The International Movement of Financial Assets: A Liberal Egalitarian Perspective

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Abstract

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This thesis discusses how a liberal egalitarian society should respond to the international movement of financial assets. Specifically, it addresses what constraints can be legitimately imposed on the freedom of individuals and corporations to transfer their financial assets, which include cash, bonds, and other types of liquid assets, out of the country. The thesis consists of two parts. The first part lays out the theoretical framework. It argues that there are three liberal egalitarian justifications for constraining an agent's claim and exercise of private property rights: the priority of the disadvantaged, the demand for fair contribution, and the requirement of membership. After that, it defends an internationalist interpretation of these constraints by defending a culturalist conception of justice under which two distinctive sets of principles of justice should apply to domestic liberal egalitarian societies and the international arena respectively. The justification for this two-tiered account of justice is that the public political culture that mediates the relation between the citizens of a liberal egalitarian society is fundamentally different from the one that mediates the relation between societies in the international arena. The second part of the thesis applies the theoretical framework developed in the first part to three different cases of international movement of financial assets: capital relocation, profit shifting, and personal asset migration. It argues that in each case a liberal egalitarian society has good reasons to impose constraints on the outflow of financial assets. The restrictions on capital outflow are justified because they prevent the interests of disadvantaged citizens from being sacrificed for the gains of the already advantaged. The ban on profit shifting is legitimate because it helps secure a fair financial contribution from the rich and multinationals. The constraints on emigrants' freedom to leave the country with their personal property are justified because a society has the right to impose financial conditions on emigration. Together, the thesis offers a critique of a pillar of global capitalism as it is known today—the international free movement of financial assets.

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Chapter 1

Introduction

1.1 An Overview

This thesis discusses how a liberal egalitarian society should respond to the international movement of financial assets. Specifically, it addresses what constraints can be legitimately imposed on the freedom of individuals and corporations to transfer their financial assets out of the country. The thesis consists of two parts. The first part lays out the theoretical framework. It argues that there are three liberal egalitarian justifications for constraining an agent's claim and exercise of private property rights: the priority of the disadvantaged, the demand for fair contribution, and the requirement of membership. After that, it defends an internationalist interpretation of these constraints by defending a culturalist conception of justice under which two distinctive sets of principles of justice should apply to domestic liberal egalitarian societies and the international arena respectively. The justification for this two-tiered account of justice is that the public political culture that mediates the relation between the citizens of a liberal egalitarian society is fundamentally different from the one that mediates the relation between societies in the international arena. The second part of the thesis applies the theoretical framework developed in the first part to three different cases of international movement of financial assets: capital relocation, profit shifting, and personal asset migration. It argues that in each case a liberal egalitarian society has good reasons to impose constraints on the outflow of financial assets. Together, the thesis offers a critique of a pillar of global capitalism as it is known today—the international free movement of financial assets.

1.2 The International Movement of Financial Assets: A Background

One defining phenomenon of the world today is the unprecedented scale of economic globalization, which refers to the increasing economic integration between different countries through the free cross-border movement of goods, capital, and labour. Due to the removal of trade barriers across the globe and the push from international organizations, such as WTO and IMF, the world saw a rapid growth in international trade in the last four decades. The total amount of commodities traded in the international market surged drastically from a mere $305 billion in 1970 to over $16 trillion in 2016.[1] The expansion of international trade has created a global market economy that fostered a global division of labour between different countries. This gave rise to an unseen level of economic interdependence between different parts of the world as different countries rely on each other for providing goods, markets, technology, and so forth.

The thesis focuses on an essential institution of the global economic order that has been largely ignored in the recent discussion of international trade: the international free movement of financial assets. By financial assets, they refer to liquid tangible economic assets that include cash, loans, bonds, stocks, bank deposits, and so forth. Since the collapse of the Bretton Woods system in the 1970s, most countries in the world gradually abolished measures and policies that control the cross-border movement of money and capital. This enables individuals and corporations to freely transfer their financial assets from one country to another with little hassle. Such freedom has two aspects. The first one is that they can transfer virtually any amount of financial assets across borders. This is possible because there is generally no cap on the volume of

[1] The World Bank, "Merchandise Exports (Current Us$)," https://data.worldbank.org/indicator/TX.VAL.MRCH.CD.WT.

currency exchange, foreign purchase, and capital outflow. The second aspect is that individuals and corporations can transfer their financial assets abroad with little to no strings attached, meaning that the transfer is generally not subjected to taxes, such as currency transaction tax, and minimum stay requirements.

The freedom to move financial assets across borders is a fundamental pillar that makes the global economy as we know it work in the first place. Without this freedom, it would be difficult to imagine how corporations could make overseas investments and do business with their counterparts in other countries. It would also be impossible to imagine how individuals could purchase foreign services and products if they are not allowed to transfer money to other countries in the first place. Put simply, the international free movement of financial assets is the cornerstone of economic globalization. If this freedom is morally problematic, we would have good reason to question the existing global economic order that is built upon it.

1.3 The Questions

The aim of the thesis is to discuss the normative issues generated by the international movement of financial assets from a liberal egalitarian perspective. The main question it seeks to answer is what justifications a liberal egalitarian society can have to impose constraints on the freedom of individuals and corporations to move their financial assets out of the country. This question has three points to be highlighted. First, the question is about the *outflow*, rather than the inflow, of financial assets. Focusing on financial asset outflow does not mean that the inflow of financial assets has no moral issues to be concerned about. It only shows that the aim of the thesis is to deal with a specific aspect

of international financial asset movement. Financial asset outflow is a phenomenon that is manifested in various cross-border economic activities. And different types of financial asset outflow should be dealt with on a case by case basis since each of them may trigger different liberal egalitarian concerns. This thesis focuses on three common types of financial asset outflow and discusses the potential issues of justice associated with them. They are 1) capital relocation, 2) profit shifting, and 3) personal asset emigration.

Second, the question asks what a *society* or *state*, rather than individual persons, should do regarding the moral issues generated by the outflow of financial assets. This thesis follows the 'institutional approach' that is widely adopted by contemporary liberal egalitarian theorists, especially Rawlsians. According to this approach, the principles of justice are devised to evaluate and regulate the basic structure of society, such as the constitution and legal system, but not personal conduct.[2] Following this institutional approach to justice, the thesis's aim is to discuss whether the basic structure of liberal egalitarian society has any reason of justice to restrict the outflow of financial assets. Its aim is not to discuss whether or not individual persons and corporates have any moral duty to refrain from moving their financial assets abroad.

Third, the question is about the possible liberal egalitarian constraints on the claim and exercise of *private property rights*, which refer to a cluster of individual rights (or, as Honoré calls them, incidents) over external objects.[3] These rights usually include the rights to possess, use, manage, and so forth. The reason for focusing on private property rights is that, for individuals and corporations to move their assets out of the country,

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[2] See Kok-Chor Tan, *Justice, Institutions, and Luck: The Site, Ground, and Scope of Equality* (Oxford: Oxford University Press, 2012), Chapter 2.
[3] A. M. Honoré, "Ownership," in *Oxford Essays in Jurisprudence*, ed. A. G. Guest (Oxford: Oxford University Press, 1961).

they must have all the relevant rights over their possessions in the first place. Figuring out the liberal egalitarian reason to limit private property rights will inform the possible legitimate constraints on the freedom of individuals and corporations to transfer their assets abroad. For example, when a corporation wants to transfer its profits to offshore tax havens, it must have the rights to the income generated by its assets. If it does not have an unconditional claim to its pre-tax income under egalitarian justice, it may not have the right to move its income overseas without first having paid its fair share of tax.[4]

This thesis develops an account of the constraints that a liberal egalitarian society can legitimately impose on the outflow of financial assets by answering three questions. First, what are the liberal egalitarian justifications for restricting the claim and exercise of private property rights? Second, how should those constraints be interpreted with regard to issues that have a global or international dimension? Third, how should the liberal egalitarian constraints on the claim and exercise of property rights be applied to the three prominent types of international financial asset movement, namely, capital relocation, profit shifting and personal asset emigration? The first part of the thesis is devoted to answering the first two questions by pointing out three liberal egalitarian justifications for restricting the rights to private property and engaging with the debate between internationalism and cosmopolitanism. The second part of the thesis is devoted to answering the third question by applying the theoretical framework developed in the first part to discuss the three types of financial asset outflow.

[4] Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (Oxford: Oxford University Press, 2002).

1.4 Part I The Theoretical Framework

The first half of the thesis sets up the theoretical framework for discussing the issues of justice associated with different types of financial asset outflow. Chapter Two first presents an account of how constraints on the claim and exercise of private property rights are justified in liberal egalitarianism. After that, Chapters Three to Five defend a two-tiered, internationalist conception of justice.

1.4.1 Chapter Two: Liberal Egalitarianism and Private Property Rights

This chapter proposes three common liberal egalitarian justifications for constraining the claim and exercise of private property rights by drawing on the works of John Rawls,[5] Ronald Dworkin,[6] Elizabeth Anderson,[7] Stuart White,[8] Jonathan Wolff and Avner de-Shalit,[9] Andrew Lister,[10] Amartya Sen,[11] Ian Carter,[12] Samuel Scheffler,[13] Thomas Nagel and Liam Murphy.[14] The chapter begins by offering an account of the core ideas of liberal egalitarian justice that should have broad appeal. Those core ideas include the ideal of reciprocity, the conception of persons as free and equal, and the idea of social

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[5] John Rawls, *A Theory of Justice (Revised Edition)* (Cambridge, MA: The Belknap Press of Harvard University Press, 1999); *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge: The Belknap Press of Harvard University, 2001); *Political Liberalism (Expanded Edition)* (New York: Columbia University Press, 2005).
[6] Ronald Dworkin, "What Is Equality? Part 2: Equality of Resources," *Philosophy & Public Affairs* 10, no. 4 (1981); *Justice for Hedgehogs* (Cambridge, MA: Harvard University Press, 2013).
[7] Elizabeth Anderson, "What Is the Point of Equality?," *Ethics* 109, no. 2 (1999).
[8] Stuart White, *The Civic Minimum: On the Rights and Obligations of Economic Citizenship* (Oxford: Oxford University Press, 2003).
[9] Jonathan Wolff and Avner de-Shalit, *Disadvantage* (Oxford: Oxford University Press, 2013).
[10] Andrew Lister, "Reciprocity, Relationships, and Distributive Justice," *Social Philosophy and Policy* 39, no. 1 (2013).
[11] Amartya Sen, "Equality of What," in *The Tanner Lecture on Human Values* (Cambridge: Cambridge University Press, 1980).
[12] Ian Carter, "Respect and the Basis of Equality," *Ethics* 121 (2011).
[13] Samuel Scheffler, "What Is Eglitarianism?," *Philosophy & Public Affairs* 31, no. 1 (2003).
[14] Murphy and Nagel, *The Myth of Ownership: Taxes and Justice*.

cooperation. Based on these ideas, the chapter proposes three liberal egalitarian justifications for placing constraints on private property rights. The first one is the priority of the disadvantaged. It justifies constraining property rights to advance the legitimate interests of disadvantaged social and economic groups. The second one is the demand for fair contribution. It justifies constraining property rights to ensure that the burdens and costs generated by the demands of justice are distributed fairly across the society. The third one is the requirement of membership. It justifies constraining property rights based on a person's membership status.

1.4.2 Chapter Three: Institutions and the Scope of Justice

Chapters Three to Five defend a two-tiered, internationalist conception of justice based on a culturalist theory of justice. By arguing that the scope of liberal egalitarian justice should be confined to domestic liberal democratic societies and that there is a distinct set of principles that apply to the international arena, these chapters offer an internationalist account of the liberal egalitarian justifications for constraining private property rights developed in Chapter Two. Chapter Three first rejects the institutionalist arguments for internationalism according to which the demands of liberal egalitarian justice arise when there exists a relevant set of institutions. It does so by examining two different institutionalist approaches—the unique-nature approach from Michael Blake,[15] Mathias Risse,[16] Samuel Freeman[17] and Thomas Nagel[18] and the interpretive approach from

[15] Michael Blake, "Distributive Justice, State Coercion, and Autonomy," *Philosophy & Public Affairs* 30, no. 3 (2001).
[16] Mathias Risse, *On Global Justice* (Oxford: Princeton University Press, 2012).
[17] Samuel Freeman, "The Law of Peoples, Social Cooperation, Human Rights, and Distributive Justice," *Social Philosophy and Policy* 23, no. 1 (2006).
[18] Thomas Nagel, "The Problem of Global Justice," *Philosophy & Public Affairs* 33, no. 2 (2005).

Andrea Sangiovanni.[19] The unique-nature approach seeks to justify the rejection of global egalitarianism by pointing out the different natures of the institutions in the domestic and international basic structures. Against this approach, the chapter argues that it fails to quarantine the domestic from other sites of justice, including both the international and the local, and is hence unable to provide the normative basis for a two-tiered, internationalist conception of justice. The interpretive approach attempts to reject global egalitarianism by emphasising the different roles justice is meant to play in a domestic society and the international order as interpreted against their distinct institutional practices respectively. Against this approach, the chapter argues that it fails to show how existing institutional practices alone can condition the justification of the principles of justice that apply to the domestic and the international respectively.

1.4.3 Chapter Four: Public Political Culture and the Scope of Justice

This chapter presents a culturalist argument to justify the two-tiered, internationalist conception of justice by explaining the essential role of public political culture in determining the content, justification, and scope of justice. It argues that liberal egalitarian principles apply exclusively to domestic constitutional democratic societies where the relations of citizens are mediated by a unique public political culture upon which those principles can be justified. It also argues that the international arena should be regulated by a set of principles of justice that is distinct from the liberal egalitarian ones because the international public political culture is fundamentally different from the one found within domestic constitutional democracies. The chapter first elaborates on

[19] Andrea Sangiovanni, "Global Justice, Reciprocity, and the State," ibid.35, no. 1 (2007).

the idea of public political culture by analysing its content, domain, and constituency. After that, it spells out the culturalist theory of justice in light of Rawls's political constructivism and Sangiovanni's interpretive method discusses in the previous chapter. Based on the culturalist theory of justice, the chapter rejects cosmopolitan egalitarianism by arguing that the public political culture upon which liberal egalitarian principles can be formulated and justified can be found in contemporary constitutional democratic societies but not elsewhere. Apart from cosmopolitan egalitarianism, the chapter also rejects parochial statism by employing the culturalist approach to formulate a distinct set of international principles of justice in light of the public political culture that mediates the interaction between the participants of the international basic structure. Those principles are the principle of non-intervention, the principle of basic human rights, and the principle of non-domination.

1.4.4 Chapter Five: Culturalist Theory of Justice and Internationalism

This chapter responds to three common critiques against the culturalist argument for the two-tiered, internationalist conception of justice. They are the pluralism critique, the accusation of status-quo bias, and the interpretive challenge. The pluralism critique argues that the culturalist argument underestimates the fundamental disagreements on justice within domestic societies while exaggerating the disagreements that appear at the international level. It points out that liberal egalitarian justice may not be justified within constitutional democracies because of their internal pluralistic culture, and that liberal egalitarian justice may be justified to regulate the relations between constitutional democracies due to their shared public political culture. The accusation of status-quo bias comes in two versions. The first one is the charge that the culturalist argument is unduly

conservative because it takes the existing cultural practices of society as given rather than examining them critically.[20] It is argued that the status quo bias of the culturalist argument would deprive it of the resources for criticising societies whose public political culture is morally repugnant. The second version of the accusation of status-quo bias is the charge that the culturalist argument erroneously permits the principles of justice to be determined by existing cultural practices that are arbitrary from a moral point of view.[21] It is argued that since the cultural membership of individuals is largely determined by factors they have no control over, such as birthplace, the culturalist argument is guilty of permitting the rights of individual persons to be determined by morally arbitrary facts. The interpretive challenge rejects the culturalist argument's interpretation of the public political culture found in the international basic structure identified in the previous chapter. It focuses on Aaron James's argument that attempts to justify international egalitarian principles by employing the methodology used by the culturalist theory of justice. He argues that the practices of international trade generate among its participants mutually recognised norms and expectations upon which egalitarian principles can be justified. This chapter responds to these three critiques against the culturalist theory of justice and argues that none of them is successful.

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[20] Laura Valentini, *Justice in a Globalized World: A Normative Framework* (Oxford: Oxford University Press, 2011), Chapter 4 to 5; Onora O'Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge: Cambridge University Press, 1996), 75.

[21] Simon Caney, *Justice Beyond Borders: A Global Political Theory* (Oxford: Oxford University Press, 2005); Charles R. Beitz, "Cosmopolitan Ideals and National Sentiment," *The Journal of Philosophy* 80, no. 10 (1983); Kok-Chor Tan, *Justice without Borders: Cosmopolitanism, Nationalism and Patriotism* (Cambridge: Cambridge University Press, 2004); Pablo Gilabert, *From Global Poverty to Global Equality: A Philosophical Exploration* (Oxford: Oxford University Press, 2012).

1.5 Part II The International Movement of Financial Assets

The second part of the thesis applies the theoretical framework developed in the first part to discuss whether a liberal egalitarian society can legitimately impose restrictions on different types of financial asset outflow. Chapter Six argues that the priority of the disadvantaged justifies a society restricting capital outflows to advance and protect its disadvantaged citizens' legitimate interests. Chapter Seven contends that the demand for fair contribution justifies a society banning the rich and multinational corporations from moving their taxable income and assets to tax havens to secure their fair financial contribution to the social cooperation in which they are members. Chapter Eight argues that the requirement of membership justifies a society constraining emigrants' freedom to bring their personal assets with them when leaving the country because emigrants' membership status justifies the society to impose financial conditions on their exit.

1.5.1 Chapter Six: Capital Outflows: The Case for Restrictions

This chapter argues that a society has legitimate reasons to restrict investors and corporations to move their capital overseas. The chapter is divided into two parts. The first part points out that, under the priority of the disadvantaged, a society should restrict the outflows of capital to prevent the economic interests of the disadvantaged from being sacrificed for the gains of the well off. It points out that the liberalisation of capital outflows would bring enormous benefits to investors and multinational firms while depriving low-skilled workers of their jobs and threatening the welfare state on which disadvantaged citizens rely. To protect the economic well-being of the disadvantaged, a society has a duty of justice to constrain the outflows of capital. After presenting the case for restriction, the chapter rejects the 'compensation theory' proposed by Aaron James

and Christensen which contends that the egalitarian deficits of the liberalisation of capital outflows can be removed by compensating the disadvantaged citizens.[22] The second part of the chapter turns the focus to the justifications found in the principles of international justice for restricting capital outflows. It first argues that a society should prohibit capital outflows to countries where human rights abuses are rampant to avoid becoming complicit in those abuses. It also contends that a society should control capital outflows to prevent developing countries' right to self-determination from being undermined by multinational corporations.

1.5.2 Chapter Seven: Offshore Finance and Fair Contribution

This chapter argues that a society can ban individuals and corporations from transferring their taxable income and assets to offshore tax havens to secure their fair financial contribution to social cooperation. It discusses two possible arguments derived from two different interpretations of the demand for fair contribution—the beneficiary interpretation and the natural-duty interpretation—and contends that only the natural-duty interpretation can offer a solid normative foundation to justify banning the use of offshore tax-havens. The argument based on the beneficiary interpretation contends that a society should ban the use of offshore tax havens to ensure that every participant in social cooperation would make a fair financial contribution proportional to the benefits she receives. Against this argument, the chapter argues that the argument may actually justify the tax avoidance practices of multinational corporations due to their business model in a globalised economy. After rejecting the beneficiary argument, the chapter

[22] James Christensen, *Trade Justice* (Oxford: Oxford University Press, 2017); Aaron James, *Fairness in Practice: A Social Contract for a Global Economy* (Oxford: Oxford University Press, 2013).

moves to discuss the argument based on the natural-duty interpretation of the demand for fair contribution. According to this argument, a society should ban the use of tax havens to ensure that every citizen pays their fair due to the collective pursuit of a public conception of justice. The chapter explains how this argument can avoid the problems encountered by the one based on the beneficiary interpretation of fair contribution. After that, the final part of the chapter discusses whether a society can still demand financial contribution from citizens when it is partially unjust.

1.5.3 Chapter Eight: Emigration and the Movement of Personal Assets

This chapter discusses how an emigrant's membership status provides a society with the justifications to constrain her freedom to leave the country with her personal property. This chapter is divided into two parts. The first part discusses two popular theories that attempt to justify attaching financial conditions to emigration—the beneficiary theory and the distributive justice theory. According to the beneficiary argument, emigrants can be demanded to pay an exit tax before they leave because they have a duty to make a fair return for the benefits and goods they received from the society they are leaving.[23] And according to the distributive justice theory, a society can demand emigrants making compensation for the damages their exit may do to the society's capacity to realise distributive justice.[24] The chapter argues that both theories are unsuccessful. Against the beneficiary theory, it points out that the beneficiary interpretation of fair return upon

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[23] Anna Stilz, "Is There an Unqualified Right to Leave?," in *Migration in Political Theory: The Ethics of Movement and Membership*, ed. Sarah Fine and Lea Ypi (Oxford: Oxford University Press, 2016), 71; Lea Ypi, "Justice in Migration: A Closed Borders Utopia?," *The Journal of Political Philosophy* 16, no. 4 (2008): 412.

[24] "Justice in Migration: A Closed Borders Utopia?," 409; Gillian Brock and Michael Blake, *Debating Brain Drain: May Governments Restrict Emigration?* (New York: Oxford University Press, 2015), 37-41.

which the theory is built is an inappropriate principle for distributing the costs of welfare provisions. And against the distributive justice theory, it points out that the theory is implausible within a cosmopolitan framework. The second half of the chapter introduces an original theory—the social membership theory—to justify taxing both emigrant citizens and emigrants who decide to renounce their citizenship in their home country. It argues that a society has the right to demand emigrant citizens make substantial financial guarantees before leaving the country to ensure that they would continue paying their fair shares of taxes to support the social cooperation of their home country while living abroad. After that, it contends that emigrant non-citizens can have little normative ground to complain against the exit tax imposed on them because their renunciation of citizens means that they are unable to make claims according to liberal egalitarian justice against the society in which they are no longer members.

Chapter 2

Liberal Egalitarianism and Private Property Rights

2.1 Introduction

The question of how liberal egalitarianism should respond to the cross-border movement of financial assets cannot be answered without first addressing how property rights are regulated under liberal egalitarian justice. And the aim of this chapter is to elaborate on the liberal egalitarian justifications for constraining the claims and exercise of private property rights. Liberal egalitarianism generally argues for the protection of an extensive set of individual liberties while recognising the concerns of equality as a legitimate reason to put constraints on those liberties. The rights to private property occupy a central position in the debates of liberal egalitarianism because they are often regarded as important liberal rights while their restriction is necessary for realising egalitarian justice. Different theorists may disagree on the egalitarian ideal that should apply to regulate property rights. Nonetheless, liberal egalitarians agree that the rights to private property must be adjusted according to some egalitarian principles in order to respect and honour the moral equality of individual persons.[1]

This chapter offers an account of how constraints on private property rights are justified in liberal egalitarianism. It points out that there are three common liberal egalitarian justifications for constraining property rights, namely 1) the priority of the disadvantaged, 2) the demand for fair contribution, and 3) the requirement of

[1] Samuel Freeman, "Capitalism in the Classical and High Liberal Traditions," *Social Philosophy and Policy* 28, no. 2 (2011): 34; Murphy and Nagel, *The Myth of Ownership: Taxes and Justice*; Jeremy Waldron, *The Right to Private Property* (Oxford: Oxford University Press, 1990).

membership. They provide the moral foundation for a society to constrain the claim and exercise of private property rights through different policies, such as tax and transfer, to ensure that the inequalities in income and wealth could be compatible with the moral equality of individuals. By figuring out the liberal egalitarian constraints on private property rights, this chapter lays the groundwork for the discussion and arguments in later chapters regarding the possible limits on the free international movement of financial assets.

This chapter is structured as follows. The next section first spells out the core ideas of liberal egalitarian justice. It elaborates the central claim of liberal egalitarianism that a society must arrange its basic structure in a manner that recognises and respects the individual persons governed by it as free and equal. Section three discusses the dilemma of private property rights posed to liberal egalitarianism. It points out that the right to private property is Janus-faced from a liberal egalitarian perspective as it both facilitates the essential socio-economic conditions for and threatens to undermine the realisation of the liberal egalitarian ideal. Section four turns the attention to the three implications that can be drawn from the discussions in sections three and four on how private property rights can be legitimately constrained within a liberal egalitarian society. The first one is the priority of the disadvantaged. It permits the society to constrain property rights to advance the legitimate interests of disadvantaged social and economic groups. The second one is the demand for fair contribution. It permits the society to constrain private property rights to ensure that the burdens and costs generated by the demands of liberal egalitarian justice are distributed fairly across the society. The third one is the requirement of membership. It permits the society to specify and adjust its private property regime based on the claims of individual persons who possess a relevant

membership. Section five concludes the discussion and introduces the possible different interpretations of the three justifications which will be the focus of the next two chapters.

Before entering the discussion, two things should be noted. First, the liberal egalitarian justice presented in this chapter is only one of the many possible conceptions. Liberal egalitarianism is a broad church that consists of different competing conceptions of justice.[2] However, due to the limited space, it would be impossible for this chapter to engage deeply with the internal disagreements among liberal egalitarians. It would also be impossible for the chapter to accommodate all different liberal egalitarian theories. The conception of justice presented below hence might not be able to satisfy every liberal egalitarian. That said, it should have a broad appeal to any egalitarians who regard the equal moral worth of individuals as an essential constraint on a society's institutional arrangements. Second, the purpose of this chapter is not to defend liberal egalitarian justice. Liberal egalitarianism has long been challenged by libertarians,[3] classical liberals,[4] and socialists.[5] From the perspectives of these competing theories, the liberal egalitarian constraints of private property rights presented below would no doubt be questionable, if not outright unacceptable. However, the aim of this chapter is not to compare the liberal egalitarian conception of private property rights to the conceptions derived from other theories of justice and show that the former is superior to the latter. For this reason, the following sections do not attempt to respond to the possible critiques from theories that outright reject liberal egalitarianism in the first place.

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[2] For example, there is a perennial debate among theorists over the currency of equality. See Dworkin, "What Is Equality? Part 2: Equality of Resources."; Sen, "Equality of What."
[3] For example, see Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 2013).
[4] For example, see Friedrich A. Hayek, *The Constitution of Liberty* (London: Routledge & Kegan Paul, 1963).
[5] For example, see G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008).

2.2 Liberal Egalitarian Justice

The fundamental claim of liberal egalitarian justice is that the basic structure of a society is just only if it adequately recognises and respects individual persons as free and equal.[6] This claim consists of two main ideas. The first one is the 'institutional approach' of liberal egalitarian justice. According to this approach, the primary subject of justice is the *basic structure* of society that comprises the major social, political, and economic institutions responsible for assigning basic rights and duties and distributing advantages and burdens among the individual members of society.[7] These major institutions include the constitution, legal framework, rules for election, the system of property rights, etc. They are the primary subject of justice mainly for two reasons. First, they generally involve the use of state coercive power which demands special justification. Second, they have a profound impact on the life prospects of the individuals who live under those institutions.[8] The narrowly defined subject of justice means that liberal egalitarianism does not apply directly to regulating private associations, such as business firms, churches, and universities, and personal interactions, such as those between friends and within families.[9] These associations and interactions are only indirectly constrained by the demands of liberal egalitarianism when they exist within a basic structure that is arranged to satisfy those demands.[10] In short, the institutional approach narrows the aim of liberal egalitarian justice into deciding which principles of justice should be applied to the basic

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[6] Anderson, "What Is the Point of Equality?," 312; Scheffler, "What Is Eglitarianism?," 32.
[7] Rawls, *Justice as Fairness: A Restatement*, 10.
[8] *A Theory of Justice (Revised Edition)*, 7.
[9] *Justice as Fairness: A Restatement*, 10. This is not the say that all liberal egalitarians accept the narrow conception of the subject of justice. For example, the institutional approach is criticised by G. A. Cohen in his *If You're an Egalitarian, How Come You're So Rich?* (Cambridge, MA: Harvard University Press, 2001). Apart from that, Ronald Dworkin and T. M. Scanlon both regard liberal egalitarianism has wider application on other forms of human interaction. See Dworkin, *Justice for Hedgehogs*, Part 4; T. M. Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998).
[10] Rawls, *Justice as Fairness: A Restatement*, 10.

structure of society so that individuals who live under it can be respected as free and equal persons.

The second main idea in liberal egalitarian justice is the conception of free and equal persons. Free and equal persons refer to individuals who possess what Rawls calls the two moral powers to a sufficient level. These two powers constitute the moral agency of individuals. The first moral power is the capacity for a sense of justice, which includes the ability to propose, understand, and act from principles and standards that specify fair terms of cooperation.[11] Individuals who possess this power are capable of making judgments of justice (and injustice) and accepting the obligations of cooperation, even at the expense of their own interests, provided that others would do the same. The second moral power is the capacity for a conception of the good, which includes the ability to have, revise, and rationally pursue a conception of the good.[12] Individuals who possess this power are able to decide for themselves what constitutes a worthwhile life in light of the religious, philosophical, or moral doctrines they affirm.

Individuals are regarded as *equal* when they possess the two moral powers to a requisite degree that enables them to participate in fair cooperation with others.[13] The equality of moral agents is not affected by the differences of persons in race, ethnicity, religion, gender, genes, and socio-economic status.[14] It is also not affected by the inequalities in their intellectual, mental, and physical capacities. Egalitarians offer different answers to why individuals should be regarded as morally equal despite their obvious differences and inequalities in many aspects. For Rawls, the basis of equality is found in 'the public political culture of a democratic society' which contains a firm belief

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[11] Ibid., 18-19; Rawls, *Political Liberalism (Expanded Edition)*, 49.
[12] *Justice as Fairness: A Restatement*, 19.
[13] ibid., 20; Carter, "Respect and the Basis of Equality," 552-53.
[14] Anderson, "What Is the Point of Equality?," 312.

in the equality of citizens.[15] For Ian Carter, the basis is what he calls 'opacity respect' according to which respecting persons as moral agents requires the abstention from evaluating their varying capacities when they possess those capacities 'above a certain absolute threshold.'[16] Despite the differences, egalitarians generally agree that individuals should be regarded as equal when they have a minimally sufficient level of agential capacities.

By virtue of their possession of the two moral powers, individuals are also regarded as *free* in two important ways. First, they are free in the sense that they are not attached to any pre-determined conception of the good. Individuals who possess the capacity of having a conception of the good are capable of making their own decision on what a worth-pursuing life is and devising their own life plans in light of the kind of person they want to be and the religious, philosophical, and moral commitments they affirm.[17] This means that they are not inevitably destined to the acceptance of any specific notion of valuable life and the pursuit of any specific version of human flourishing. In this regard, individuals are free persons when they are independent of and not identified with any pre-determined conception of the good life.[18] The second sense in which individuals are regarded as free is that they are not bounded by any 'natural' order of society. By having the capacity of having a sense of justice, individuals are able to make judgments about justice based on their own reason and they see themselves as being entitled to make claims of justice against the institutions under which they are governed.[19] Apart from that, individual persons are capable of cooperating with others to pursue and

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[15] Rawls, *Justice as Fairness: A Restatement*, 79; *Political Liberalism (Expanded Edition)*, 19.
[16] Carter, "Respect and the Basis of Equality," 553.
[17] Rawls, *Political Liberalism (Expanded Edition)*, 30.
[18] Ibid.
[19] Rawls, *Justice as Fairness: A Restatement*, 23.

realise a public conception of justice that is reasonable for all to accept.[20] In other words, free persons are not bounded to organise their social relations in a specific, pre-determined way; instead, they are able to arrange the public affairs of their society according to their own public conception of justice resulting from free and open deliberation.

Liberal egalitarian justice demands that a society's basic structure must recognise and respect individual persons as free and equal. One common interpretation of this demand is that it requires a society to arrange its basic structure in a manner that realises the ideal of *reciprocity*.[21] There can be different interpretations of the concept of reciprocity, but the one relevant here refers to the ideal that a society's basic structure is arranged in a manner that could be acceptable to all free and equal persons governed by it who seek to advance their rational interests through cooperating with each other.[22] This ideal of reciprocity respects the individuals governed by the basic structure of society as free agents by recognising their capacity to propose, reason, and decide the terms of cooperation in light of their own self-defining interests. It also respects their moral equality by demanding the basic structure of society to give equal concern to the rational interests of every cooperating social member, regardless of their race, sex, and socio-economic background.

There are different liberal egalitarian theories that seek to spell out the principles of justice which free and equal persons would find acceptable. These theories can be seen as offering different accounts of two fundamental liberal egalitarian principles:

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[20] *Political Liberalism (Expanded Edition)*, 49-50.
[21] Ibid., xliv; Jonathan Quong, "Contractualism, Reciprocity, and Egalitarian Justice," *Politics, Philosophy & Economics* 6, no. 1 (2007).
[22] Rawls, *Political Liberalism (Expanded Edition)*, xliv, 16.

> *The Liberty Principle*: individual persons are entitled to a wide range of political, social, and economic rights and liberties that enable them to adequately develop and fully exercise their two moral powers.
>
> *The Egalitarian Principle*: the rights and liberties guaranteed by the Liberty Principle should be specified and adjusted in a way that respects the moral equality of individual persons.

In light of these two principles, the ideal society from a liberal egalitarian perspective should be the one that arranges its basic structure to guarantee individual persons the freedom to pursue their own life projects and participate in collective self-governance, and ensure that their individual and collective pursuits would not undermine their equal moral worth that entitles them to equal respect. In this regard, liberal egalitarian justice can be said as distinctive from other political theories that also champion personal liberty, such as libertarianism, by its acceptance of the concerns of equality as legitimate constraints to the distribution and exercise of individual freedom.

The Liberty Principle typically covers three types of freedoms and rights. The first one is a set of *civil* rights and liberties, such as the freedom of conscience and the freedom of occupation, that are essential for any person to form, revise and pursue her own conception of the good. The second type is a set of *political* rights and liberties, such as the right to run for public offices and the freedom of the press, that are fundamental for individual persons to participate in the collective decision-making processes for deliberating and applying the principles of justice to the basic structure of society.[23] The third type is a set of *welfare* rights, such as the right to education and the right to healthcare,

[23] *Justice as Fairness: A Restatement*, 113.

that enable individual persons to effectively exercise their civil and political liberties.[24] Following Rawls, there are two methods to decide which specific rights and liberties should be covered by the Liberty Principle when uncertainties or disputes arise.[25] The first one is 'historical,' that is, to survey various liberal democratic regimes and assemble a list of rights and liberties that are protected in what seem to be historically the more successful regimes. The second one is 'analytical,' that is, to consider what rights and liberties are essential for providing the political and social circumstances for the development and exercise of individuals' moral powers.

The rights and liberties covered by the Liberty Principle are not absolute and they can be subjected to various constraints. For example, a right can be legitimately restricted if it conflicts with other equally important rights and liberties covered by the Principle. Also, a society may legitimately limit and adjust citizens' claims to rights and liberties under unfavourable socio-economic conditions, such as natural limitations, extreme poverty, and warfare.[26] But the pivotal normative constraint on the Liberty Principle from a liberal egalitarian perspective is the Egalitarian Principle which demands the basic structure of society to recognise and respect the equal moral worth of individual persons who possess the two moral powers to a requisite degree. It requires the basic structure to see the rational interests of free and equal persons derived from their moral personality as of equal moral significance that is worthy of equal concern.[27] The Egalitarian Principle can have two different interpretations.

The first one is to conceive it as a *distributive* ideal. In this view, egalitarian justice demands the basic institutions of society to equally distribute the particular set of

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[24] Freeman, "Capitalism in the Classical and High Liberal Traditions."
[25] Rawls, *Justice as Fairness: A Restatement*, 45.
[26] *A Theory of Justice (Revised Edition)*, 216-18.
[27] Nicholas Kirby, "Two Concepts of Basic Equality," *Res Publica* 24 (2018): 299.

entitlements guaranteed to individual persons under the Liberty Principle. And this demand of justice is derived directly from individual persons' equal claim to such entitlements by virtue of their equality in moral agency. Based on different accounts of what free and equal persons are entitled to, the entitlements that should be equally distributed according to different distributive egalitarian theories can refer to resources,[28] capabilities,[29] and opportunities for welfare,[30] among other things. Despite their differences, the underlying agreement among those theories is that the respect for the moral equality of individual persons requires equality in the distribution of entitlements among them. This does not entail that the distributive view of egalitarian justice endorses strict distributive equality and sees any unequal distribution of entitlements among individuals as necessarily unjust. What distributive egalitarianism argues for is that the equal distribution of a particular set of entitlements should be taken as a baseline and any departures from it would require compelling justifications.[31]

The second interpretation of egalitarian justice is the *relational* view. In this view, what egalitarian justice demands is that a society's basic institutions should facilitate and maintain a social relation in which individual persons can stand as equals to one another.[32] This demand, according to Elizabeth Anderson, has a positive and a negative aspect. Positively, it contends that in an egalitarian society individual persons should be able to relate to one another as equal moral agents participating in social cooperation.[33] Negatively, egalitarian justice requires the abolition of oppressive social relations 'by

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[28] Dworkin, "What Is Equality? Part 2: Equality of Resources."
[29] Sen, "Equality of What."
[30] Richard J. Arneson, "Equality and Equal Opportunity for Welfare," *Philosophical Studies* 56 (1989).
[31] Christian Schemmel, "Distributive and Relaitonal Equality," *Politics, philosophy & economics* 11, no. 2 (2011): 126.
[32] Anderson, "What Is the Point of Equality?," 289; Scheffler, "What Is Eglitarianism?," 22.
[33] Anderson, "What Is the Point of Equality?," 313.

which some people dominate, exploit, marginalize, demean, and inflict violence upon others.'[34] The constraint imposed by the relational view of egalitarianism on the Liberty Principle is that the entitlements guaranteed by the Principle should be specified and adjusted to uphold a relation of equality among individual persons. Contrary to the distributive view, relational egalitarianism does not see the unequal distribution of entitlements guaranteed under the Liberty Principle as a prima facie case of injustice; instead, it contends that such inequality is unjust only if it leads to unequal social relations.

The distributive and relational conceptions of egalitarianism are often portrayed as rivalrous positions. However, as Andres Moles and Tom Parr rightly point out, it is mistaken to regard these two views as mutually exclusive.[35] This is because the two views actually have reason to accept and support the position of each other. On the one hand, the relational view would not dispute that the equal distribution of certain entitlements, such as political rights, is constitutive or at least instrumental to achieving a society of equals.[36] On the other hand, the distributive view would not deny that an equal relation is usually a pre-condition for the equal distribution of entitlements to be possible. In other words, the distributive and relational views of equality are not mutually exclusive because more often than not they are actually complementary to each other. The fact that the two views are often mutually supportive of each other does not mean that either view can subsume the other one as suggested by some theorists, however.[37]

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[34] Ibid.; Elizabeth Anderson, "Equality," in *The Oxford Handbook of Political Philosophy*, ed. David Estlund (Oxford: Oxford University Press, 2012), 42-44.
[35] Andres Moles and Tom Parr, "Distributions and Relations: A Hybrid Account," *Political Studies* 67, no. 1 (2019).
[36] Ibid., 136-38. See also Christian Schemmel, "Why Relational Egalitarians Should Care About Distributions," *Social Theory and Practice* 37, no. 3 (2011); Anderson, "What Is the Point of Equality?," 314; Scheffler, "What Is Eglitarianism?," 21.
[37] See Schemmel, "Why Relational Egalitarians Should Care About Distributions."; Wolff and de-Shalit, *Disadvantage*, 6.

On the one hand, the distributive view cannot claim that relational inequality is unjust *only if* it contributes to distributive inequality. This can be illustrated by the case in which a racist government segregates black and white students into different schools but nonetheless promises equal educational resources to students from both races. In this 'segregated but equal' example the injustice committed by the racist government, from a relational egalitarian perspective, is that it enforces a system of racial segregation that endorses and contributes to a demeaning social relation in which black people stand as inferiors to their white counterparts. And this injustice associated with an inegalitarian relation cannot be seen as a by-product of distributive inequality given the government's commitment to equal distribution of educational entitlements among students from both races. In this regard, the relational view of egalitarianism cannot be subsumed by the distributive view because the 'segregated but equal' example shows that the injustice associated with relational inequality can be independent of distributive inequality.

On the other hand, the relational view also cannot claim that distributive inequality is unjust *only if* it contributes to distributive inequality. To understand why, consider the case in which a government inspired by Mill's proposal for plural voting decides to give each PhD holder an extra vote in the general elections. It is conceivable that the extra votes given to PhD holders in this case may not necessarily lead to a condemnable inegalitarian social relation, such as domination and subjugation. For example, the number of PhD holders may be too small to make their extra votes impactful in the elections or they may simply refuse to take advantage of their extra votes. However, even if plural voting may not be problematic from a relational perspective, liberal egalitarians would still have reason to consider it unjust by virtue of its unequal distribution of voting right. As argued by Beitz, plural voting fails to respect people with

different educational backgrounds as morally equal because such inequality '*itself* comes to symbolize the lesser merit or worth of those disadvantaged by it.'[38] His point is that egalitarians should regard the unequal distribution of voting right facilitated by plural voting *itself* as an incident of injustice. This is because, by giving extra weight to the voices of the more educated, such inequality indicates that the voices of less educated people are of lesser worth than their more educated counterparts. The example of plural voting demonstrates that in some cases, such as voting rights, distributive inequality *alone* can be a manifestation of injustice regardless of whether such inequality would result in a condemnable relation.[39] Therefore, relational egalitarianism cannot subsume distributive egalitarianism because the injustice of distributive inequality does not necessarily depend on its contribution to a condemnable inegalitarian relation.

To conclude, there is no reason to regard the distributive and relational views of equality as mutually exclusive and that the two views cannot subsume one another. For this reason, it is more appropriate to see the distributive and relational views as capturing two distinct demands derived from the moral equality of individual persons. The constraints imposed by the Egalitarian Principle on the Liberty Principle are therefore, in Moles and Parr's term, 'hybrid' in nature.[40] According to this hybrid account of egalitarianism, the moral equality of individual persons, on the one hand, requires strictly

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[38] Charles R. Beitz, *Political Equality: An Essay in Democratic Theory* (Princeton: Princeton University Press, 1989), 37, emphasis added.

[39] The claim here does not deny that plural voting may contribute to a demeaning, discriminatory social relation in which the more educated stand as superior to those less educated. In this case, relational inequality should be seen as *an additional* evil rather than the root of the evil associated with plural voting. The purpose of referring to Beitz's argument against plural voting is to point out that it cannot be said that distributive inequality is unjust *merely* by virtue of the fact that it corrupts an ideal egalitarian relation. For a more detailed elaboration of this point, see Moles and Parr, "Distributions and Relations: A Hybrid Account," 141.

[40] Ibid.

equal distribution of certain entitlements, such as voting right.[41] And on the other hand, it permits inequality in the distribution of other rights and liberties as long as such inequality does not erode the equal relation among individual persons. Egalitarian theories therefore need to answer both the questions over which rights and liberties should be governed by strict equality and how unequal access to entitlements should be adjusted to preserve an ideal egalitarian relation.

2.3 Private Property Rights: Justification and Threats to Equality

Among the rights and liberties covered by the Liberty Principle are private property rights. Private property rights are seen as fundamental to maintaining an economic system that provides the necessary conditions for individual persons to exercise and realise their moral powers. Yet those rights are also regarded as a major threat to the realisation of the Egalitarian Principle if they are left unregulated. One debate that occupies a central place in liberal egalitarian literature, therefore, is how private property rights should be specified and adjusted in order to respect the moral equality of individual persons. The answer to this question is essential to address how the freedom to move one's financial assets across borders should be constrained from a liberal egalitarian perspective. But before answering this question, it is necessary to briefly define private property rights.

Private property rights, following A. M. Honoré's seminal definition, refer to a bundle of claims a person is entitled to make against others over a tangible or intangible thing.[42] And those rights, as argued by John Christman, can be clustered into two classes of rights. The first one is a set of 'control' rights that include the rights 'to use, possess,

[41] Or in Sen's term, equality in some *spaces*, see Amartya Sen, *The Idea of Justice* (London: Penguin Books, 2010), 294-95.
[42] Honoré, "Ownership." See also

manage, modify, alienate, and destroy one's property.'[43] These rights constitute a pro tanto right to non-interference that confers upon a property owner the power to independently decide what is to be done with her property without undue interference from others and the state.[44] To say that a person has control rights over a thing is to mean that she has the *exclusive* power to utilise that thing for her own purposes, by either simple possession, use, or consumption.[45] Apart from control rights, another class of rights according to Christman is a set of 'income' rights that allow individuals to derive income from their assets through conditional transfer.[46] Income rights are composed of mainly two separate rights—the right to exchange one's property (trade) and the right to retain goods received in trade (income).[47] The right to income allows a person to engage with others in bilateral agreements that involve her property and receive rent, interest, and profit from those agreements. Based on Christman's conception of private property rights, a person can claim 'full ownership' over a thing when she has all the relevant rights to *control* and *generate income* from that thing.

The right to private property is widely seen as among the entitlements which a society has obligation to recognise and protect under the Liberty Principle because they advance the fundamental interests of free and equal persons by facilitating the necessary conditions on which their development and exercise of moral powers depend. This can be illustrated by two examples. First, the right to private property provides a person with the material security that allows her to devise and pursue a life plan of her own. It is

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[43] John Christman, *The Myth of Property: Toward an Egalitarian Theory of Ownership* (Oxford: Oxford University Press, 1994), 128.
[44] Ibid.
[45] Ibid.
[46] Ibid., 129-31.
[47] Ibid., 130. Christman uses the term 'transfer' instead of 'exchange.' But 'transfer' is not accurate enough because one could transfer her property to another person unconditionally but the right to income, as Christman himself points out, always involves 'conditional' transfer (exchange).

commonly accepted that a decent level of material security is a prerequisite for a person to have the opportunity and psychological space to reflect on how she wants her life to go.[48] A person faced with material deprivation would simply be preoccupied with her most pressing needs and thus unable to engage with any long-term projects. For anyone to enjoy genuine material security, a necessary condition is that she must have the property rights that give her personal control over her immediate material environment.[49] This is because without such rights a person would be under constant uncertainty and fear that the goods and resources which form the basis of her material security could be taken away by others against her will at any time. In short, the protection of private property rights is a demand of the Liberty Principle because those rights are essential to a reasonable level of material security that gives a person a sense of independence and confidence in devising and pursuing long-term projects.

Second, the right to private property is also essential for establishing and maintaining an economic system that provides the material basis for the collective pursuit of a public conception of justice in any modern society. A necessary condition for the realisation of any conception of justice is a basic structure supported by sustainable sources of public funding. For example, it would be impossible for a society to realise liberal egalitarian justice if it is unable to pay for the institutions that protect individual rights, facilitate democratic participation, and provide generous welfare benefits. To establish a reliable financial basis for the pursuit of justice, it is generally agreed that a society would have to adopt some version of market economy. The reason is that market economy is seen to be better at creating a robust tax base than other economic systems

[48] Ibid., 171; Waldron, *The Right to Private Property*, 306.
[49] Christman, *The Myth of Property: Toward an Egalitarian Theory of Ownership*, 171.

due to its superior efficiency in the allocation of capital and resources for economic production.[50] One central element of any market economy is the protection of private property rights.[51] The powers of individual persons to decide the use of and to engage with others in bilateral agreements over their property are essential to allow goods and services to be exchanged between different parties based on their independent, voluntary decisions. In this sense, the right to private property is justified because it facilitates an economic system that supports the collective pursuit of a public conception of justice.

The previous paragraphs have explained why a society needs to establish a private property regime in order to recognise and respect individuals' moral personality. A private property regime can be understood in two ways. First, it can be understood as a set of rules and institutions that guarantee individual persons the formal opportunities to acquire and own property. In this sense, a private property regime does not guarantee individuals any actual ownership of property; it only allows them to become property owners when certain conditions are fulfilled. Second, a private property regime can be understood as a system that *distributes* actual ownership of income and wealth across the society. In an economy driven by private property, income and wealth would be largely distributed among individual citizens based on the free-market exchange they participate in. And a person's income and wealth level under such an economy would be highly influenced by her access to capital and how well she utilises her property. One notable characteristic of such market-driven distribution facilitated by a private property regime

[50] For example, see Rawls, *A Theory of Justice (Revised Edition)*, 239-42.

[51] It is acknowledged that there is no necessary connection between a market economy and private ownership of productive means. Market socialists such as David Miller, John Roemer, and David Schweickart, have proposed different ways a market economy can operate under a system of public ownership of productive means. However, even under market socialism a wide range of private property rights, such as the right to decide how to utilise one's personal income and wealth, are expected to be protected.

is that it does not follow any particular predesigned patterns and the outcome of distribution is therefore compatible with a very high level of income and wealth inequalities. This distributive implication of the private property regime concerns liberal egalitarians because severe economic inequalities can pose serious threats to undermine the moral equality of individuals. Both the distributive and relational views of equality have a reason for concern about the distributive effects of a private property regime. Consider the following cases.

First, excessive income and wealth inequalities may compromise the distribution of rights and liberties to which the principle of *strict equality* applies. As pointed out before, one aspect of the egalitarian ideal is that certain rights and liberties ought to be distributed in a strictly equal manner so as to respect individual persons as morally equal. And one notable example of such rights and liberties is the right to equal political opportunities. According to Rawls, in a just, egalitarian society individual citizens, regardless of their economic and social position, must be guaranteed a set of political liberties that are 'sufficiently equal in the sense that all have a fair opportunity to hold public office and to affect the outcome of elections, and the like.'[52] Excessive income and wealth inequalities may corrupt the equal distribution of political opportunities because they allow wealthier citizens to influence political outcomes with far more channels which are effectively unavailable to the poor.[53] For example, the superrich could hire lobbyists, buy political advertisements, and finance themselves to participate in elections and these channels of political influence are often too expensive for most people with a modest background. As a result, the political opportunities of the superrich and the poor could

[52] Rawls, *Justice as Fairness: A Restatement*, 149.
[53] Joshua Cohen, "Money, Politics, Political Equality," in *Fact and Value: Essays on Ethics and Metaphysics for Judith Jarvis Thomson*, ed. Alex Bryne, Robert Stainaker, and Ralph Wedgwood (Cambridge, MA: The MIT Press, 2001), 59.

be significantly unequal even if they are equally motivated and equally capable. This corrupting effect of excessive inequalities on the equal distribution of political opportunities demonstrates how a private property regime may undermine the egalitarian ideal understood as a distributive concept.

Second, excessive inequalities may also lead to a condemnable inegalitarian *relation* among individual persons. Relational egalitarians are concerned by economic inequalities because they can be converted into inequality of status.[54] For example, one common criticism against laissez-faire market economy is that by permitting the concentration of ownership of productive capital it creates a class society in which the capitalist class is able to dominate the working class. It is conceivable that, in a relatively unregulated private property regime where capital is traded freely, the ownership of productive means would be concentrated in the hands of a few. This would engender a bifurcated society which consists of a capitalist class that control most productive means and a working-class who has to sell their labour in exchange for wages. The vastly unequal ownership of productive means between the capitalist and working class would allow the former to subject the latter to its arbitrary power. That is, the capitalist class would have the capacity to impose their decisions on the working class without reference to the latter's interests and opinions.[55] This is because the working class have no real alternatives other than selling their labour to the capitalist class to earn an income that makes the end meet. In this sense, a society that permits severe economic inequalities is problematic from an egalitarian perspective because it helps facilitate a relation of domination between the

[54] Anderson, "What Is the Point of Equality?," 326.
[55] Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997), 55.

capitalist class and working class in which the latter is at the mercy of the former's will due to their vulnerability.

2.4 Liberal Egalitarian Constraints on Private Property Rights

The previous sections have offered an overview of the demands of liberal egalitarian justice and the dilemma posed by private property rights to the realisation of those demands. The threats brought by a private property regime to the egalitarian ideal mean that a society which seeks to honour the moral equality of individual persons must put proper constraints on private property rights. A society can constrain the claim and exercise of private property rights in broadly three ways. First, it can *prohibit* individuals from using their property for certain purposes. For example, individuals may be prohibited from spending money on slavery trade. Second, it can put *conditions* on how individuals utilise their property. For example, factory owners can be required to set up unions for workers in order to obtain business licences. Third, it can *redistribute* the ownership of property between different individuals. For example, rich people can be required to pay taxes to support a welfare system that hands out benefits to the poor.

There are deep disagreements among liberal egalitarians over how to specify and adjust a society's private property regime for it to realise the egalitarian ideal. On the one hand, they disagree over what principles and standards a society should follow in adjusting its private property regime. One notable example of such disagreements is the debate over whether there should be a presumption of equality in the distribution of the ownership of income and wealth as suggested by Rawls's difference principle.[56] On the

[56] Anderson, "What Is the Point of Equality?."; Schemmel, "Why Relational Egalitarians Should Care About Distributions."

other hand, theorists also disagree over the implications of the egalitarian ideal on actual policies and institutional arrangements. For example, one perennial debate among liberal egalitarians is whether public ownership of productive means is required to prevent political equality from being corrupted by economic inequalities.[57] Since this thesis seeks to develop a critique against the global free movement of assets that can have broad appeal to liberal egalitarians, it does not aim to align itself with or defend any particular theory on the constraints of private property rights. Instead, it seeks to propose three justifications that should appeal to liberal egalitarian theories in general to constrain the claim and exercise of private property rights. They are 1) the priority of the disadvantaged, 2) the demand for fair contribution, and 3) the requirement of membership. These justifications should be able to find broad appeal among liberal egalitarian theorists over how a society's private property regime should be regulated. And they provide the fundamental standards for evaluating a society's private property regime and guiding its specification and adjustment. Based on these justifications, it is then possible to decide how the issues involving the freedom of international movement of assets should be decided.

2.4.1 The Priority of the Disadvantaged

One notable commitment expressed by liberal egalitarian justice is the priority of the disadvantaged.[58] Recall that liberal egalitarian justice demands that the basic structure of society must be arranged in a manner that could be reasonably accepted by all free and

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[57] See John Roemer, *Egalitarian Perspective: Essays in Philosophical Economies* (Cambridge: Cambridge University Press, 1996); Barry Clark and Herbert Gintis, "Rawlsian Justice and Economic System," *Philosophy & Public Affairs* 7, no. 4 (1978); Chris Wyatt, *The Difference Principle Beyond Rawls* (London: Continuum, 2008).

[58] For a detailed discussion, see Wolff and de-Shalit, *Disadvantage*.

equal persons governed by it. One common interpretation of this demand is that it requires the arrangements of the basic structure to be justifiable to the disadvantaged members of society, in particular the most deprived. It is assumed that if the disadvantaged members could have reason to accept the basic structure's arrangement, those who are better off in the society would have no legitimate ground to complain about the ways social benefits and burdens are distributed. In this regard, the aim of liberal egalitarian theories is to figure out what principles of justice could be justified to the disadvantaged members of society to regulate the basic structure. The prioritisation of the interests of the disadvantaged is therefore a demand of liberal egalitarian justice because it requires the principles of justice to be decided from the point of view of the less privileged members of society. In this light, the Liberty and Egalitarian Principles discussed above are justified in the sense that the disadvantaged could have reason to accept these principles as the most appropriate ones to regulate the basic structure of society.

The priority of the disadvantaged is expressed explicitly or implicitly in different liberal egalitarian theories. The most obvious one, of course, is Rawls's difference principle according to which the social and economic inequalities mediated by the basic structure are justified only if they 'are to be the greatest benefit of the least-advantaged members of society.'[59] The fame of Rawls's theory may generate an impression that the priority of the disadvantaged represents a distinctively Rawlsian conception of liberal egalitarian justice. This, however, is not the case, as such a demand for the priority given to the disadvantaged can also be found in other liberal egalitarian theories. One example is the 'envy test' proposed by Ronald Dworkin to assess whether the distribution of

[59] Rawls, *Justice as Fairness: A Restatement*, 42-43.

resources in a society is sufficiently egalitarian. According to Dworkin, the resources of society should be distributed in a manner that ensures no one will envy what others have got and want to trade her bundle of resources for anyone else's bundle.[60] One interpretation of the envy test is to regard it as suggesting that a distribution of resources is just only if those ending up with a smaller bundle could find no reason to complain. Interpreted in this way, Dworkin's egalitarian theory of justice prioritises the interests of the disadvantaged by requiring the society to improve their conditions to the point where they would no longer envy those with more resources.[61] Apart from Dworkin's envy test, another example of the priority of the disadvantaged can be found in Amartya Sen's capability approach to egalitarian justice. The central claim of Sen's theory is that every human being should possess an equal set of basic capabilities that allow them to have the real opportunity to achieve valued functionings.[62] And for Sen, the most urgent task of a society is to improve the conditions of the disadvantaged members to ensure that they have the necessary resources and conditions to develop a set of basic capabilities. In this sense, the theory of Sen can be seen as prioritising the disadvantaged since it determines whether a society is a basically just one by looking at whether it could improve the capabilities of its less privileged members to a sufficient level. The theories of Rawls, Dworkin, and Sen demonstrate how the priority of the disadvantaged is expressed, explicitly or implicitly, by mainstream liberal egalitarian theories. Their theories indicate that the commitment to equality would inevitably require a society to prioritise the standpoint of the disadvantaged in deciding how its basic structure should be arranged.

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[60] Dworkin, *Justice for Hedgehogs*, 356.
[61] Tom Parr, "How to Identify Disadvantaged: Taking the Envy Test Seriously," *Political Studies* 66, no. 2 (2017).
[62] Amartya Sen, "Equality of What?," in *Tanner Lectures in Human Values*, ed. S McMurrin (Cambridge: Cambridge University Press, 1980), 217-19.

This demand for priority generates two questions. First, who are the 'disadvantaged'? Second, what does it mean to give 'priority' to the disadvantaged?

The priority of the disadvantaged is often interpreted as a demand for prioritising the interests of the absolute *least* advantaged or *worst-off* members of society.[63] In this sense, the disadvantaged refers to the individual persons who have the smallest bundle of goods, whether they are interpreted as resources, opportunities, or capabilities, to pursue their conception of the good and participate in public affairs. While characterising the disadvantaged as the worst-off social members may be useful to evaluate the moral acceptability of a society's basic structure as a whole, it may not be helpful for evaluating specific arrangements and policies that may not have any direct impact on the conditions of the absolute worst off in society. To illustrate, consider the case of taxation. A society that seeks to improve the conditions of the worst off by a welfare state would have to make decisions over how the tax system should be arranged to fund the provision of different benefits and services. The arrangements of taxation may not necessarily affect the actual level of welfare entitlements enjoyed by the worst off, but they would inevitably have significant implications on other social groups in the society. For example, a tax system that relies on income tax while eschews capital gains tax would benefit asset owners at the expense of middle-class professionals, and vice versa. In this case, focusing on the conditions of the least advantaged may not offer any meaningful guidance to decide the justice of the tax system. To answer the question of justice regarding policies and arrangements that do not impact the worst off, relying on the viewpoint of the worst off may be unhelpful or even irrelevant.

[63] Wolff and de-Shalit, *Disadvantage*, 4.

Given the limitation of defining the disadvantaged as the absolute worst off, a more versatile definition should characterise the disadvantaged in a *relative* sense. The relatively disadvantaged refers to individuals who possess a *smaller* bundle of relevant goods compared to other social members. Relatively disadvantaged individuals are not necessarily the absolute worst off in society. Those who struggle to make ends meet are no doubt disadvantaged. But in a relative sense, individuals from a middle-class background who enjoy a comfortable life and a wide range of opportunities can still be considered disadvantaged in comparison to those who are, say, wealthier and better educated than them. Under this definition, the priority of the disadvantaged requires that, if a particular arrangement of the basic structure would affect two or more social groups, the society must prioritise the interests and concerns of the disadvantaged group, regardless of whether they belong to the absolute worst-off members in society or not. For example, in the case of taxation arrangements mentioned in the previous paragraph, it would require the society to prioritise the interests of the middle-class professionals over the wealthier asset owners. This is not to say that the focal point of liberal egalitarian justice should be moved away from the worst off. Rather, the point is that if a society seeks to justify its basic structure to every free and equal member, it cannot simply do so by offering a reason to why the worst off could find the basic structure as a whole justifiable; it also needs to make sure that the specific arrangements of the basic structure which do not affect the worst off could be justifiable to the disadvantaged social groups affected by them.

After having addressed the question of who the disadvantaged are, the next question is what it means to give priority to the disadvantaged. To assign priority to the disadvantaged is to see their interests as having absolute weight over those of the more

advantaged, unless there is a compelling reason of justice not to do so.[64] The interests of the disadvantaged that should be prioritised do not refer to any random interests; instead, they refer to the rational interests of the disadvantaged associated with their moral personality which liberal egalitarian principles aim to secure and advance. The disadvantaged, viewed as free and equal persons, can be seen as having two fundamental interests. First, they want to have more rather than fewer resources and opportunities for pursuing their life plans and participating in democratic governance. Second, they want to be publicly recognised and respected as morally equal to the more privileged members of society. Interpreted in light of these two interests, the priority of the disadvantaged generates two distinct demands of justice. On the one hand, it requires that when a society has to make a choice between different institutional designs or policy options, it should opt for the one that could best improve the resources and opportunities for the disadvantaged, even if other options would result in a greater total amount of goods available to the society as a whole. On the other hand, it demands that the moral equality of individual persons must not be undermined for the gains of the advantaged, or in the name of 'the greater good' for the society as a whole.

The priority of the disadvantaged has important implications for how a society should respond to the outflows of financial capital. This is discussed in the second half of the thesis. For now, two conclusions can be drawn from the priority of the disadvantaged over how private property rights ought to be constrained by a liberal egalitarian society. First, the society should adjust and specify its private property regime in a way that prioritises the improvement of the resources and opportunities available to the disadvantaged members. This would justify the society to redistribute the ownership

[64] Ibid., 156.

of income and wealth from the rich to the disadvantaged through arrangements and policies such as tax and transfer. Apart from that, the priority of the disadvantaged would also not allow the society to arrange its private property regime in a way that enables the already advantaged members to have greater ownership of income and wealth at the expense of the disadvantaged. For example, it would be unjust if the society seeks to lower the tax burdens on the rich by cutting spending on the welfare provision that benefits the poor. Second, the society should ensure that the arrangements of its private property regime would not threaten the disadvantaged members' status as morally equal to the more advantaged members. In specific, based on the distributive and relational interpretations of the ideal of equality discussed above, the society would need to adjust and specify its private property regime to ensure 1) that the inequalities in ownership would not pose a threat to the equal distribution of the rights and liberties to which strict distributive equality applies, and 2) that they would not be converted into any condemnable unequal relations among individual persons.

2.4.2 Fair Contribution

Another justification for constraining the claim and exercise of private property rights that is commonly found in liberal egalitarianism is the demand for *fair contribution*. As pointed out above, liberal egalitarian justice demands a society to arrange its basic structure in a manner that provides every member with a wide range of rights and benefits, including security, opportunities, welfare, etc. And the other side of such a demand is that it would generate various costs and burdens which have to be shared by the members of society in one way or another. In this sense, liberal egalitarian justice is not simply about a just distribution of entitlements; it is also about a just distribution of what Stuart

White refers to as 'contributive obligations' among the members of society.[65] Therefore, a just society, other than guaranteeing individual persons the liberties and equality they are entitled to, has to arrange its basic structure to ensure that every person pays her fair dues to support the institutions that are arranged according to the principles of justice.

A society has a duty of justice to secure a fair contribution from its members because its success in doing so is important for respecting everyone in the society as equals. Just, liberal egalitarian institutions can only be created and sustained by the collective efforts of the members of society.[66] If a person refuses to make a fair contribution to such efforts but enjoys the benefits and advantages brought by a just basic structure nonetheless, she is guilty of free-riding. And the problem of free-riding is that it leads to an inegalitarian relation in which the good-standing social members relate to the free-riders as inferiors to superiors.[67] Such a relation is inegalitarian and objectionable in the sense that it is marred by exploitation and aristocracy. It is an exploitive relation because it allows free riders to take unfair advantage of good-standing citizens by offloading a definite share of the costs of social cooperation onto them.[68] In this case, free-riding individuals see themselves as intrinsically more worthy than their fellow members of society that they are entitled to demand sacrifices from the latter but not the other way round.[69] It is also an aristocratic relation because it creates a privileged social class who are not subject to the duty that applies to other citizens.[70] In this case, free-riding individuals see themselves as belonging to a superior social class that there is

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[65] White, *The Civic Minimum: On the Rights and Obligations of Economic Citizenship*, 97; Anderson, "Equality," 42.
[66] White, *The Civic Minimum: On the Rights and Obligations of Economic Citizenship*, 61.
[67] Ibid., 62, 67.
[68] Ibid., 61.
[69] Ibid., 67.
[70] Anderson, "Equality," 43.

one rule for them and another for the rest of society. Neither the case of exploitation nor the case of aristocracy is compatible with the ideal of equality that demands the relationship between individuals to be the one under which every person stands to each other as equals. This explains why a just society from a liberal egalitarian society has an obligation to arrange its basic structure in a manner that secures the fair contribution from every social member. For by allowing freeriding, a society would fail to facilitate and maintain a social relation in which everyone stands to each other as equals.

There can to two interpretations of the demand for fair contribution—the beneficiary interpretation and the natural-duty interpretation. According to the former, individuals who benefit from a just social cooperation have a duty to make a fair return in proportion to the share of goods and advantages they receive.[71] According to the latter, individuals have a natural duty of justice to comply with and support the just basic structure that applies to them.[72] These two interpretations of the demand for fair contribution each provide a justification for a liberal egalitarian society to regulate the private property rights of individuals through taxes and other means in order to secure their fair shares of financial contribution to social cooperation.

Here I first elaborate on the beneficiary interpretation of the demand for fair contribution. As pointed out above, in a well-functioning, reasonably just liberal egalitarian society individuals can obtain various goods and services. They include both non-market and market benefits. Non-market benefits refer to the social goods individuals can claim independently of their market participation. Those goods can include personal security, education and training, healthcare, housing subsidy, and so on.

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[71] White, *The Civic Minimum: On the Rights and Obligations of Economic Citizenship*, 51; George Klosko, "Fair Play, Reciprocity, and Natural Duties of Justice," *Ratio Juris* 33, no. 4 (2020): 339.
[72] Rawls, *A Theory of Justice (Revised Edition)*, 99; Jeremy Waldron, "Special Ties and Natural Duties," *Philosophy & Public Affairs* 22, no. 1 (1993).

Market benefits refer to the social goods individuals can obtain through participating in the market. The basic institutions of society provide the background conditions that facilitate the proper functioning of a market economy in which individual persons can pursue their various economic interests. Those institutions include a system of property rights, a set of laws that regulate economic activities, a legal system that settles disputes, and so on. Both the non-market and market benefits provided by a reasonably just society are produced by the cooperative efforts of virtually all members of society.[73] In other words, individuals who receive the above benefits from a reasonably just society are beneficiaries of other people's burdensome efforts to support a cooperative scheme that supplies those benefits. The fact that they benefit in this way then creates a moral obligation on them to make an appropriate return for the benefits they receive from the cooperative scheme.[74] And fairness requires that each person's contributive obligation should be proportional to the benefits she receives, with the result that those who benefit more share a greater cost of the social cooperation that produces those benefits. For example, students who study subjects that require more public funding, such as medicine and aerospace engineering, may be expected to pay higher fees than students who study subjects that require less, such as literature and political science. Besides that, high-income earners should assume a greater share of tax burdens than those who earn relatively little because the former benefits more from the socially-supported market economy than the latter.

Now move to the natural-duty interpretation of the demand for fair contribution. According to this interpretation, individuals have a duty to contribute not because of the

[73] Klosko, "Fair Play, Reciprocity, and Natural Duties of Justice," 339.
[74] Ibid., 337.

benefits they receive from just institutions, but because of the moral authority of the legitimate basic structure that applies to them. In this view, the reason individuals have a duty to make a financial contribution to support the institutions of a liberal egalitarian society is that those institutions are arranged to realise a distributive scheme demanded by a justified conception of justice. And the fair contribution each person is expected to make depends on what is required of them by a just distributive scheme from a liberal egalitarian perspective. As pointed out above, the scheme demanded by liberal egalitarian justice is the one that 1) enables the disadvantaged to have more resources to pursue their life plans and 2) ensures the moral equality between the disadvantaged and their more advantaged counterparts. For a society's distributive scheme to achieve these two ends, it cannot simply distribute goods and services to the disadvantaged; it also needs to distribute the costs of the provision of those goods and services in a way that places greater burdens on the more advantaged, defined by their income and wealth, over the disadvantaged. In other words, a fair distribution of financial burdens from a liberal egalitarian perspective should be a progressive one under which the fair contribution each person is expected to make is proportional to her financial ability to pay. The reason for this is twofold. On the one hand, combined with generous welfare provision, placing smaller burdens on the less advantaged can help improve their resources and opportunities for pursuing their own life plans. It would be self-defeating to impose heavy financial burdens on the disadvantaged if the point of generous welfare provision is to improve their material conditions. The heavy financial burdens on the worse off would simply cripple, or even neutralise the effects of welfare provision on advancing their economic well-being. On the other hand, placing greater burdens on the economically advantaged can help the income and wealth inequalities that threaten the

egalitarian ideal. As pointed out above, excessive income and wealth inequalities would corrupt the moral equality among citizens by enabling the rich to have undue political influence and dominate the less advantaged. And one way a society can prevent economic inequalities from becoming excessive is through tax and transfer policies. For those policies to be effective, the 'tax' part needs to place greater burdens on the rich than the poor to ensure that the equalising effects of the 'transfer' part would not be neutralised. In short, according to the natural-duty interpretation, individuals in a liberal egalitarian society have a duty to make a fair financial contribution to support the society's basic structure to realise justice. And the contribution they are expected to make depends on their financial capacity.

Both the beneficiary interpretation and the natural-duty interpretation of the demand for fair contribution provide different answers to why individuals have a duty to share the costs of a society's social cooperation. The second half of the thesis examines which interpretation can offer a more convincing reason for a society to crack down on international tax avoidance schemes. For now, two conclusions can be drawn from the demand for fair contribution. First, the realisation of liberal egalitarian justice generates costs and the distribution of such costs gives a society legitimate reason to put constraints on the exercise and claim of private property rights. This justifies a society to impose financial burdens on individuals through taxation and other means. Second, unless there is a compelling reason to justify otherwise, the more advantaged members of society should shoulder a greater share of the costs created by just institutions and policies. According to the beneficiary interpretation, this is because the advantaged members presumably benefit more from social cooperation. According to the natural-duty interpretation, this is because the realisation of a just distributive scheme requires greater

burdens to be placed on the advantaged members. In other words, both interpretations suggest that a society should distribute a greater share of tax burdens on the rich rather than the poor.

2.4.3 The Membership Requirement

The third common justification for constraining private property rights that can be identified in liberal egalitarian justice is the requirement of a relevant membership. As the above has argued, under liberal egalitarian justice individual persons are entitled to make claims to various rights and benefits. And their claims are conditioned upon their *membership* in a relevant moral community defined in terms of their shared moral personhood, that is, their possession of the two moral powers to an adequate degree. Liberal egalitarian theories, either explicitly or implicitly, adopt some version of membership requirement since the question they seek to answer is how individual persons with shared properties should be treated by the basic structure of society. The membership requirement confines the scope of liberal egalitarian justice to those who possess a relevant membership. This means that non-human animals are generally excluded from the purview of liberal egalitarian principles and there are perennial debates over the moral status of children and severely mentally disabled persons.

Liberal egalitarians disagree on whether the relevant membership should be conceived as the membership of *humanity* or the membership of *society*. Theorists who argue for the former think that the free and equal persons who are entitled to make claims according to liberal egalitarian principles should refer to free and equal *human* persons.[75]

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[75] For example, see Dworkin, *Justice for Hedgehogs*; Caney, *Justice Beyond Borders: A Global Political Theory*; Gilabert, *From Global Poverty to Global Equality: A Philosophical Exploration*.

They argue that human beings under normal circumstances are capable of developing and exercising the two moral powers to a sufficient degree. And in their view, it follows that human beings in general are members of the same moral community that is under the purview of liberal egalitarian principles. This 'humanist' interpretation of the membership requirement does not claim that the membership of humanity is the only morally relevant membership individual persons possess. It accepts that other types of membership, such as those in family, university, and society, might generate corresponding rights and duties.[76] What it argues for is that the membership of humanity is the only relevant membership that triggers the demand for liberal egalitarian justice. According to the 'humanist' interpretation of the membership requirement, the scope of liberal egalitarian justice is *universal* and a person's claims to the entitlements promised by the principles of justice should not be affected by her race, sex, religious belief, socio-economic position, and citizenship.

Another interpretation of the membership requirement is the 'communitarian' interpretation according to which the relevant membership for liberal egalitarian justice is the membership of *society*.[77] It argues that the free and equal persons who occupy the central spot of liberal egalitarianism should refer to as the free and equal *citizens* of a society under modern conditions. The communitarian interpretation points out that liberal egalitarian justice is not a response to individual persons' internal capacities and properties *per se*; instead, the principles of justice apply to specify the terms of cooperation between the free and equal members of society who are engaged in a morally relevant relation. The communitarian interpretation does not deny that individual persons'

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[76] Robert E. Goodin, "What Is So Special About Our Fellow Countrymen?," *Ethics* 98, no. 4 (1988).
[77] For example, see Rawls, *Justice as Fairness: A Restatement*; David Miller, *On Nationality* (Oxford: Clarendon Press, 1995); Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983).

membership in humanity might be morally relevant, but it argues that the membership in a modern society is the *only* relevant membership that triggers the demand for liberal egalitarian justice.[78] Under the communitarian interpretation of the membership requirement, the scope of liberal egalitarian justice is confined to a particular society where a relevant social relation can be found. This means that a person's claims to the rights and benefits according to liberal egalitarian principles are conditioned upon her possession of a relevant social membership.

The debate over the scope of liberal egalitarian justice is the focus of the next three chapters. For now, the focus is on how the membership requirement justifies a society to put constraints on individual persons' claims and exercise of private property rights. As pointed out above, individual persons' claim to private property rights is based on the Liberty Principle which aims to secure the conditions for them to develop and exercise their moral powers. If individual persons' claims to the entitlements guaranteed by the liberal egalitarian principles of justice are conditioned upon their possession of a relevant membership, then their claim to private property rights is also conditioned upon such a membership. The membership requirement according to the 'humanist' interpretation may not provide much justification for a society to limit individual persons' claim and exercise of private property rights based on their membership. For the membership of humanity is universally possessed by almost all individual persons under normal circumstances.[79] The concern of universalists is how the obligations generated by the universal right to private property should be distributed among different societies given the lack of a world state. But on the other hand, the 'communitarian' interpretation

[78] John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999).
[79] That said, as pointed out before, there are serious debates over the cases of children and severely disabled persons.

would provide a society with reason to limit the claim of private property rights from those who lack a relevant social membership. The reason is that under the communitarian interpretation a society owes a duty of justice to guarantee an adequate set of private property rights only to its social members. This would allow a society's private property regime to put on non-members, such as tourists, temporary workers, and foreign investors, constraints which would not be justified on its social members. For example, the society may only allow locals but not foreigners to invest in certain industries. The communitarian interpretation does not deny that a person might still be entitled to make claims to some version of private property rights against a society where she is not a member. But it denies that the normative ground for such claims could be liberal egalitarian in nature. In conclusion, whether the membership requirement could function as a justification for a society to constrain the claim and exercise of private property rights depends on whether the communitarian interpretation is taken. And whether the communitarian interpretation should be taken depends on whether the scope of liberal egalitarian justice should be confined to a particular society where a special form of social relation could be found. The answers to these questions have important implications on whether a society is justified to impose financial costs on the exercise of the right to emigrate. This is discussed in greater detail in the second half of the thesis.

2.5 Conclusion

This chapter first presented the central ideas of liberal egalitarian justice, including its institutionalist approach and the idea of free and equal persons. It then moved to explain how individual persons' claim to private property rights is justified to advance their freedom and how those rights may undermine the moral equality of persons. Finally, the

chapter outlined three liberal egalitarian justifications for constraining individuals' claims and exercise of private property rights. They are the priority of the disadvantaged, the demand for fair contribution, and the membership requirement. These justifications provide the frameworks for discussing how a society should deal with the issues related to the international movement of financial assets, including capital outflows, international tax avoidance, and emigration with personal assets. However, before discussing the normative issues generated by asset outflow, it is necessary to first clarify the *scope* of liberal egalitarian justice. This is because whether the scope of liberal egalitarian justice is universal or confined to a domestic society would have a significant impact on what kinds of constraints a society could justifiably pursue to limit asset outflow. The next three chapters defend a culturalist conception of justice which confines the application of liberal egalitarian justice to a particular society where the social relation of its members is mediated by a relevant public political culture.

Chapter 3

Institutions and the Scope of Justice

3.1 Introduction

The previous chapter introduced the core liberal egalitarian justifications for constraining the claim and exercise of property rights. They provide the foundation for answering how a liberal democratic society should respond to the international movement of financial assets. But to understand how those constraints would actually work, it is necessary to first settle the question regarding the *scope* of liberal egalitarian justice, that is, whether the demands of liberal egalitarianism should apply exclusively within a liberal democratic society or beyond state borders. Should the worse off whose welfare and interests ought to be prioritised refer to the disadvantaged *members of society* or the *global poor*? Should the duty of fair contribution refer to a duty owed to fellow participants in *social cooperation* or those participating in *global* and *international* cooperation? Should the membership that is requisite for being eligible to make claims to liberal rights and benefits be the membership of a *society* or the membership in a broader group, such as the membership of *humanity*? The answers to these questions are crucial to how a liberal egalitarianism should respond to the international movement of financial assets.

Regarding the scope of justice, there is no agreement among liberal egalitarians. Their theories generally fall into one of the three following positions. The first one is *parochial statism*. It argues that liberal egalitarianism only applies between *citizens* within a society and there is no demand of justice applicable outside domestic societies.[1] The

[1] For example, see Nagel, "The Problem of Global Justice."; Blake, "Distributive Justice, State Coercion, and Autonomy."

second position is *cosmopolitanism*. It argues that liberal egalitarian justice should apply beyond state borders and every individual person in the world is entitled to make claims according to the liberal egalitarian principles of justice.[2] The third position is *internationalism*. This position argues for a two-tiered account of justice that sits somewhere between parochial statism and cosmopolitanism. It accepts the statist claim that robust liberal egalitarian justice applies only to *citizens* on the one hand, but on the other hand contends that some principles of justice, which may not be liberal egalitarian in nature, should apply to regulate the relationship between *societies* in the international community.[3]

The internationalist position, I think, is the most plausible one among the three. This and the next two chapters are devoted to elaborating and defending a form of internationalist justice that is largely based on Rawls's idea of political constructivism. It is a *relational* conception of justice that is *cultural practice-dependent*. It argues that a liberal democratic society has a duty to meet the demands of liberal egalitarianism only domestically. In the international arena, it has a duty of sufficientarian justice that demands the respect of other well-ordered societies' independence and equality. The reason for this two-tiered account of justice is that the *public political culture* that mediates the relation between the citizens of a liberal democratic society is fundamentally different from the one that regulates the interaction between societies in the international community.

But before presenting the cultural practice-dependent argument, this chapter first focuses on a popular approach used by theorists to justify confining the scope of justice

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[2] For example, see Caney, *Justice Beyond Borders: A Global Political Theory*; Tan, *Justice without Borders: Cosmopolitanism, Nationalism and Patriotism*.
[3] For example, see Rawls, *The Law of Peoples*; Risse, *On Global Justice*.

to the domestic—the *institutionalist approach*. It discusses two different institutional arguments—the *unique-nature* and the *interpretive* arguments. And it argues that neither is successful. The chapter is arranged as follows. The next section first offers a critique of two unique-nature institutionalist arguments—the coercion- and interdependence-based arguments—which attempt to reject global egalitarianism by emphasising the different *natures* of the institutions in the domestic and international basic structures. Section three rejects Sangiovanni's interpretive argument that focuses on the different roles justice is meant to play in a domestic society and the international order as *interpreted* against their different institutional practices respectively. Section four concludes the chapter.

3.2 The Institutionalist Approach, Round One

Any internationalist, two-tiered account of justice must offer a reason for what makes the domestic arena morally different from the international arena to explain why liberal egalitarian justice only applies to the former but not the latter. There must be some morally relevant features and attributes in a domestic society that cannot be found in the international arena. One popular approach to justify the uniqueness of the domestic is the *institutionalist* approach according to which the *basic structure* of domestic societies is what makes the domestic morally distinct from the international. And by the basic structure, institutionalists refer to the fundamental *institutions* that distribute rights and duties, benefits and burdens across the society. There are two arguments for the internationalist conception of justice—the unique-nature and the interpretive arguments. Each argument has its own account of what makes the domestic basic structure fundamentally different from the international one. For the unique-nature argument, as the name suggests, it is the nature of the domestic institutions. But for the interpretive

argument, it is the point and purpose of the domestic institutions as interpreted against their practices.

Despite their difference, the two arguments share two things in common. First, both arguments adopt the *relational* conception of justice according to which the concern of justice arises when individuals are engaged in a morally relevant relation.[4] Second, both are *practice-dependent* theories that argue that the 'content, justification, and scope' of the principles of justice are conditioned upon the practices they are meant to regulate.[5] In their view, the basic structure of domestic societies is a site of justice because its institutions put citizens in a morally salient institutional relation that gives rise to the questions of justice. And they argue that the liberal egalitarian principles that answer those questions are formulated and justified based on a critical understanding of the institutional practices of the domestic basic structure. From an institutionalist perspective, the reason for confining the scope of liberal egalitarian justice to domestic societies is that, in the international arena, there lacks a basic structure equivalent to the one found in domestic societies within which a relevant institutional relation and a set of relevant practices that trigger the demands of liberal egalitarian justice can be identified.

This section first focuses on the unique-nature institutionalist arguments and the interpretive argument is discussed in the next. It begins by introducing two variants of the unique-nature arguments—the *coercion-based* and *interdependence-based* arguments—and elucidating their different views on how the unique nature of domestic basic structure justifies the rejection of global egalitarianism.[6] After that, it argues that neither argument

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[4] Valentini, *Justice in a Globalized World: A Normative Framework*, 108.
[5] Andrea Sangiovanni, "Justice and the Priority of Politics to Morality," *The Journal of Political Philosophy* 16, no. 2 (2008): 138.
[6] Blake, "Distributive Justice, State Coercion, and Autonomy."; Nagel, "The Problem of Global Justice."; Risse, *On Global Justice*; Freeman, "The Law of Peoples, Social Cooperation, Human Rights, and Distributive Justice."; Sangiovanni, "Global Justice, Reciprocity, and the State."

is successful by demonstrating how they could actually be used to justify global egalitarianism. Finally, it contends that, although the coercion- and interdependence-based arguments fail to reject global egalitarianism, it does not follow that they can justify the *cosmopolitan* egalitarian position.

3.2.1 Coercion-based Argument

The premise of the coercion-based argument is that liberal egalitarian justice applies when there exists a coercive basic structure that threatens to undermine the *autonomy* of those governed by it.[7] As elaborated in the previous chapter, liberal egalitarianism is committed to the equal respect for individuals' autonomy, which refers to their capacities to form and pursue their self-chosen ends. The respect for autonomy means that liberal egalitarianism endorses principles that entitle individuals to have access to the conditions under which they can live as autonomous agents. For a person to be autonomous, she must have an adequate degree of independence that her will is free from the control and manipulation of others.[8] Any coercive acts are prima facie objectionable from a liberal point of view because they violate a person's autonomy by subjecting her will to the will of another person and forcing her to abandon her self-chosen plans and pursuits.[9] For this reason, the coercive basic structure found in modern states that regulate the relation between citizens is seemingly problematic for liberals.

A well-functioning state is characterised by having a coercive legal system that imposes a set of rules and laws on its citizens by threatening non-compliance with punishment. Those rules and laws compel citizens to act in ways that may not serve, or

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[7] Blake, "Distributive Justice, State Coercion, and Autonomy," 265.
[8] Joseph Raz, *The Morality of Freedom* (New York: Oxford University Press, 1986), 370, 78.
[9] Ibid., 371, 78.

be compatible with, their self-chosen ends. Citizens in general have no choice but to comply as disobedience would immediately lead to the risk of being punished. State coercion therefore stands in prima facie conflict with the liberal principle of autonomy. That said, it does not mean that liberals believe that state coercion should be eliminated. As pointed out by Blake, from a liberal perspective, state coercion is Janus-faced:

> [It] is both coercive of individuals and required for individuals to live autonomous lives. Without some sort of state coercion, the very ability to autonomously pursue our projects seems impossible.[10]

It would be difficult to imagine how a person could develop and exercise her ability to pursue a rational life plan under conditions that resemble a Hobbesian state of nature where life is "solitary, poor, nasty, brutish, and short."[11] Hence, instead of blankly rejecting state coercion, liberalism seeks to distinguish the coercive practices against citizens that are *justified* from those that are not. Liberals are then faced with the question of the appropriate forms of justification that give legitimacy to an otherwise impermissible invasion of autonomy.[12] And their answer is the liberal egalitarian principles of justice according to which state coercion is justified when it is used to protect the basic liberties of citizens and to secure their equal standing.

Some theorists, including Blake, Risse, and Nagel, argue that if the liberal egalitarian principles of justice are formulated to justify the state coercion against citizens, their scope of application cannot be extended beyond domestic societies. In their view, liberal egalitarian justice applies to domestic societies because citizens' joint subjection to state coercion puts them into a special *institutional relationship* which gives rise to the question of justification answerable only by the liberal egalitarian principles of justice.

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[10] Blake, "Distributive Justice, State Coercion, and Autonomy," 280.
[11] Thomas Hobbes, *Leviathan* (Cambridge: Cambridge University Press, 2010), 89.
[12] Blake, "Distributive Justice, State Coercion, and Autonomy," 272-73.

And they contend that this special form of relation exists exclusively within domestic societies. For there is no comparable global or international coercive basic structure, such as a world state, to impose rules and laws on the global or international level. Therefore, the question of justification that makes liberal egalitarian justice relevant in the domestic arena does not arise in the global or international arena.

However, one obvious response to this conclusion is that coercion does occur at the international level through trade agreements, international treatises, and international organisations. There seems to be an international basic structure that may be comparable to the basic structure found in domestic societies. Theorists who support the coercion-based argument for limiting the scope of liberal egalitarian justice do not deny the existence of coercion beyond state borders. They may also accept that the coercive practices at the international level may require justification to be permissible. However, they believe that those coercive practices cannot find their justification in liberal egalitarian principles because they are fundamentally different from those found in domestic basic structure. There are mainly two reasons offered by theorists to explain the difference.[13]

The first one argues that, contrary to the basic structure of domestic societies, the institutions at the international level do not engage in *direct* and *unmediated* coercive practices against individual human agents.[14] In a domestic society, the coercive agencies of the state have a direct relation with the citizens as the power exercised by the former against the latter is not filtered by any intermediate agency. As Risse puts it, the laws and institutions of the state have direct and unmediated access to the body and assets of

[13] There are other explanations, including But given the limited space here, only the two most compelling ones are included here.
[14] Blake, "Distributive Justice, State Coercion, and Autonomy," 256, 80; Risse, *On Global Justice*, 25-28; Nagel, "The Problem of Global Justice," 134.

citizens.[15] The directness and immediacy of state coercion are the key to why it invades the autonomy of citizens and is therefore morally different from the coercive institutions that exist at the international level. While international treatises and organisations exercise coercive power, it is directed towards *states* rather than individual persons. Even if such coercive power has any effect on individual persons, those effects are *indirect* and *mediated* through states.[16] Hence, for theorists who support the coercion-based argument for limiting the scope of liberal egalitarian justice, the coercive practices at the international level are not autonomy-invading as the domestic basic structure is. For this reason, the principles of liberal egalitarian justice, which apply to justify the violation of personal autonomy, are not relevant in justifying the coercion that exists in the international arena.

The second reason argues that the state coercion is morally different from the coercive practices at the international level because the subjection to the former is *involuntary* while the latter is *voluntary*.[17] One interpretation of this argument is that the coercive institutions found in domestic societies are autonomy-invading not only because they threaten to punish those who do not comply, but also because they are imposed on the members of society without their prior consent. Individuals are born into a society and they normally have no choice but to adhere to state coercion. As Nagel puts it,

> Emigration aside, one is not permitted to declare oneself not a member of one's society and hence not subject to its rules, and other members may coerce one's compliance if one tries to refuse.[18]

He then suggests that, contrary to the involuntariness in citizens' subjection to state coercion, the subjection to international institutional orders and rules is analogous to participating in *voluntary* associations and engaging in a voluntary contractual

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[15] Risse, *On Global Justice*, 26.
[16] Ibid., 27.
[17] Nagel, "The Problem of Global Justice," 133.
[18] Ibid.

relationship.[19] States could decide whether to participate in a particular international organisation and bargain the terms of agreements with other countries before committing to them. More importantly, states have the option to withdraw their membership from international organisations and walk away from international treatises. Nagel believes that the voluntary nature of international orders means that they are different from domestic societies in a morally significant way and thus not subject to the demands of liberal egalitarian justice which applies to justify the involuntary subjection of citizens to state coercion.

3.2.2 Interdependence-based Argument

The interdependence-based argument[20] asserts that the domestic basic structure is morally salient because of the *interdependent* nature of its institutions with citizens. The argument shares the coercion-based argument's claim that the coercive institutions of the state are essential for providing the necessary conditions for citizens to develop and exercise their autonomy capacities. However, instead of focusing on their coercive nature, it emphasises that those institutions cannot continue to exist without the support and compliance of the citizens who are governed by them. As Sangiovanni puts it:

> citizens and residents, in all but the most extreme cases, provide the financial and sociological support required to sustain the state. It is they who constitute and maintain the state through taxation, through participation in various forms of political activity, and through simple compliance, which includes the full range of our everyday, legally regulated activity. Without their contributions to the de facto authority of the state—contributions paid in the coin of compliance, trust,

[19] Ibid., 140.

[20] This type of argument is called the "reciprocity-based" argument by Sangiovanni and Risse. However, as shown in the previous chapter, reciprocity refers to a fair share of distribution of benefits and burdens and it is a liberal egalitarian ideal. To say that a reciprocal basic structure triggers the demands of liberal egalitarian justice therefore leads to a confused conclusion which says that liberal egalitarian justice applies only to a society which has already achieved the liberal egalitarian ideal. To avoid this confusion, I believe "interdependence-based" is better to characterise the argument.

> resources, and participation—we would lack the individual capacities to function as citizens, producers, and biological beings.[21]

In short, a state and its citizens are interdependent on each other because the state relies on the compliance of citizens to function while citizens depend on the state to obtain the goods and circumstances necessary for living autonomously.

According to the interdependence-based argument, the question of justice arises in a domestic society because it needs to offer citizens a reason why they should continue to support and maintain the orders and rules imposed on them. To do so, the society needs to explain to its citizens how the orders and rules they contribute to supporting enable everyone to receive a fair share of benefits which may not be available otherwise. This is when the principles of liberal egalitarian justice become relevant because they spell out the standards for a fair distribution of rights, benefits, and burdens that is able to respect the equal moral worth of individuals. By arranging the basic structure in accordance with the demands of liberal egalitarian justice, a society would be able to offer its citizens a compelling reason to support and contribute to the continued functioning of state institutions.

The thrust of the interdependence-based argument is that citizens, by jointly participating in supporting a basic structure which provides them essential goods, are engaged in a unique institutional relation which they do not share with non-citizens. And liberal egalitarian principles are formulated to respond to the questions of justice arising from this unique relation. To justify limiting the scope of liberal egalitarian justice to domestic societies, it is necessary to explain why the interdependence found in domestic societies cannot be found at the global or international level. Sangiovanni suggests that

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[21] Sangiovanni, "Global Justice, Reciprocity, and the State," 20-21.

this question can be answered in two ways. The first one is that modern states do not depend on global orders and rules to function and continue to exist. There is no doubt that international treatises and organisations are sustained by the compliance and trust of states. However, the capacities of states to sustain a stable political, economic, and legal system do not depend on global orders or international institutions.[22] This is due to the fact that global orders and international institutions only have limited authority over a narrow range of issues.[23] Besides that, they also lack the financial, legal, administrative, or sociological means to provide the conditions necessary for states to properly function. As a result, there is no interdependence between states and the global orders. Secondly, individuals also do not depend on the global orders and rules to obtain the goods and circumstances necessary for a decent life. In a globalised economy, it may be argued that individuals' economic well-being increasingly depends on the global economic order and other countries. However, this kind of dependence is not comparable to citizens' dependence on the domestic basic structure to provide security and all other kinds of basic goods.[24] This is because while individuals' material well-being may be undermined without a well-functioning global economic order, they would struggle to maintain a minimally acceptable standard of living if their state fails to function properly. This means that a relevant interdependence does not exist between the global order and individuals.

3.2.3 The Cosmopolitan Critiques

The coercion-based and interdependence-based arguments have a similar structure. They both argue that liberal egalitarian justice only applies to domestic societies because the

[22] Ibid., 21.
[23] Ibid.
[24] Ibid., 34.

distinct nature of domestic basic structure means that the citizens living under it are engaged in a unique form of relation which is not shared with the rest of the world. For the coercion-based argument, the unique relation is citizens' joint subjection to shared coercive institutions. For the interdependence-based argument, the unique relation is their joint participation in a basic structure to which they contribute and depend on simultaneously. These two arguments' emphasis on the *nature* of the domestic basic structure is their major shortcoming.

While often referred to as institutionalist arguments,[25] the key that triggers the demands of liberal egalitarian justice according to the coercion-based and interdependence-based arguments is actually not the domestic basic structure *per se* but the quality that defines the *nature* of the basic structure—coercion and interdependence, respectively. The underlying premise behind the two arguments is that the principles of liberal egalitarian justice should apply *when* there exists a relevant form of coercion or interdependence. The reason why the scope of liberal egalitarian justice should be confined to domestic societies then is that the domestic basic structure happens to be the only site which embodies the relevant form of coercion or interdependence. Therefore, to reject the coercion-based and interdependence-based arguments, one obvious way is to point out that the relevant form of coercion or interdependence is not exclusive to domestic societies. This is a popular strategy employed by global egalitarians who believe that liberal egalitarian justice should apply to the international and global levels.[26] What they reject is not the premises but the conclusion of the coercion-based and interdependence-based arguments. They argue that, given that the international rules

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[25] Joshua Cohen and Charles Sabel, "Extra Rempublicam Nulla Justitia?," ibid.34, no. 2 (2006).
[26] For example, A. J. Julius, "Nagel's Atlas," ibid.; Ryan Pevnick, "Political Coercion and the Scope of Distributive Justice," *Political Studies* 56 (2008); Christian Barry and Laura Valentini, "Egalitarian Challenges to Global Egalitarianism: A Critique," *Review of International Studies* 35 (2009): 491-93.

and orders have a similarly coercive or interdependent nature to the domestic basic structure, the liberal egalitarian principles of justice that apply to the latter should also apply to the former. It has been shown above that theorists who defend the coercion-based and interdependence-based arguments have made attempts to preempt this objection. They do so by narrowing the relevant form of coercion to the one that is direct, unmediated, and involuntary, and the relevant form of interdependence to the one that secures the continued functioning of states and the basic needs of individuals. Their efforts are unsuccessful, however.

a. Direct and Unmediated Coercion

Direct and unmediated coercion cannot be said as being exclusive to domestic societies because there exists an international institution that exercises direct and unmediated coercion on individuals—*state border controls*.[27] As pointed out by Abizadeh,

> modern border controls rely on a terrifying array of coercive apparatuses, ranging from police dogs, electric wires, and helicopters, to incarceration, deportation, torture, shooting on sight, and so on.[28]

The coercion used to enforce state border against outsiders is *direct* and *unmediated* because it is not filtered by any intermediate agents: anyone who crosses the border without the right papers is under the immediate threat of being detained, deported or worse. Given their coercive nature, border controls are autonomy-invading. They remove options that would be otherwise available to would-be immigrants (namely, crossing the border and settling in a new country) by threatening them with legal action and violence, thereby

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[27] A detailed version of this argument can be found in Arash Abizadeh, "Cooperation, Pervasive Impact, and Coercion: On the Scope (Not Site) of Distributive Justice," *Philosophy & Public Affairs* 35, no. 4 (2007): 349-51. See also Barry and Valentini, "Egalitarian Challenges to Global Egalitarianism: A Critique," 495-96.

[28] Arash Abizadeh, "Democratic Theory and Border Control: No Right to Unilaterally Control Your Own Borders," *Political theory* 36, no. 1 (2008).

effectively subjecting them to the will of the country that denies them entry. For this reason, it is inaccurate for Risse to claim that only the basic structure of domestic societies but not the one of the international order exerts direct and unmediated coercion that erodes the autonomy of individual agents. It follows that the basic structure of the international order would also trigger the question of justification that needs to be resolved by liberal egalitarian justice.

Internationalists could reply to the above argument by drawing on David Miller's claim that state border controls are neither coercive nor autonomy-invading. According to Miller, state border controls are not coercive because they only *prevent* outsiders from entering the country.[29] He argues that prevention is distinct from coercion in the sense that the latter 'involves forcing a person *to do* some relatively specific thing,' but the former only 'involves forcing a person *not to do* some relatively specific thing while leaving other options open.'[30] Miller illustrates the distinction by using the example of an obnoxious neighbour who tried to enter his house. He argues that he cannot be accused of coercing his neighbour by merely refusing to let her get into his house without his permission.[31] This is because although he removed an option (entering his house) from his neighbour, he did not compel her into doing anything against her will and he left all other options available to her. Miller suggests that his refusal to let his neighbour in his house is analogous to state border controls which deny entry to would-be immigrants.[32] In his view, by merely turning away would-be immigrants, state border controls are involved in prevention rather than coercion since they only remove a course of action

[29] David Miller, "Why Immigration Controls Are Not Coercive: A Reply to Arash Abizadeh," *Political Theory* 38, no. 1 (2010): 116.
[30] Ibid., 114.
[31] Ibid.
[32] Ibid., 116.

(entering the country and settling there) available to the would-be immigrants and those who are denied entry remain free to pursue other options available to them.[33]

Following the above view, Miller contends that there is no reason to think that individual agents' autonomy is compromised by state border controls.[34] He adopts Raz's account of autonomy according to which a person's autonomy is invaded when she does not have an adequate range of options to choose from and she is under the coercion and manipulation by others.[35] To Miller, prospective immigrants are not being put under either of these situations by state border controls. On the one hand, he regards state border controls, as shown in the previous paragraph, as a case of prevention, not coercion—prospective immigrants are stopped from, not forced into, performing a particular course of action. On the other hand, he thinks that

> [t]he prospective immigrant who is refused entry to a particular state still has available, as far as the act of prevention goes, a wide range of options to choose from, including many courses of action open to him in the country in which he presently holds citizenship, together with opportunities to emigrate to other states willing to grant him entry.[36]

In short, from Miller's point of view, state border controls do not invade the autonomy of would-be immigrants by preventing them from entering the country.

Based on Miller's argument, it could be argued that the international basic structure is neither coercive nor autonomy-invading as the domestic basic structure does and hence it does not need to meet the demands of liberal egalitarianism to be legitimate. Miller's argument is flawed, however. First, his distinction between prevention and coercion is unhelpful. This can be explained by the fact that prevention is effective and

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[33] Ibid.
[34] Ibid.
[35] Ibid., 112.
[36] Ibid., 116.

enforceable only when it is backed by coercive means. In the case of state border controls, a state prevents prospective immigrants from entering the country not by simply erecting fences along the border and refusing to issue entry visas, but by threatening would-be trespassers with arrest and deportation, and by using such coercive measures against actual trespassers. In short, a state can prevent unauthorised entry because it can coerce—a point Miller actually admits.[37] The problem of separating prevention from coercion is that, without the backing of coercion, an attempt to prevent is nothing more than an effort to signal rejection: a state's refusal to issue an entry visa gives the signal that it does not want the applicant to enter the country, but that signal is translated into actual deterrence only when the state has the capacity and willingness to coerce compliance. If *effective* prevention necessarily entails coercion, then the distinction between the two collapses. To say that state border controls are preventive is to mean that they are coercive.

Second, Miller's argument against calling border controls autonomy-invading misses the point. In Miller's view, a prospective immigrant's autonomy is not compromised by border controls that restrict her freedom of international movement. For the prospective immigrant is still left with a other options to choose from. What Miller suggests then is that a state would not invade an agent's autonomy by restricting her freedom as long as she is not deprived of an adequate range of options. This view of autonomy is counter-intuitive from a liberal point of view because it suggests that a state would not be invading the autonomy of individual agents even if it is involved in severe limitations of civil liberties. For example, following Miller's view, it would not be autonomy-invading for a state to restrict citizens' occupational choices or censor movies

[37] Ibid.

when there is still an adequate range of jobs available to workers and a sufficient range of themes for filmmakers to work on. This would strike liberals as implausible, given that restricting the freedoms of occupation and expression are the paradigm cases of autonomy invasion from a liberal perspective. They are autonomy-invading not because they deprive individual agents of adequate options, but because they subject agents to the will of others. By coercing citizens into not working for certain types of job, the state imposes its will on citizens and decide for them what should be available in the job market. The same applies to the case of border controls. Even if prospective immigrants are left with an adequate range of options, their autonomy would still be compromised by border controls which force them to abandon their self-chosen plan, thereby effectively subjecting them to the will of the state that refuses their entry.

b. Involuntary Subjection

Involuntary subjection to a coercive order exists at the international level because not participating in the global economic order is not an option for many countries. The global economic order is maintained and operated by international institutions such as The International Monetary Fund (IMF), World Bank, and World Trade Organisation (WTO). These institutions set up rules for global capital markets, terms of cross-border trade, a mechanism for settling disputes, etc. Any state that wants to be part of the global economy would have to participate in those institutions and accept their rules. To most countries, especially the smaller and less powerful ones, pulling out of those institutions would be practically impossible as the costs of cutting ties with the global economy would

be too much to bear.[38] An often-cited example is that developing countries usually have no choice but to accept the draconian terms set by the IMF in exchange for loans as more often than not it is the only source of capital accessible for those countries.[39] Another example is the Brexit saga that demonstrates the difficulty, if not impossibility, to cut ties with a major international organisation. What is more telling is that the most ardent advocates of Brexit actually argue that the U.K. should rely on the rules of another international organisation—the WTO—after having left the European Union. Therefore, as argued by Barry and Valentini, from a purely *formal* viewpoint, joining the international institutions that govern the global economic order can be regarded as voluntary, but given the potentially unbearable costs of exclusion and lack of reasonable alternatives, participation can be described as *coercive*.[40] Most states actually have no choice but to accept the rules and orders set by major international institutions.

c. Interdependence

The kind of interdependence identified by Sangiovanni exists outside domestic societies because many states do depend heavily on the global rules and orders for providing their citizens with the goods essential for a decent standard of living. Barry and Valentini have argued that states indeed rely on each other's compliance with the international norms, such as conferring each country the right to extract the natural resources without its own border, to get access to the resources that are essential for economic production and

[38] Sangiovanni, "Global Justice, Reciprocity, and the State," 18; Cohen and Sabel, "Extra Rempublicam Nulla Justitia?," 161.
[39] See Mathias Risse, "What to Say About the State?," *Social Theory and Practice* 32 (2006): 681; Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press, 2008), Chapter 4.
[40] Barry and Valentini, "Egalitarian Challenges to Global Egalitarianism: A Critique," 495.

citizens to lead a decent life.[41] Another more straightforward example is the reliance of states on international trade to secure an adequate supply of *food*—an essential good for both the functioning of the state and the satisfaction of individuals' most basic needs. According to Fadar et al, approximately 950 million people are relying on international trade to meet their food consumption needs and most countries in the world are incapable of producing enough food to feed their own population.[42] Only a handful of countries, such as Canada, France, and Australia, are capable of being self-sufficient in today's world.[43] Some countries, such as the Netherlands, Japan, and Saudi Arabia, are especially dependent on food imports due to their natural and geographical constraints.[44] The reliance of states on international trade for food supply means that Sangiovanni is incorrect in claiming that states and individuals do not depend on the international order to properly function and obtain the goods necessary for a decent life respectively. For no state could properly function without having sufficient food to feed its population and no person could have an acceptable standard of living without a stable access to food. The international economic order, therefore, has the kind of interdependent nature that characterises the domestic basic structure as it needs the support and contribution from states while the states rely upon it to function properly.

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41 Ibid., 492-93. See also Abizadeh, "Cooperation, Pervasive Impact, and Coercion: On the Scope (Not Site) of Distributive Justice," 336-37.
42 Mrianela Fader et al., "Spatial Decoupling of Agricultural Production and Consumption: Quantifying Dependences of Countries on Food Imports Due to Domestic Land and Water Constraints," *Environmental Research Letters* 8 (2013): 3-4.
43 Ibid., 4.
44 Jennifer Clapp, "Food Self-Sufficiency: Making Sense of It, and When It Makes Sense," *Food Policy* 66 (2017): 91.

3.2.4 Going All the Way Down: A Critique Against Cosmopolitanism

The above has shown that the relevant forms of coercion and interdependence which are thought by some statists and internationalists to be the key to triggering the demands of liberal egalitarian justice are indeed not exclusive to the basic structure found in domestic societies. Given that the international orders and rules have a similar coercive or interdependent nature to the domestic basic structure, the coercion-based and interdependence-based arguments seem incapable of excluding liberal egalitarian justice from being applied to the international arena. This, however, does not mean that the coercion-based and interdependence-based arguments could actually justify the cosmopolitan egalitarian position. For they fail to confine the application of liberal egalitarian justice to the sites which cosmopolitan egalitarians regard as acceptable.

Following Rawls's differentiation, there are three levels of justice.[45] The first one is *local* justice which applies to *private* associations and organisations, such as churches, universities, and business firms. The second one is *domestic* justice which applies to the basic structure of *society*. The third one is *global* justice which applies to the *international* basic structure. For statist and internationalist egalitarians, they aim to confine the principles of liberal egalitarian justice to the domestic but not the local and the global. As argued above, cosmopolitan egalitarians are right to point out that the coercion-based and interdependence-based arguments are unable to rule out the global as a site for liberal egalitarian justice. However, what is often ignored is that these two arguments actually would justify applying the principles of justice all the way down to the *local* as well.

The relevant form of coercion and interdependence that is thought to trigger the demand for liberal egalitarian justice is common in private associations and organisations,

[45] Rawls, *Justice as Fairness: A Restatement*, 11.

such as workplaces, universities, churches, and so on. To illustrate, consider the case of workplaces. The workplace of most modern firms is always autonomy-invading because employees are not allowed to act according to their own will. They are under the *direct* control of their superiors and most of the time they are required to follow whatever orders and instructions threw at them. Besides that, individuals in modern capitalist societies generally have no choice but to participate in the job market to earn a living. Their decision to be subject to the coercion of workplaces hence can be regarded as *involuntary*. Given that in workplaces coercion is exercised *directly* against the employees by their superiors and that their subjection to it is *involuntary*, a relevant form of coercion that triggers the demands of egalitarian justice according to the coercion-based argument can be found in most business firms in modern capitalist societies. Apart from being coercive, modern firms are also characterised by their interdependent relationship with their employees. For any firm to survive and properly function, employers must have the compliance and cooperation from their employees. On the other hand, employees depend on the proper functioning of their firms to obtain the goods and resources essential for pursuing their conceptions of the good, such as income, skills, and opportunities. In this regard, the relationship between employers and employees in modern firms is characterised by a relevant form of interdependence similar to the one between the state and citizens singled out by Sangiovanni. If this is the case, there seems to be no reason why according to the interdependence-based argument the demands of liberal egalitarian justice should not be extended to private associations such as business firms.

The potential for the coercion-based and interdependence-based arguments to extend the scope of justice to cover the *local* poses a problem to cosmopolitan egalitarians.

This is because, like their statist and internationalist counterparts, many cosmopolitan egalitarians, such as Thomas Pogge and Kok-Chor Tan, are *institutionalists*. They disagree with theorists such as G. A. Cohen who have long argued for extending the application of egalitarian justice to private associations and individual conduct.[46] Institutionalists are united by the belief that principles of justice should apply to the basic *institutions* that govern private associations but not the private associations themselves.[47] For this reason, cosmopolitan egalitarians cannot claim victory by simply showing that the coercion-based and interdependence-based arguments proposed by statist and internationalist egalitarians could justify extending the scope of justice to the global arena. They need to also explain why the scope should stop at the global rather than going all the way down to the local. Otherwise, their institutionalist approach to justice would inevitably be compromised.

One possible counter-argument to the above claim is that not all cosmopolitans follow the Rawlsian institutionalist approach. It may be argued that for cosmopolitans who take a right-based or humanity-centred approach to justice, they may not have any principal reason to reject liberal egalitarian justice from being applied to the local.[48] They may see the global and domestic basic structures as the primary but not the only sites where liberal egalitarian principles are relevant. In this regard, they may have no problem accepting that any associations at the local level should be internally ordered by liberal egalitarian principles of justice if they embody the relevant kind of coercion or interdependence. For example, they may agree with the feminist argument for regulating

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[46] See G. A. Cohen, "Where the Action Is: On the Site of Distributive Justice," *Philosophy & Public Affairs* 26, no. 1 (1997); *If You're an Egalitarian, How Come You're So Rich*; *Rescuing Justice and Equality*.
[47] Blake, "Distributive Justice, State Coercion, and Autonomy," 261-66.
[48] For example, see Gilabert, *From Global Poverty to Global Equality: A Philosophical Exploration*; Caney, *Justice Beyond Borders: A Global Political Theory*.

families with the same liberal egalitarian principles that apply to the society at large.[49] They may also agree with workplace democrats' claim that business firms should be arranged in a more egalitarian and democratic way.[50] In short, the going-all-the-way-down argument presented above may not pose a threat to non-institutionalist cosmopolitans as they may not find it problematic for liberal egalitarian principles to be extended into the local.

This response is problematic, however. For extending the scope of liberal egalitarian justice to private associations poses a serious threat to the freedom of association—a freedom widely regarded as a basic liberty that any just society must guarantee. The central concern of the going-all-the-way-down argument above is that there is nothing unique about the coercion and interdependence that is found in the domestic and international basic structures. The relevant form of coercion and interdependence that is thought to trigger the demand for liberal egalitarian justice can also be identified in numerous private associations. Other than the workplace and family, it can also be found in universities, churches, professional unions, sports clubs, and many other private associations.[51] If the coercion-based and interdependence-based arguments are strictly followed, this means that the vast majority of private associations in the society

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[49] For example, Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989); "Political Liberalism, Justice, and Gender," *Ethics* 105, no. 1 (1993): 26-27.

[50] For example, Nien-hê Hsieh, "Justice at Work: Arguing for Property-Owning Democracy," *Journal of Social Philosophy* 40, no. 3 (2009); Samuel Arnold, "The Difference Principle at Work," *The Journal of Political Philosophy* 20, no. 1 (2012); Samel Freeman, "Property-Owning Democracy and the Difference Principle," *Analyse & Kritik* 9, no. 1 (2013).

[51] Take university as an example. On the one hand, universities can be autonomy-invading because students often have to act against their own will in order to fulfil the demands and requirements set directly by lecturers and university administration. Students' subjection to the coercion in the university can be regarded as often non-voluntary. Many simply feel compelled to apply for a place in the university even if they do not wish to because a university degree is now the entry requirement for a decent job. On the other hand, the relationship between universities and students can be described as interdependent in nature. It is obvious that universities depend on student enrollment to survive financially while students depend on the university to obtain essential social goods, such as skills and opportunities, for the pursuit of their life plans. In short, following the coercion-based and interdependence-based arguments, universities should be internally ordered by liberal egalitarian principles of justice.

should be internally ordered by liberal egalitarian principles. To say that private associations should be *internally ordered* by liberal egalitarian principles is to mean that the demands of justice that regulate the domestic basic structure should also apply to regulate those associations. This is different from demanding private associations to be *constrained* by the requirements of a just basic structure that is arranged according to liberal egalitarian principles.[52] An obvious consequence of applying liberal egalitarian justice internally to private associations is that it would suffocate the private space that enables individuals to associate with others on mutually acceptable terms. This is because individuals would be demanded to arrange their private relationships based on liberal egalitarianism rather than a shared comprehensive conception of the good or common interests. For example, churches may need to organise their internal relationships according to liberal egalitarian values, such as democracy and neutrality rather than their own religious beliefs. The erosion of the freedom of association is problematic from a liberal egalitarian perspective since it jeopardises the social conditions essential for individuals to develop and exercise their moral power to form and pursue a conception of the good life.[53] Individuals would be deprived of the social space where they can affirm and maintain their identity.[54] The uniformity of associations would also deny them the opportunities to explore different possible ways of life. Therefore, the result of applying liberal egalitarian principles to regulate the internal relationships of private associations that exhibit a relevant form of coercion and interdependence is that it would undermine a fundamental commitment of liberal egalitarian justice. For this reason, even if non-institutionalist cosmopolitans can avoid the dilemma faced by their institutionalist

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[52] S.A. Lloyd, "Family Justice and Social Justice," *Pacific Philosophical Quarterly* 75 (1994): 356.
[53] Rawls, *Political Liberalism (Expanded Edition)*, 313.
[54] Cecile Laborde, *Liberalism's Religion* (Cambridge, M.A.: Harvard University Press, 2017), 174.

counterparts, they still cannot find an adequate normative foundation to justify their position in the coercion-based and interdependence-based arguments.

3.2.5 Conclusion

To conclude shortly, this section has discussed two unique-nature institutionalist arguments—the coercion-based and interdependence-based arguments—that attempt to justify limiting the scope of liberal egalitarian justice to domestic societies. It agrees with the cosmopolitan egalitarians' critiques that these two arguments fail to rule out the international arena from being a proper site for liberal egalitarian justice. However, this section points out that the coercion-based and interdependence-based arguments are indeed also unable to justify the cosmopolitan egalitarian position. For both arguments cannot confine the application of liberal egalitarian justice exclusively to the domestic and global *basic structures*. The inability to rule out private associations reveals a deeper flaw of the unique-nature institutionalist arguments, that is, by focusing on the *nature* of the basic structure, they actually fail to point out what makes the basic structure morally unique to be the sole trigger for the demands of liberal egalitarian justice. In other words, the unique-nature argument, despite often referred to as an institutionalist argument, ironically fails to support an institutionalist position.

All in all, the unique-nature institutionalist arguments examined in this section not only fail to explain why liberal egalitarian justice should only apply to domestic societies. Worse, they may not even be qualified to be called 'institutionalist.' The predicament faced by the coercion- and interdependence-based arguments is due to the fact that, from their point of view, existing institutions become morally relevant only if they happen to embody the relevant qualities that trigger the demands of liberal

egalitarian justice. In short, according to the unique-nature arguments, institutions are not morally salient in their own right.

The failure of the unique-nature arguments shows that, for an institutionalist argument to successfully defend the internationalist conception of justice, it must explain why existing institutions themselves are fundamental and indispensable in conditioning the content, justification, and scope of justice. An attempt to offer such an explanation can be found in an alternative institutionalist argument—the interpretive argument—which argues that the principles of justice appropriate for a society cannot be decided independently of a critical understanding of the point and purpose of the society's basic structure as *interpreted* against its existing institutional practices. The next section discusses whether the interpretive argument can provide a better justification for the two-tiered account of justice that is fundamental to the internationalist conception of justice.

3.3 The Institutionalist Approach, Round Two

The thrust of the interpretive argument is that the content, justification, and scope of the principles of justice are conditioned upon a critical interpretation of the point and purpose of the institutional practices which the principles are meant to regulate. The interpretive argument claims that liberal egalitarian principles are formulated exclusively to fulfil the point and purpose of the domestic basic structure as interpreted against its basic structure's practices. And it argues that those principles do not apply to the international arena because the international basic structure has a fundamentally different set of institutional practices from which an aim distinct from the one of domestic societies could be identified. The interpretive argument, like the unique-nature argument above, believes that the basic structure of society is a site of justice because it puts those

involved into a morally salient network of relations.[55] It, however, regards existing institutions as morally salient in their own right by arguing that the interpretation of those institutions is the foundation for a critical understanding of the point and purpose of the basic structure upon which principles of justice could be constructed.

In this section, the first part introduces Sangiovanni's interpretive argument that seeks to reject global egalitarianism. It begins by elucidating his constructivist methodology according to which the principles of justice appropriate for a society are constructed in light of its basic structure's point and purpose obtained from a critical interpretation of the existing practices of the basic structure. After that, it explains how Sangiovanni attempts to justify confining the scope of liberal egalitarian justice to domestic societies by contending that the point and purpose of the domestic basic structure are fundamentally different from the one of the international basic structure. The second part of the section argues that the interpretive argument fails to justify the two-tiered, internationalist conception of justice. It starts by pointing out that Sangiovanni's theory is unable to show how existing practices alone can condition the justification of justice. It then proposes two potential solutions to the problem but argues that both fail to rescue the interpretive argument.

3.3.1 The Interpretive Argument

An often-cited example of the interpretive argument is Sangiovanni's constructivist theory. Apart from the interdependence-based argument discussed in the previous section, elsewhere Sangiovanni attempts to defend internationalism with another theory that emphasises the indispensable role played by existing institutional practices in the

[55] Sangiovanni, "Justice and the Priority of Politics to Morality," 146.

construction of principles of justice. His theory contends that 'the content, scope, and justification of a conception of justice is worked out in light of both its intended role within existing institutions and the interpretation of the point and purpose of those institutions.'[56] Based on Dworkin's legal interpretivism, Sangiovanni proposes a three-stage process to illustrate how principles of justice can be constructed through interpreting the existing institutions of a political society.[57]

In the first, 'pre-interpretive' stage, the aim is to establish a 'shared *object* of interpretation' and to 'fix the contours' of that object.[58] The proper object, according to Sangiovanni and other institutionalists, is the institutions that put their participants in a special form of relation. And by institutions, they mean the formal and informal rules, protocols, and decision-making procedures that organize and regulate the behaviours of individuals and their interaction with each other. For instance, in the case of a modern liberal society like the United States, the object of interpretation should be its constitution, democratic elections, precedents issued by courts, and so forth. The task of the interpreter at the pre-interpretive stage from the institutionalist perspective is to identify and offer a description of the major institutions of a society in uncontroversial, mutually-shared terms.[59] The point of making such a description is to supply the 'raw data' of interpretation for the next stage.

In the second, 'interpretive' stage, the task is to interpret the institutions in question so as to determine their point and purpose.[60] This requires the interpreter to put herself into the shoes of the institutions' participants to reconstruct what reasons they

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[56] Ibid., 150.
[57] A similar theory can be found in Aaron James, "Constructing Justice for Existing Practice: Rawls and the Status Quo," *Philosophy & Public Affairs* 33, no. 3 (2005): 301.
[58] Sangiovanni, "Justice and the Priority of Politics to Morality," 148.
[59] Ibid.; James, "Constructing Justice for Existing Practice: Rawls and the Status Quo," 301.
[60] Sangiovanni, "Justice and the Priority of Politics to Morality," 148.

might have for affirming the institutions' basic rules, procedures, and standards.[61] She needs to answer why the institutional practices identified in the previous stage are worth pursuing from the participants' point of view. In doing so, the interpreter seeks to understand the different parts of the institutions as an 'integral whole, whose parts work together in realizing a unique point and purpose.'[62] The interpretive process may not be a straightforward one as the various elements of the system may initially seem to be at odds with each other. And it is the job of the interpreter to connect and arrange the seemingly contradicting elements into a coherent whole. At the end of the interpretive stage, by successfully identifying the point and purpose of the institutional system in question and understanding what might rally the support from its participants, the interpreter should be able to establish 'the parameters and fixed points which a full-blown conception of justice must take into account.'[63]

Sangiovanni emphasises that the task of identifying the point and purpose of a society's institutions should be carried out *without* depending on the participants' existing values and beliefs.[64] In denying the relevance of existing public culture he seeks to distinguish his institutionalist approach and the cultural-dependent approach exemplified by Walzer's theory of justice. In Sangiovanni's view, institutionalists reject that the existing public culture of a political society has any role to play in the justification and formulation of the principles of justice.[65] Therefore, at the 'interpretive' stage, the interpreter is not required to take the society's political culture into account to understand the point and purpose of its institutional system and how it could motivate the

[61] Ibid.
[62] Ibid., 149.
[63] Ibid.
[64] Ibid.
[65] Ibid., 146.

affirmation from its participants. For this reason, a successful interpretation does not need to be the one that echoes the beliefs already affirmed by the political society's participants and explains their potential underlying coherence.[66]

Finally, in the third, 'post-interpretive' stage, the task is to construct the first principles of justice based on the interpretative materials obtained at the previous stage.[67] This requires the interpreter to determine the content of justice applied to a political society in light of the point and purpose of its institutional system. To do so, she might need to answer: what is the role of justice in a political society given the point and purpose of its institutions?[68] How should the principles of justice be formulated so that they could serve to realise the point and purpose of the institutional system? To illustrate, in the case of a modern constitutional democracy, if the interpreter concludes at the previous stage that its institutions' aim is to protect the liberties and equal standing of citizens, she might decide that the role justice is meant to play in that society is to reconcile the seeming conflicts between freedom and equality. She might then need to determine what principles could accommodate the conflicting claims generated by the two ideals properly.

At this stage, Sangiovanni believes that it should be clear how the content, justification, and scope of a conception of justice are conditioned by the institutional practices it is meant to apply to. First, the *content* of principles of justice is worked out in light of the institutions' point and purpose obtained through the interpretive process. Its appropriateness is determined by whether it could successfully guide the institutional system to realise its intended purpose. Second, the *justification* of a conception of justice is determined in terms of its intended function within the existing institutions. For

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[66] Ibid., 159.
[67] Ibid., 150.
[68] Ibid.

Sangiovanni, a conception of justice is justified to the participants of a political society if it can successfully fulfil the role it is meant to play in that society, that is, spelling out the principles that specify the demands which the society's institutional system needs to fulfil in order to achieve its point and purpose. Finally, the *scope* of a conception justice is limited to applying to the institutional practices upon which the conception is constructed. Given that the role of justice is to guide the institutions to realise their intended purpose, a conception of justice appropriate for one set of institutions may become inappropriate for another one. For different points and purposes may be identified from different institutional practices by the interpretive process and each institutional system would therefore need a unique set of principles to realise its intended aim. In short, according to Sangiovanni, justice varies according to the institutional context it is meant to regulate.[69]

Sangiovanni's account of the limited scope of justice offers an alternative institutionalist reason for rejecting the cosmopolitan claim that liberal egalitarian justice should apply globally. The reason does not depend on the different *natures* between the institutions of domestic societies and those of the international society; instead, it emphasises the different roles justice is meant to play in a constitutional democracy and the international order as interpreted against their different institutional practices. This, according to Sangiovanni, can be illustrated by Rawls's rejection of applying justice as fairness globally. In Sangiovanni's view, the institutionalist reason for Rawls's internationalism is that justice as fairness is constructed *exclusively* to answer to the unique point and purpose of a modern constitutional democracy identified through interpreting its institutional practices (as characterised by, say, a liberal constitution, rule of law, and

[69] Ibid., 146, 59.

democratic elections). The same conception of justice cannot apply to the international arena because the international basic structure has a fundamentally different set of institutional practices (as characterised by, say, the international law and treatises) from which an *aim* distinct from the one of a constitutional democracy could be identified. The different aims of the two institutional systems have not been elaborated on by Sangiovanni in great detail. But following Aaron James's reading of Rawls's internationalism, it could be said that, in the case of a modern constitutional democracy, its aim is to provide primary goods and facilitate a fair scheme of cooperation among citizens who are viewed as free and equal.[70] And in the case of the international institutional order, its aim is to secure peace, the autonomy of peoples, and to spell out the standards of international legitimacy.[71] The different aims of a constitutional democracy and the international institutional order mean that different sets of principles are required to fulfil the different roles justice is meant to play in these spheres. Rawls's justice as fairness and Law of Peoples then can be viewed as two distinct theories of justice constructed in response to the distinct interpretive facts identified in a constitutional democracy and the international order respectively. His reason to reject liberal egalitarian cosmopolitanism, from the institutionalist perspective, is that a liberal egalitarian conception of justice is unable to fulfil the institutional aim of the international order, which accentuates the freedom and equality of *peoples* but not of *citizens*. This internationalist interpretation of Rawls's anti-cosmopolitan position demonstrates how a two-tiered, internationalist conception of justice could be justified under Sangiovanni's interpretive theory.

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[70] James, "Constructing Justice for Existing Practice: Rawls and the Status Quo," 300.
[71] Ibid., 30.

The interpretive argument for internationalism is able to avoid the problem faced by the unique-nature arguments discussed in the previous section. According to the interpretive argument, justice does not vary according to the *nature* of the institution but the role it is meant to play in light of the institutional system's point and purpose. This means that, even if the domestic and international basic structures are both, say, coercive in nature, it does not follow that they should be governed by the same conception of justice. The different aims of their institutional practices mean that they each still demand a distinct set of principles. For this reason, cosmopolitans could no longer argue that liberal egalitarian justice should apply to both the domestic and the international because the nature of the institutional systems in both arenas are the same.

3.3.2 Against Institutionalism, Round Two

The major problem of Sangiovanni's theory is that it fails to show how existing institutional practices alone can condition the *justification* of a conception of justice. According to Sangiovanni, a conception of justice is justified and can claim normative authority when it can successfully guide the institutions to realise their aim. He, however, does not offer any reason why this is the case. In specific, he does not explain what makes the point and purpose of institutions obtained at the interpretive stage so morally significant that it is used as the standpoint for constructing the principles of justice. One way to answer the question is to look at how the point and purpose of the institutions are determined. Recall that, at the interpretive stage, the aim of a political society's institutional system is decided partly through interpreting the reasons its participants might have for affirming its rules and procedures. The institutional system's aim is then used as the standpoint for the post-interpretive stage from which a conception of justice

is constructed. One possible explanation for the point and purpose of the institutions being used as the standard for evaluating and constructing a conception of justice at the post-interpretive stage is that it points to the reasons which the participants might have for endorsing a political order. Therefore, the reason why a conception of justice would be justified when it could successfully guide the institutional system to realise its intended purpose is that, by doing so, the conception of justice would be able to appeal to the reasons of those whose relationship is to be governed by it. In this regard, Sangiovanni's theory espouses the idea of *public justification* to explain the normative authority of the principles of justice obtained through the three-stage interpretive process. Its ultimate criterion for determining whether a set of principles of justice is justified in a specific society is whether the members of that society would have sufficient reasons to endorse the demands generated by those principles.[72]

The idea of public justification is, however, at odd with Sangiovanni's theory due to the latter's disregard for public political culture. The cornerstone of public justification is what Vallier calls the *belief-value set* of agents which indicates their *actual* judgements and convictions about the legitimate use of political power.[73] There are two different approaches to explain why the belief-value set is fundamental to public justification. The first one is the *moral anthropology* approach found in the theories of cultural conventionalists like Walzer. It explains the importance of the belief-value set by arguing that it allows theorists to uncover the principles of justice that have already been implicitly endorsed by the members of society. The second view is the *public reason* approach originated in Rawls's account of public justification. It argues that the belief-value set is

[72] Kevin Vallier, *Liberal Politics and Public Faith* (New York: Routledge, 2014), 24.
[73] Ibid., 29.

essential because its *idealisation* allows theorists to infer the public reason that guides determining which principles of justice could be justified for a society. Against the moral anthropology approach, public reason theorists point out that the actual political judgements and beliefs of agents, more often than not, are too incoherent, biased, and self-contradictory to function as a set of operational justificatory reasons for public justification. They contend that fixing the problem would require the idealisation of agents' belief-value set through adjusting and altering their judgements and convictions according to some normative and epistemic criteria (e.g. getting rid of rational inconsistencies and relevant ignorance).[74] For example, Rawls uses the veil of ignorance as a device to idealise citizens as reasonable and rational by keeping information and knowledge about their personal circumstances out of their deliberation.[75] The key to public justification, according to public reason theorists, is to figure out what reason agents might have to affirm the political institutions under *ideal conditions*.

Both the moral anthropology and public reason approaches affirm the essential role played by agents' belief-value set in public justification. This means that, for the three-stage interpretive process proposed by Sangiovanni to be able to identify the principles of justice that could be publicly justified, it must be able to identify the belief-value set held by the members of society in the first place. This is where the disregard for public political culture in Sangiovanni's theory becomes problematic. As pointed out above, according to Sangiovanni, a society's public political culture plays no role in identifying the aim of institutions and constructing the principles of justice. In other words, the interpretive process of Sangiovanni's theory does not take into account the

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[74] Ibid., 29-30. The interpretive stage of Sangiovanni's theory can be seen as a manifestation of the idealisation.

[75] Rawls, *Justice as Fairness: A Restatement*, 18, 85-89; *Political Liberalism (Expanded Edition)*, 225.

existing beliefs, principles, and values held by the members of society that express their judgements and convictions on political legitimacy. The problem of the interpretive process then is that it seeks to accomplish the impossible task of achieving public justification without delving into the members' belief-value set. The attempt at the interpretive stage to infer the reasons the members of society might have to affirm the institutional system is hence nothing more than baseless speculation. In short, if the aim of Sangiovanni's theory is to achieve public justification, its disregard of a society's public political culture is a fatal error.

One potential response to the above criticism is to argue that Sangiovanni's theory may not need to invoke the idea of public justification at all. It could be argued that Sangiovanni is mistaken to claim that, at the interpretive stage, the point and purpose of the institutional system in question are determined by inferring what reasons the participants might have for affirming its rules. For it is possible to determine the aim of institutions without taking into account the reasons held by their participants. For example, one could infer that a major aim of the institutions of a contemporary constitutional democracy is to respect the autonomy of its members by simply interpreting the types of rights and liberties guaranteed by the constitution. It could then be said that the task of the interpretive stage could be accomplished without the need to assume the point of view of the participants of the institutional system in question. The interpreter could determine the supposed aim of the institutions in question simply by closely studying and investigating their written rules, actual practices, norms, and so forth. Based on this modified account of the interpretive stage, the point and purpose of the institutions no longer depend on their members' convictions and judgements on political legitimacy. For this reason, Sangiovanni's theory does not invoke the idea of public

justification by claiming that the principles of justice constructed at the post-interpretive stage are justified when they can successfully guide the institutional system they are meant to regulate to realise its point and purpose.

The above view, which might be called the radical institutionalist view, demonstrates how Sangiovanni's interpretive theory could avoid invoking the idea of public justification; however, by ditching public justification, it would encounter difficulties in answering the question raised above, that is, why do the interpretive facts of an institutional system (i.e. its point and purpose) carry such significant moral weight that determines whether a conception of justice is justified or not? The answer to this question is key to explaining the normative authority of the principles of justice constructed following the three-stage interpretive process that characterises Sangiovanni's theory. One possible answer, as the above has shown, is to argue that the aim of the institutional system obtained at the interpretive stage is morally relevant in the sense that it reflects the reasons which the participants might have for affirming the system's rules and standards. To say that a conception of justice resulting from the three-stage interpretive process is justified is to mean that it could appeal to the reasons of those governed by its principles. This solution is rejected by the radical institutionalist view, however.

An alternative to invoking the idea of public justification is to argue that the aim of institutions embodies certain values and ideas that carry significant moral weight *in their own right*, meaning that their normative authority is *intrinsic*. Call this the objectivist view. To use the example of a contemporary constitutional democracy again, after having closely studied its institutional system, the interpreter might conclude that one of its aims is to, say, guarantee the equal rights of citizens. Radical institutionalists could argue that

this aim is morally relevant because protecting citizens' equal rights embodies certain fundamental moral ideas and values, such as respect for individual autonomy and fairness. They could then claim that the principles of justice constructed in light of the aim to protect the equal rights of citizens are justified in the sense that they espouse ideas and values that are morally significant by themselves.

The problem of the objectivist view, however, is that, by assuming and appealing to the intrinsic normative authority of certain political ideas and values, it makes the interpretive process that is fundamental to the institutionalist argument *redundant*. If it is assumed that certain ideas and values possess intrinsic normative authority in the realm of politics, this would provide a compelling moral reason to identify the aim of a society's institutions and formulate the corresponding principles of justice in light of those ideas and values. For example, if there is intrinsic normative value in respecting the autonomy of individuals, this idea *alone* would create a pro tanto reason that commands what a society's institutions should aim to realise and which principles of justice it should follow. In this regard, the interpretive process as proposed by institutionalists would become redundant to determine the point and purpose of a society's institutions and the content of the principles of justice. This would contradict the fundamental idea of interpretive argument that the content and justification of the principles of justice are conditioned upon the interpretive facts of the institutional practices those principles are meant to apply to.

More damagingly, by assuming that certain ideas and values possess intrinsic moral authority, radical institutionalists have accepted a fundamental premise used by some cosmopolitans to justify global egalitarianism. According to one version of cosmopolitanism, the fundamental premise of global egalitarianism is that the normative

authority of some moral ideas and values, such as human dignity and individual autonomy, is intrinsic and not derived from any contingent practices, norms, or institutions. Based on this premise, cosmopolitans argue that those ideas and values are *universal* and justice should not vary according to institutional or other contexts that are arbitrary from a moral point of view. In their view, given the existence of moral ideas and values whose authority is nonderivative and universal, the liberal egalitarian principles that are essential for securing and realising those ideas and values should also apply *globally*. This pro-global egalitarian conclusion is not acceptable to radical institutionalism, a theory meant to be a defence for the internationalist conception of justice. For this reason, radical institutionalists cannot make the assumption that there are moral ideas and values that command intrinsic normative authority.

To conclude, the above discussed the interpretive argument that attempts to justify a two-tiered, internationalist conception of justice. It focused on Sangiovanni's theory and argued that his theory is unable to offer a proper foundation for internationalism because it fails to explain the normative relevance of the interpretive process that is central to the theory. That said, Sangiovanni's theory offers a useful theoretical framework, namely the interpretive process, upon which a proper defence for the internationalist conception of justice could be developed. The problem of his theory also reveals that a proper defence for the internationalist conception of justice should pay greater attention to public political culture, something deemed by Sangiovanni as morally irrelevant. In short, Sangiovanni's interpretive methodology is fine, but he has chosen the wrong subject of interpretation.

3.4 Conclusion

This chapter discussed different institutionalist arguments for justifying the two-tiered, internationalist conception of justice. And it argues that none of them succeeds. For the coercion- and interdependence-based arguments, their problem is that, by focusing on the nature of the domestic institutions, they fail to establish the normative difference between the domestic and the international. For the interpretive argument, the problem is that it fails to explain the normative salience of the point and purpose of a society's basic structure in conditioning the justification of justice. In short, a successful defence for the internationalist conception of justice cannot be found by zooming in on the basic institutions of domestic societies.

The failure of the institutionalist arguments does not mean that the *basic structure* of society cannot provide any theoretical resources to reject cosmopolitanism. For what the institutionalist arguments focus on is only one component of the basic structure, namely, the fundamental *institutions* that distribute rights and duties, advantages and burdens across the society. But the basic structure has another essential component, that is, the *public political culture* which consists of the values, norms, and conventions upon which the institutions can be made sense of and assessed. The next chapter argues that the different public political cultures found in a constitutional democracy and the international community are the reason why the scope of liberal egalitarian justice should be confined to the domestic but not beyond.

Chapter 4

Public Political Culture and the Scope of Justice

4.1 Introduction

This chapter presents a culturalist argument to justify the two-tiered, internationalist conception of justice. The thrust of the argument is that liberal egalitarian justice applies exclusively to modern constitutional democracies because within those societies there exists a relevant *public political culture* that cannot be found in the international arena. The culturalist argument shares some key premises with the institutionalist arguments discussed in the previous chapter. First, the culturalist argument also adopts the relational conception of justice. But contrary to the institutionalist arguments, it contends that individuals' joint subjection to a set of institutions is insufficient to put them in a morally salient relation that gives rise to the questions of justice; there must be also a shared political culture among those involved. Second, the culturalist argument, like the institutionalist arguments, is a practice-dependent theory. However, it argues that the content, justification, and scope of the principles of justice are conditioned upon not the institutional practices but the cultural practices of the basic structure from which the principles are constructed. Third, the culturalist argument embraces the interpretive method employed by Sangiovanni in his institutionalist argument. However, it contends that the proper subject of interpretation should be a political society's political culture rather than its institutions.

This chapter aims to accomplish two things. First, it seeks to develop a culturalist theory of justice that is inspired by Rawls's political constructivism according to which the principles of justice applicable to a particular society are worked up from the public

political culture of that society.[1] Second, it seeks to employ this culturalist conception of justice to argue against global egalitarianism and parochial statism. The chapter is arranged as follows. The next section first elaborates on the idea of public political culture by looking at its content, domain, and constituency. Section Three spells out the culturalist conception of justice and argues that the scope of liberal egalitarian justice should be confined to domestic societies within which a relevant public political culture can be identified. Section Four explains why the principles of justice applicable to the international basic structure should be sufficientarian, rather than egalitarian, in nature. Section Five concludes the discussion.

4.2 Public Political Culture

Any well-functioning basic structure is composed of two essential components: a set of fundamental institutions and a set of norms and conventions that constitute what Rawls calls public political culture. Institutions, as mentioned before, refer to the formal and informal rules, protocols, and decision-making procedures that organise and regulate the behaviours of individuals and their interaction with each other. Their function, according to Rawls, is to assign rights and duties and shape the division of advantages among those subject to the basic structure.[2] Institutions are *non-normative* or *amoral* in the sense that they describe how power *is*, rather than how it *should* be, exercised. A critical understanding of the institutions of domestic societies is the cornerstone of the institutionalist arguments examined in the previous chapter. What institutionalists mean by the uniqueness of the domestic basic structure is actually the uniqueness of domestic

[1] *Political Liberalism (Expanded Edition)*, Lecture III.
[2] Ibid., 258.

institutions. On the other hand, public political culture refers to the values, norms, and beliefs shared by the members of society with respect to the meanings and foundations of the institutions that regulate their behaviours and interaction.[3] It is the product of the collective historical experiences of the basic structure that are rooted in public events and civil discourse.[4] A public political culture expresses how the members of society generally perceive and make sense of the fundamental institutions that are responsible for the distribution of advantages and burdens among them.[5] And it also reflects their judgments about the standards and ideals to which those institutions are expected to adhere.

Public political culture can be defined by its *content*, *domain*, and *membership*. The following paragraphs elaborate on them one by one to give a clearer picture of the functions and boundaries of public political culture. This analysis is essential for understanding the role played by the public political culture in triggering and answering the questions of justice. It also gives a glimpse of how public political culture can provide the foundation for a proper defence of the two-tiered, internationalist conception of justice.

a. Content

Public Political Culture's content is *normative* in the sense that it expresses the firmly-held beliefs shared by the members of a political society about the *legitimacy* of its basic structure's institutions.[6] A public political culture contains what Rawls calls the

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[3] Ibid., 13-14. See also Lucian W. Pye, "Political Culture," in *International Encyclopedia of the Social Sciences*, ed. David L. Sills (New York: Macmillan & Free Press, 1968), 218.
[4] "Political Culture," 68; Leonardo A. Morlino, Dirk Berg-Schlosser, and Bertrand Badie, *Political Science: A Global Perspective* (London: SAGE Publications, 2017), 218.
[5] Gabriel Abraham Almond and Sidney Verba, *The Civic Culture* (Princeton, NJ: Princeton University Press, 1963), 15.
[6] Morlino, Berg-Schlosser, and Badie, *Political Science: A Global Perspective*, 68; Pye, "Political Culture," 221; Geoffrey Brennan et al., *Explaining Norms* (Oxford: Oxford University Press, 2013), 28.

'considered judgments' or 'considered convictions' of the members of society on the underlying ideals and values which give meanings to the practices of the institutions.[7] These judgments indicate the members' settled and informed beliefs on the most fundamental issues of justice which they have the greatest confidence in being correct and impartial.[8] And these beliefs constitute what are viewed by the members of society as the 'fixed points'—convictions they never expect to withdraw—in judging the legitimacy of the basic structure's institutions.[9] This means that for any institutions to be considered reasonably acceptable, they must observe, or at least not deviate too far away from those fixed points. To illustrate, it can be said that one fixed point in any liberal society's political culture is that slavery can never be justified and this means that in such a society no institution that permits slavery would be seen as legitimate.

One important role of public political culture in a basic structure is that it defines the legitimate boundaries of the institutions.[10] This involves specifying which social goods are appropriate for the institutions to distribute and which are not. For instance, it can be said that the tradition of laïcité in the political culture of France entails that it would be pro tanto illegitimate for the basic structure there to be engaged in the distribution of any religious goods. Another role of public political culture in the basic structure is that it indicates the relevant reasons which the institutions are expected to follow in distributing different social goods. Those reasons could be derived from the publicly accepted norms regarding the relationship between and the proper treatment of different social groups. To illustrate, a society with a strong belief that the government

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[7] Rawls, *Justice as Fairness: A Restatement*, 29-30.
[8] *A Theory of Justice (Revised Edition)*, 17-18; T. M. Scanlon, "Rawls on Justification," in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (New York: Cambridge University Press, 2002), 140.
[9] Rawls, *Justice as Fairness: A Restatement*, 29; *A Theory of Justice (Revised Edition)*, 17-18, 42; *Political Liberalism (Expanded Edition)*, 8.
[10] Pye, "Political Culture," 221.

should not discriminate against anyone based on her race would denounce any distributive policy that openly disadvantages a particular racial group. Apart from that, the relevant reasons could also be inferred from the publicly recognised meanings of different social goods.[11] Embedded in a public political culture are the shared understandings among the members of society on the importance and value of the goods being distributed by the institutions. And these understandings form the social basis from which the relevant distributive criteria and standards for those goods could be derived. For example, if there is a shared understanding among a society's members that voting right is a valuable good because it manifests the ideal of equal citizenship, this would indicate that, within that society, equality should be a relevant, or even essential, criterion for the distribution of voting right.

b. Domain

A public political culture's domain is the institutions of a society's basic structure that mediates the relation of its members. This means that its conventions and ideals give order and meanings only to the practices of those institutions but not beyond. Following Walzer, it can be said that the human society comprises different distributive spheres and each sphere contains its own culture that shapes the criteria and standards for distributing a particular set of social goods.[12] Public political culture comprises only the distributive criteria and standards for the distribution of the goods under the purview of the basic structure of society. And they have no direct authority and relevance in other social and private spheres, such as workplaces and friendships, that exist outside the basic structure.

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[11] Walzer, *Spheres of Justice: A Defense of Pluralism and Equality*, 9; Brennan et al., *Explaining Norms*, 37.
[12] Walzer, *Spheres of Justice: A Defense of Pluralism and Equality*.

That being said, given that the basic structure constitutes the background institutions within which other social and private spheres exist, public political culture may still exert *indirect* influence beyond its own domain by being the background constraint of other spheres.

The relation between institutions and public political culture in real-world societies is always *dynamic*. On the one hand, the institutional arrangements of a society are shaped by the society's public political culture. As pointed out above, public political culture indicates the norms and ideals which the institutions are expected to observe. If the institutions deviate too wildly from people's convictions and beliefs, their legitimacy would be immediately called into question. Therefore, a well-functioning society's institutions would tend to reflect, or at least not conflict with, the considered judgments held by citizens. On the other hand, the public political culture of a society is also shaped by the institutions. As pointed out by Rawls, institutions do not only satisfy 'given desires and aspirations' of the members of society but also arouse further desires and aspirations in the future.[13] In other words, institutions are not simply an embodiment of people's beliefs and convictions; they also play an active role in shaping the norms of society by encouraging its members to adopt certain beliefs and accept certain ideas. For example, one often criticism against capitalist society is that it generates a culture of greed and selfishness that threatens social cooperation. In short, the relation between institutions and public political culture can be seen as a feedback loop in which they contribute to the development of each other.

Public political culture's limited domain means that it is different to Kylmlicka's societal culture and Miller's common public culture. According to Kymlicka, a societal

[13] Rawls, *Justice as Fairness: A Restatement*, 56.

culture 'provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres.'[14] There can be two interpretations of Kymlicka's idea. First, it can be interpreted as an *all-embracing* culture that penetrates every aspect of human life. Second, it can be interpreted as a specific culture that gives its members a shared vocabulary of tradition and convention in the pursuit of a *meaningful* life. If the first interpretation is taken, public political culture can be seen as a more restrictive concept than societal culture as it is relevant and authoritative only within the institutions of a society's basic structure. If the second one is taken, public political culture and societal culture can be regarded as two distinct sets of norms and ideals that exist in two respective distributive spheres.

On the other hand, Miller's common public culture, while narrower than Kymlicka's societal culture, is still a broader concept than public political culture. According to Miller, a common public culture

> will include political principles such as a belief in democracy or the rule of law, but it reaches more widely than this. It extends to social norms such as honesty in filling your tax return or queueing as a way of deciding who gets on to the bus first. It may also embrace certain cultural ideals, for instance religious beliefs or a commitment to preserve the purity of the national language.[15]

For Miller, a common public culture is what defines *nationality* and for this reason its domain is considerably wider than that of a public political culture. While public political culture is directly relevant only within the distributive sphere constituted by the institutions of a society's basic structure, the domain of Miller's common public culture

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[14] Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1996), 76.
[15] Miller, *On Nationality*, 27.

or, more accurately, national culture includes all the spheres, such as personal relationships and social practices, that are relevant to the development of national identity.

c. Membership

The members of a public political culture are the people who are jointly subjected to a basic structure *and* share a common set of beliefs and convictions about *that* basic structure. In other words, the membership of a public political culture is intertwined with the membership of a shared basic structure in a particular society. By being engaged in a relation mediated by a shared basic structure, the members of a society not only participate in a set of common institutional practices but also a set of common cultural practices embodied by a public political culture. These cultural practices do not express the members' view on the criteria and standards which the institutions of *any* political society must fulfil in order to be legitimate. Rather, they indicate the members' normative beliefs and convictions about the institutions which mediate *their* relation in a shared political society. For instance, when the British argue that the royal family should play a strictly ceremonial role in politics, they do not refer to *any* royal family and the politics of *any* society but the Royal Family of Britain and the British politics. And when the Americans say that the supreme court should be non-partisan, it can be assumed that what they mean is not the supreme court of *any* countries but the supreme court that governs *their* relation, that is, the U.S. supreme court.

The point of a public political culture in a shared political relation is that it allows the members to have a common ground to engage with the normative issues emerged inside their relation. A public political culture, for example, can provide the members with a shared normative language for making and resolving different distributive claims

against the basic institutions of their society. Apart from that, it can also inform the criteria and standards for the members to evaluate the distributive practices to which they are jointly subjected. In this regard, a public political culture is 'public' in the sense that it is a set of norms and beliefs publicly recognised and accepted by the members of a particular society to mediate their relation under a shared basic structure.[16] The membership of a public political culture always entails the membership of a particular society (though not vice versa). It makes no sense to say that a person is a member of a society's public political culture without being a member of that society in the first place.

Although by definition the members of a public political culture must share a common set of normative beliefs and convictions, it does not mean that they cannot have disagreements. Even in a highly homogeneous society, people who see themselves as belonging to the same political culture would have disagreements on different norms and convictions over their interpretation, scope of relevance, application, and many other things. This is inevitable if people are assumed to be autonomous agents who are capable of forming and reflecting on normative judgments. But the existence of such disagreements does not necessarily entail the absence of a public political culture shared by the members of society. For a public political culture should be understood, in Wittgenstein's term, as a family-resemblance concept that lacks a single defining core but comprises a set of overlapping, criss-crossing beliefs and convictions.[17] To say that the members of a political society share a public political culture is not to mean that there is a definite set of beliefs and convictions which every member is expected to accept. Rather, it is to mean that there is a sufficient level of convergence among the members' beliefs

[16] See Brennan et al., *Explaining Norms*, 3.
[17] Ludwig Wittgenstein, *Philosophical Investigations*, trans. G. E. M. Anscombe (Oxford: Blackwell, 1958), 91.

and convictions upon which a common ground can be found for them to engage with the normative issues given rise to by their subjection to a shared basic structure.[18]

4.3 The Culturalist Argument Against Cosmopolitanism

The previous section has presented an account of public political culture by specifying its content, domain, and membership. Admittedly, the above account leaves many unanswered questions. For example, if the members of two different societies have similar beliefs and judgments over what makes the basic structure of society legitimate, does it mean that they are the members of the same public political culture? Besides that, is it unrealistic to assume that a normative common ground could be found within a society given how polarised today's world has become? The following discussion and the next chapter will add flesh to the account of public political culture. But for now, the above account should be sufficient for developing a culturalist practice-dependent argument for limiting the scope of liberal egalitarian justice to modern constitutional democratic societies. This section first argues that the principles of justice applicable to a particular society depend on a critical interpretation of the public political culture of that society. After that, based on the culturalist practice-dependent theory, the scope of liberal egalitarian justice should not be extended beyond a political society with a relevant public political culture upon which liberal egalitarian principles could be constructed.

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[18] Richard Rorty, *Objectivity, Relativism, and Truth*, vol. 1 (Cambridge: Cambridge University Press, 1990), 30.

4.3.1 Culturalist Conception of Justice

A culturalist conception of justice argues that people who share a public political culture regarding the basic structure to which they are jointly subjected are engaged in a morally relevant *relation* that gives rise to the questions of justice. And the reason why the concern for justice arises within such a relation is that the tension and conflicts inside a public political culture trigger the need for a set of higher-order principles that are capable of settling the deeply disputed questions of justice created by those conflicts. As mentioned above, members of a shared public political culture may still have deep disagreements over how different advantages and burdens should be distributed across the society. They may disagree on how the basic ideas and values embedded in the public political culture should be specified. Besides that, they may have conflicting views over the ordering and priority of different ideals and distributive claims. Take the tension between the competing claims of liberty and equality in the tradition of constitutional democracy as an example. Citizens in a constitutional democratic society may share a public political culture under which the protection of individual liberty and the guarantee of equal citizenship are seen as the ideals that should guide the distributive practices of the basic structure of society. However, they may disagree on the proper interpretation of the content and boundary of the two ideals. Besides that, they may also disagree on how the two ideals should be weighed against each other. In short, the tension internal to a public political culture is the origin of the questions of justice in a political society.

The inevitable tension and conflicts internal to public political culture reveal the major shortcoming of the theory of justice championed by Walzer. According to Walzer, the principles of justice applicable for the distribution of a particular social good are

determined by its social meaning embedded in a society's norms and conventions.[19] And the point of political philosophy is to interpret the social meanings of different social goods to *uncover* the principles of justice implicit in those meanings. However, the tension and conflicts that exist inside a public political culture entail that there would be inevitable disagreements over the social meanings of the goods being distributed by the basic structure of society.[20] For this reason, it would be difficult, if not impossible, to elicit *directly* from the norms and conventions of a public political culture any coherent set of principles for regulating the distributive practices of the basic structure. Therefore, the role of public political culture in a culturalist conception of justice cannot be that its norms and convention entail the social meanings of goods from which a set of ready-made principles could be uncovered.

A better alternative is that a public political culture provides the normative basis upon which a relevant set of principles could be *constructed* to resolve the deeply disputed questions over justice inside a political society. The questions of justice, as pointed out above, are triggered by the tension and contradictions found within a public political culture. The task of the principles of justice in a political society then is to offer a set of higher-order principles to settle the disagreements over the proper interpretations of the basic ideas inside a public political culture and to assign priority to different competing ideals and distributive claims. If successful, the principles should be able to demonstrate the underlying unity in the public political culture, or at least, narrow the divisive differences among the members of society over the fundamental questions of justice.

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[19] Walzer, *Spheres of Justice: A Defense of Pluralism and Equality*, 19.
[20] David Miller, *Principles of Social Justice* (London: Harvard University Press, 1999), 25.

From a culturalist perspective, the public political culture that triggers the questions of justice *itself* contains the foundation for answering those questions. For the considered judgments and settled beliefs identified in a public political culture inform the reasons its members might have to accept a particular set of principles of justice. A culturalist conception of justice hence seeks to work up a set of principles from the considered judgments and settled beliefs identified in a public political culture. This conception of justice is *practice dependent* in its approach and *constructivist* in its method. It is practice dependent in the sense that it regards the content, scope, and justification of the principles of justice as depending on the cultural practices of the basic structure which those principles are meant to regulate. And it is a constructivist theory because it argues that the principles of justice applicable to a political society are *constructed* by critically *interpreting* the public political culture embedded in that society's basic structure. To construct the principles of justice in light of a society's public political culture, the culturalist conception of justice follows an interpretive method similar to the one proposed by Sangiovanni that has been discussed in the previous chapter. Recall that his method consists of three stages: pre-interpretive, interpretive, and deliberating stages. The major difference between the culturalist interpretive method and Sangiovanni's one is that the subject of interpretation of the former is not the basic structure's institutional practices but its cultural practices. The following paragraphs elucidate the culturalist take on the three-stage interpretive method.

In the first, *pre-interpretive* stage, the aim is to identify the basic ideas and considered convictions that are rooted in a society's public political culture. This would involve a survey of the norms, conventions, and values expressed in everyday political discussions and the public interpretations of historical texts and documents. Such a

survey would inform the basic ideas that give meanings to the society's distributive practices. It would also indicate the informed and settled normative beliefs held by the members of society regarding the basic institutions of their society. The depiction of the basic ideas and considered convictions found in the public political culture serves mainly two purposes. First, it provides the 'raw data' of interpretation for the next stage. Second, more importantly, it identifies the *sources* of justification for the principles of justice resulting from the process of interpretation. As mentioned above, the considered judgments held by the members of society indicate the reasons they might have for accepting a particular set of principles of justice. And these judgments therefore provide the benchmarks by which the principles constructed in the later stage are to be judged.

In the second, *interpretive* stage, the purpose is to determine the point and purpose of the basic institutions of society by interpreting the 'raw data' identified in the previous stage. This involves the effort to understand the public political culture as an *integral whole* whose components rally behind a common understanding of the basic structure's point and purpose. To do so, the interpreter may need to first identify what Rawls calls the *organising ideas* that help characterise the public political culture in a structural and coherent way.[21] To illustrate, in Rawls's theory of justice the public political culture of a modern democratic society is characterised by three organising ideas. They are 1) the idea of society as a fair system of social cooperation, 2) the idea of citizens as free and equal persons, and 3) the idea of a well-ordered society regulated by a public conception of justice.[22] The purpose of identifying the organising ideas, on the one hand, is to understand how different norms and ideas found in the public political culture could be

[21] Rawls, *Justice as Fairness: A Restatement*, 24-26; *Political Liberalism (Expanded Edition)*, 9.
[22] *Justice as Fairness: A Restatement*, 5.

systematically connected and related to each other. On the other hand, it is to figure out the underlying unity behind the seemingly contradicting beliefs and convictions held by the members of society. After having identified the organising ideas, the interpreter could then determine the accepted point and purpose of the basic institutions of society that is implicit in the public political culture. For instance, if a modern democratic society's public political culture is, as Rawls proposes, characterised by the three organising ideas quoted above, the aim of its basic institutions could then be inferred as to facilitate the social cooperation between citizens as free and equal persons under terms that are publicly accepted as fair.

In the final stage, the *deliberating* stage, the aim is to deliberate on the appropriate principles of justice in light of the accepted point and purpose of the basic structure implicit in the public political culture identified in the previous stage. This involves contemplating what principles of justice, if applied to regulate the basic institutions of society, could best facilitate those institutions to realise the point and purpose they are expected to fulfil. To judge whether a particular set of principles is justified or not, the key is whether those principles could find support from the considered judgments of the members of society identified at the beginning of the interpretive process.[23] This is because, for any principles of justice to be justified, they must be able to appeal to the normative reason of those being affected. As Rawls puts it:

> What justifies a conception of justice is not its being true to an order antecedent to and given to us, buts its *congruence* with our deeper understanding of ourselves and our aspirations, and our realization that, given our history and the traditions embedded in our public life, it is the most reasonable doctrine for us.[24]

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[23] Ibid., 30-31; Scanlon, "Rawls on Justification," 147-48..
[24] John Rawls, "Kantian Constructivism in Moral Theory," *The Journal of Philosophy* 77, no. 9 (1980): 519, emphasis added.

In this sense, to say that a principle of justice is justified is to say that it is able to match the considered judgments held by the members of society. However, there might be cases when the principles of justice are able to account for most considered judgments but are at odds with the other few. In such cases, one of the following routes may follow. First, the members of society may find it compelling to revise or even abandon their convictions that are at odds with the principles of justice. One could argue the fact that the principles are able to match most considered judgments provides good reason for the members of society to regard the judgments that are at odds with the principles as mistaken.[25] Second, the principles of justice may need to be further revised and specified. The inability of the principles of justice to account for some considered convictions may indicate that there are some rough edges in the principles that need to be smoothed out. This provides a reason for investigating the interpretive process to see if there is something that might have gone wrong. Regardless of which route to follow, the ultimate aim is to ensure that the principles of justice can be fully supported by the considered judgments deeply rooted in the public political culture of a society.

The above has presented what I regard as the most persuasive account regarding how a conception of justice is constructed and justified. This account of justice emphasises the essential role of public political culture in deciding the content and justification of justice. It argues that the content of justice is constructed in light of the accepted point and purpose of the basic institutions implicit in the public political culture of a society. It also argues that the principles of justice are justified when they could fit well with the considered convictions identified from the public political culture. The next part employs this culturalist conception of justice to defend limiting the scope of liberal

[25] Scanlon, "Rawls on Justification," 148.

egalitarian justice to the domestic societies within which a relevant public political culture could be found.

4.3.2 The Scope of Liberal Egalitarian Justice

If public political culture is what decides the content and justification of justice, the reason why the scope of liberal egalitarian justice should not be extended to cover the international arena should become clear. From a culturalist perspective, the function of principles of justice is to answer the questions triggered by the tension and conflicts within a public political culture. And for a set of principles of justice to be applicable to a particular society, that society must have a relevant public political culture upon which those principles could be constructed and justified. In this regard, justice is *culturally specific*. Whether liberal egalitarian justice applies to a particular society or not then depends on whether a relevant public political culture exists in that society. A culturalist argument against global egalitarianism argues that such a relevant public political culture can only be found in (some) domestic societies but not in the international arena. The absence of a relevant public political culture in the international arena is the reason why liberal egalitarian justice does not apply there.

The central premise of the culturalist argument against global egalitarianism is that liberal egalitarian justice can only be constructed and justified upon the public political culture of what Rawls calls a democratic society under modern conditions.[26] Such a public political culture contains norms and ideas that are familiar and recognisable to the citizens in today's democratic societies. The sheer number of those norms and ideas means that it would be impossible to enumerate them all here. But this should not

[26] Rawls, "Kantian Constructivism in Moral Theory," 518.

be a problem as what the culturalist argument focuses on are the fundamental norms and beliefs that express the considered judgments and settled convictions of the members of society. In a modern democratic society, its public political culture can be seen as characterised by three fundamental norms and beliefs: the presumption of liberty, democratic rule, and the rule of law.

The presumption of liberty refers to the accepted belief that any restriction of citizens' liberties imposed by the state requires adequate justification.[27] This belief consists of mainly two propositions. First, it regards the freedom of citizens to pursue what they want as a normative default position from which any departure must be supported by a compelling reason.[28] This default position allocates the burden of proof to the state whenever it wants to impose restrictions on the freedom of citizens.[29] It is the state that has the duty to justify its exercise of coercion, not citizens to justify their freedom. The second proposition of the presumption of liberty is that it sees a limited government as a prerequisite for individual freedom. In this view, the power of the state is seen to be a major threat to individual liberty when there is no clear limit to it. For this reason, in liberal societies it is commonly agreed that the power of the state must be confined to an accepted scope and that the state should be forbidden to exercise any power beyond what it is allowed to.[30]

Democratic rule refers to the belief that a legitimate government should be a government ruled by the people. Central to this belief is the idea that a government's authority comes from the people over whom it rules. For this reason, a government is

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[27] Cindy Phillips, "The Presumption of Liberty and the Coerciveness of the State," *Jurisprudence* 7, no. 3 (2016): 563-64; Sir John Laws, "The Rule of Law: The Presumption of Liberty and Justice," *Judicial Review* 22, no. 4 (2017): 370.
[28] Phillips, "The Presumption of Liberty and the Coerciveness of the State," 564.
[29] Joel Feinberg, *Social Philosophy* (Eaglewood Cliffs: Prentice-Hall, 1973), 22.
[30] Laws, "The Rule of Law: The Presumption of Liberty and Justice," 368-69.

considered legitimate only when its power is exercised by the people or their representatives elected in free, open, and periodic elections. The most fundamental value expressed in democratic rule is political equality according to which every citizen, regardless of her race, religion, and socio-economic background, should have adequate and equal opportunities to participate in the democratic process.[31] Political equality is most notably manifested in citizens' equal right to vote in elections and referenda. It is also expressed in the equality of other political rights, such as the equal rights to run for public offices, freedom of speech, freedom of assembly, and so forth. In any democratic society, denying any individuals or social groups the equal right to political participation is regarded as a serious affront to democratic norms.

The rule of law refers to the ideal that a society is governed by a consistent and coherent framework of law that is fair to everyone subject to it. The central demand of this ideal is equality before the law. This requires that everyone in the society, including both ordinary citizens and those in positions of power, is subject to the same law and no one is above the law. One component of this demand is that public officials are expected to exercise their power in accordance with the directives and constraints set out by the law, rather than in an arbitrary, *ad hoc*, or purely discretionary manner on the basis of their own preferences or ideology.[32] Any case of government officials abusing the law for their own advantage would almost guarantee to trigger massive outrage in democratic societies. Another component of legal equality is that the law of society must be fair to all those subject to it. In a democratic society there is a widely accepted view that the law is meant to be impartial and independent from narrow, partisan interests. Therefore, it would be

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[31] Robert A. Dahl, *Democracy and Its Critics* (New Haven and London: Yale University Press, 1989), 108-09.

[32] Jeremy Waldron, "The Concept and the Rule of Law," *Georgia Law Review* 43, no. 1 (2008): 6. See also

unacceptable for the law to be used to discriminate against or privilege a particular social group.

The presumption of liberty, democratic rule, and the rule of law are the cornerstones of the public political culture of a modern constitutional democratic society. And the seeming tension and conflicts caused by the disagreements over their interpretation and order of priority are what trigger the questions of justice in such a society. Those questions include the perennial debates over whether the freedom to make political donations should be heavily regulated to protect the political equality of citizens, whether the freedom of hate speech should be restricted for the sake of racial equality, whether granting a legal exemption on religious grounds violates the equality before the law, and so forth. From a culturalist perspective, the principles of liberal egalitarian justice are constructed to settle these questions of justice triggered inside the public political culture of a constitutional democratic society. The content of liberal egalitarian principles is centred on giving a proper interpretation of the ideals of liberty, equality, and fairness and arranging them into a coherent order because the tension and conflicts of these values are what the principles are meant to settle. And those principles are only justified within a modern constitutional democratic society whose members share a public political culture that contains the reason to support the principles. The cultural dependency of liberal egalitarian justice entails that it is a *particularist*, rather than universal, conception of justice. Liberal egalitarian principles, as pointed out by Rawls, are not meant to be 'suitable for all societies regardless of their particular social and historical circumstances;' rather, they are constructed 'to settle a fundamental disagreement over the just form of basic institutions within a democratic society under modern conditions.'[33]

[33] Rawls, "Kantian Constructivism in Moral Theory," 518.

The particularist nature of liberal egalitarian justice indicates the reason why it cannot be applied to the international arena. That is, the public political culture that provides the normative foundation for the principles of liberal egalitarian justice to be formulated and justified is not universal. Today's world is characterised by what Valentini refers to as deep value pluralism.[34] Value pluralism refers to the fact that different societies in the world have different public political cultures because they disagree on the basic ideas and values upon which the basic institutions of society should be built. And this pluralism is deep in the sense that the differences between different political cultures are incommensurable as there is no mutually recognised common ground to resolve the disagreements. In a pluralistic world, the political culture prevalent in liberal democratic societies is only one among many. There is no reason and evidence to assume the universality of liberal democratic culture. Rather than the ideals of liberty and equality, some societies' political culture is anchored on religious doctrines or a socially endorsed conception of the good life.[35] The deep value pluralism of today's world means that the public political culture upon which a liberal egalitarian conception of justice is constructed and justified is not available at the international or global level. It follows that the liberal egalitarian principles of justice would not be the *justified* principles to govern the international institutions and global order. In this regard, the reason why liberal egalitarian principles do not apply to the international or global arena is that there lacks a political culture that can provide the normative basis for constructing and justifying those principles.

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[34] The term is borrowed from Laura Valentini in her *Justice in a Globalized World: A Normative Framework*, 66.

[35] David A. Reidy has a more detailed illustration, see "Rawls on International Justice: A Defense," *Political Theory* 32, no. 3 (2004): 305-12.

4.4 International Justice

The previous section has rejected the cosmopolitan egalitarian position by arguing that principles of liberal egalitarianism are only applicable to domestic societies that have a relevant public political culture. That completed the first half of the defence for a two-tiered, internationalist, account of justice. This section completes the second half that involves the rejection of the statist egalitarian position according to which no principle of justice is applicable on the international stage. It argues that in the international basic structure there exists a set of norms and conventions upon which principles of international justice could be constructed. Those principles are distinct from the liberal egalitarian principles applicable to domestic societies for the public political culture at the international level is different from the one found in modern constitutional democracies.

This section aims to offer a culturalist theory of international justice by employing the constructivist method presented in the previous section. This theory is inspired by Rawls's theory of international justice. In *The Law of Peoples*, Rawls seeks to spell out the principles of international justice by a theory that parallels his theory of justice for a constitutional democratic society.[36] Given Rawls's emphasis on the essential role played by the public political culture of a modern democratic society in his theory of domestic justice, one would expect that his theory of international justice attempts to work up the principles of international justice from the public political culture of what he calls the society of peoples.[37] However, Rawls's theory is extremely thin on details about the norms and basic ideas that govern the international basic structure. And indeed it is unclear whether the international public political culture has any role to play in his theory

[36] Rawls, *The Law of Peoples*, 9-10.
[37] Ibid., 3.

at all. This seeming inconsistency between Rawls's domestic and his international theories of justice causes confusion over the normative basis and justification of the principles he defends in *The Law of Peoples*.

This section seeks to demonstrate what a theory of international justice would look like if it works up the principles of justice from the norms and settled beliefs found in the international basic structure. The theory below is not an attempt to explain and justify the principles of the Law of Peoples proposed by Rawls, although it agrees with the anti-cosmopolitan conclusion reached by those principles. The theory, on the one hand, disagrees with Rawls's view that international justice is an 'extension' of the liberal conception of justice for a modern democratic society.[38] On the other hand, it argues that international justice should demand more than the ideals of non-intervention and human rights emphasised in the Law of Peoples. The only trace of Rawlsianism in the theory developed below is that it follows a culturalist conception of justice that is largely inspired by Rawls's political constructivism.

In what follows, the first part identifies three relatively uncontroversial international conventions that are fundamental to, and widely shared by the participants in the international basic structure, namely, the norms of prohibiting the use of force, collective self-determination, and fundamental human rights. After that, it explains the potential internal conflicts between the three norms that trigger the need for the principles of international justice. Finally, this section lays out a set of principles of international justice that is *sufficientarian* in nature and explains why the principles rule out international egalitarianism.

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[38] Ibid., 9-10.

4.4.1 Norms and Conventions in the International Arena

Similar to the basic structure found in domestic societies, the international basic structure also consists of a set of *institutions* and a distinct *public political culture*. The institutions on the international stage include the major intergovernmental institutions, such as the United Nations, World Health Organisation, and IMF, and international treatises, such as the Charter of the United Nations, the Universal Declaration of Human Rights, and the Geneva Conventions. These institutions spell out the rights and duties of their participants against each other. They also provide a framework to foster cooperation and settle disputes. Contrary to domestic institutions, international institutions lack a central enforcement mechanism. The enforcement of international treatises and the decisions made by international organisations mainly relies on the collective action of different international agents.

The international institutions operate within a distinct set of norms and conventions that function similarly to the public political culture found in domestic societies. Those norms and conventions, just like the ones in domestic societies, can be numerous. That said, as pointed out in the previous section, the focus of the culturalist argument is the norms and ideas that express the settled beliefs and considered judgments of the members of society. Therefore, there is no need to lay out a comprehensive list that consists of every norm and convention which can be found in the international arena. What needs to be done is to point out the most fundamental norms that can express the fixed points for constructing the principles of international justice. The international norms that can perform this function are what scholars of international law refer to as *jus cogens*.

Jus cogens, or peremptory norms, refer to a category of international norms that are regarded as absolute, meaning that no derogation from them is considered permissible under any circumstances.[39] Those norms are hierarchically superior to *jus dispositivum*—rules and laws made by states through mutual consent—and they impose limitations on what international agreements states could enter and agree upon legitimately. Any international laws and treatises that are in conflict with peremptory norms are to be considered void and null.[40] The doctrine of *jus cogens* is formally recognised in the Vienna Convention on the Law of Treaties and affirmed by numerous judgments from international courts and tribunals.[41] Peremptory norms reflect the moral and ethical cornerstone of the international community. Any breach of those norms, as emphasized by Alexander Orakhelashvili, 'would [therefore] involve a result so morally deplorable as to be considered absolutely unacceptable by the international community as a whole.'[42] While *jus cogens* occupy such an important role in international law, it is acknowledged that there are difficulties in identifying the exact list of peremptory norms.[43] Yet, there are three norms that are widely recognised by international law scholars to be qualified as peremptory.

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[39] Alfred Verdross, "Jus Dispositivum and Jus Cogens in International Law," *The American Journal of International Law* 60, no. 1 (1966): 56; Kamrul Hossain, "The Concept of Jus Cogens and the Obligation under the U.N. Charter," *Santa Clara Journal of International Law* 3, no. 72 (2005): 73; Alexander Orakhelashvili, *Peremptory Norms in International Law* (Oxford: Oxford University Press, 2008), 8; Mary Ellen O'Connell, "Jus Cogens: International Law's Higher Ethical Norms," in *The Role of Ethics in International Law*, ed. Donald Earl Childress III (Cambridge: Cambridge University Press, 2011), 80; Thomas Weatherall, *Jus Cogens: International Law and Social Contract* (Cambridge: Cambridge University Press, 2015), 5.

[40] Verdross, "Jus Dispositivum and Jus Cogens in International Law," 56; O'Connell, "Jus Cogens: International Law's Higher Ethical Norms," 83.

[41] See article 53 and 64 of the Convention. "Jus Cogens: International Law's Higher Ethical Norms," 87-93.

[42] Orakhelashvili, *Peremptory Norms in International Law*, 50.

[43] Verdross, "Jus Dispositivum and Jus Cogens in International Law," 57; Hossain, "The Concept of Jus Cogens and the Obligation under the U.N. Charter," 74.

The first one is the norm of *prohibiting the use of force*.[44] This norm is recognised by the United Nations Charter[45] and its *jus cogens* status has been confirmed repeatedly in international courts.[46] It prohibits wars of aggression and the threat of using aggressive armed force in interstate relations. States are expected to pursue their diplomatic goals and settle their disputes through peaceful means, such as negotiations and seeking arbitration at international tribunals. Any action that threatens the territorial integrity and political independence of other states would be seen as *pro tanto* condemnable. The only legitimate reason to use armed force against another state is when there is a case for self-defence.[47] States have the right to defend themselves and use necessary and proportional force to protect the life and property of their citizens from foreign invaders.[48] The inherent right of states to self-defence and the principles that specify how that right should be exercised are both regarded as part of *jus cogens*.[49]

The second norm that is widely regarded as peremptory is the norm of *collective self-determination*. The right to self-determination by peoples and nations is a fundamental doctrinal consensus widely recognised and accepted by the international community.[50] Under this doctrine, peoples and nations are viewed as being entitled to freely decide on

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[44] Orakhelashvili, *Peremptory Norms in International Law*, 50-51; de Hoogh Andre, "Jus Cogens and the Use of Armed Force," in *The Oxford Handbook of the Use of Force in International Law* (Oxford: Oxford University Press, 2015).
[45] See article 2(4) of the Charter.
[46] For example, see *Nicaragua v. United States* (1986), *Oil Platforms (Islamic Republic of Iran v. United States of America)* (2003), *Israeli Wall Advisory Opinion* (2004).
[47] Orakhelashvili, *Peremptory Norms in International Law*, 50-51; Andre, "Jus Cogens and the Use of Armed Force," 1172.
[48] Orakhelashvili, *Peremptory Norms in International Law*, 51.
[49] Ibid., 50-51; Andre, "Jus Cogens and the Use of Armed Force," 1172-73.
[50] S. James Anaya, "A Contemporary Definition of the International Norm of Self-Determination," *Transnational Law & Contemporary Problems* 3 (1993); Orakhelashvili, *Peremptory Norms in International Law*, 51-53; Robert Araujo, "Sovereignty, Human Rights, and Self-Determination: The Meaning of International Law," *Fordham International Law Journal* 24, no. 5 (2000); Matthew Saul, "The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?," *Human Rights Law Review* 11, no. 4 (2011); David Scott, "Norms of Self-Determination: Thinking Sovereignty Through," *Middle East Law and Governance* 4 (2012). See also Article 1(2) of the United Nations Charter and Article 1(3) of the International Covenant on Civil and Political Rights.

their own political system and pursue social, economic, and cultural development according to their own wishes. Core to the right to self-determination is a commitment to the *equality* of peoples, meaning that every nation, regardless of its size of population and power, should be respected as having the equal rights to govern itself.[51] It follows that no people should be subjected to the control of other countries simply because it is less powerful and less economically developed. This underlies a conviction that no form of colonialism and imperialism, regardless of how benevolent the motive and how beneficiary the outcome might be, is acceptable. Integral to the right to self-determination is the right of colonised nations and subjugated peoples to free themselves from the control of foreign powers to become independent or adopt other statuses they freely choose.

The third norm that is viewed as part of *jus cogens* is the norm of *fundamental human rights*.[52] The doctrine of human rights and its peremptory status has gained universal recognition from the international community since the post-war eras.[53] Under the doctrine, it is agreed that human individuals, regardless of their race, gender, nationality, religion, and social status, should be equally entitled to a list of basic, fundamental rights that ensures their dignity is properly respected. This effectively prohibits genocide, slavery, torture, and other inhumane treatments against individuals.[54] The standards of human rights have created a moral minimum which any agents of the international community must respect and honour. The primary function of this moral minimum is to

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[51] "Norms of Self-Determination: Thinking Sovereignty Through," 204-05.
[52] Orakhelashvili, *Peremptory Norms in International Law*, 53-60; O'Connell, "Jus Cogens: International Law's Higher Ethical Norms," 84-85; Andrea Bianchi, "Human Rights and the Magic of Jus Cogens," *European Journal of International Law* 19, no. 3 (2008).
[53] See Article 1(3) of the United Nations Charter, the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.
[54] O'Connell, "Jus Cogens: International Law's Higher Ethical Norms," 85.

impose restrictions on how states should treat their citizens and foreigners who reside within the territory. States are seen as having the obligation to recognise and protect the rights of every individual under their jurisdiction. If any state fails its duty, other states and international organisations, such as the United Nations, are expected to step in to deter and stop further human rights violations through measures such as economic sanctions or, in case of urgency, military intervention.

It may be argued that the characterisation of the fundamental norms of the international society above is objectionable as the disrespect for those standards and doctrines is actually an international *norm*. For example, human rights violations are common in most societies in today's world and it is rare for the aggressors to be punished or sanctioned by the international society. If this is the case, then it seems wrong to say that human rights are a norm respected by the members of international society. However, for a norm to be considered peremptory, the key is not that it is universally observed, but that its violation is recognised as so morally repugnant that no member of the international society wants to be called a violator of that norm. In most cases of human rights violation, the aggressor would try everything it could to deny or cover up the atrocities it has committed. The fact that human rights violators feel the need and pressure to reject or defend against the accusations against them is evidence that human rights are a peremptory norm that exerts a normative pull on the members of international society. Therefore, universal compliance is not a prerequisite for a standard or doctrine to be considered a peremptory norm.

4.4.2 The Interpretive Stage

While the three norms presented above are widely recognised and accepted on the international stage, their content and scope are unsettled at best, and controversial at worst.[55] For example, how should the 'peoples' that are entitled to the right to collective self-determination be understood? Should they refer to nations, states, or communities? Regarding the list of human rights, how should it be defined and how extensive should it be? How severe the violation of human rights does it need to be so that international intervention is warranted? Apart from the problems of indeterminacy, the peremptory norms also suffer from potential internal conflicts with each other.[56] For example, a comprehensive account of human rights may significantly undermine the scope of self-determination peoples could legitimately pursue. But on the other hand, a broadly defined right of collective self-determination may entail a conception of human rights severely crippled to the point that is deprived of any meaningful political value. Another example is that the norm of prohibiting the use of force seems to be inherently incompatible with the norm of human rights that permits, or even demands, military intervention against *another* country if doing so is necessary for protecting the human rights of the citizens in *that* country.

According to the culturalist conception of justice, the existence of indeterminacy and seeming conflicts between different considered judgments and convictions is what triggers the need for a set of principles of justice. To construct a set of workable principles that is able to resolve the questions of indeterminacy and conflicts between the fundamental norms in the international arena, the next step is to figure out the

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[55] Saul, "The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?."
[56] For example, see Lee Caplan, "State Immunity, Human Rights, and Jus Cogens: A Critique of the Normative Hierarchy Theory," *American Journal of International Law* 97 (2003).

common understanding of the point and purpose of the international basic institutions implicit behind the three peremptory norms above. An appropriate point and purpose should be able to offer an appropriate interpretation of the content of the peremptory norms and demonstrate their underlying unity despite the seeming conflicts.

One plausible interpretation is to regard the aim of the international peremptory norms as to facilitate the conditions under which individuals who share a common political culture could live under a basic structure that is constructed according to their own conception of justice. As pointed out in the previous section, the world today is characterised by what Valentini calls deep value pluralism.[57] There are fundamental disagreements among *autonomous* peoples and nations over the justified conception of justice applied to the basic structure of a society that has a fundamental impact on the life prospect of those living in it. To ensure that individuals could live under an institutional arrangement that is justified to them, every people, defined as a collective who shares a common political culture, would need the right to *self-determination* so that they could freely arrange the basic structure in light of its own values and beliefs.

For collective self-determination to be possible, there are both external and internal conditions that need to be satisfied. One essential external condition is that peoples need to have the freedom from foreign military intervention and subjugation. It would be difficult to imagine how it is possible for a people to focus its resources and energy on pursuing its own conception of justice if its survival is under constant threat from external powers. Self-determination is achievable only when there is a sufficient level of peace and stability within the international community. This highlights the

[57] Valentini, *Justice in a Globalized World: A Normative Framework*, 66.

importance of the norm that *prohibits the use of force* as it aims to eliminate one of the greatest threats to peoples' prospect of being able to determine their own destiny.

Apart from the external conditions, peoples also need to have certain internal social and economic conditions satisfied in order to be capable of self-determination. For example, the members of the people would need to have a certain level of education so that they could have the necessary capacity to engage in the deliberation of the issues of justice. Apart from that, a people would also need to have a sufficient level of economic resources available. This is when the standards of *human rights* come into play. The point of human rights can be seen as specifying the necessary internal conditions upon which a people could exercise their right to self-determination. In this sense, the standards of human rights are no longer a threat to the right to collective self-determination; instead, they are *constitutive* to the exercise of that right. Besides that, using force to stop human rights violations in another country can be seen as preserving rather than undermining self-determination because its aim is to secure and restore a people's prerequisite capability to pursue its own conception of justice.

After having proposed a possible point and purpose of the international basic institutions that is implicit in the norms of prohibiting the use of force, collective self-determination, and fundamental human rights, the question that needs to be answered in the next interpretive stage, the deliberating stage, is then: What are the most acceptable principles of justice to specify the relation between equal and autonomous peoples so that each could obtain the necessary conditions to determine their political status and pursue economic, social, and cultural development according to their own conception of social justice? The next section provides a brief sketch of the three principles of international justice that answer this question. They are the principle of non-intervention,

the principle of basic human rights, and the principle of non-domination. Together, these principles spell out the conditions which the international basic structure must maintain to facilitate the self-determination of autonomous and equal peoples.

4.4.3 The Principles of International Justice

a. Non-intervention

The principle of non-intervention demands that reasonable peoples that are no threat of aggression and human rights violation should be free from external intervention in the pursuit of their own conception of domestic justice. Its purpose is to secure the essential external conditions for self-determination to be possible. Under the principle of non-intervention, peoples are entitled to the equal right to freely decide what kind of political status and which form of social, economic, and cultural development is most appropriate for realising their own public values and beliefs. This prohibits agents in the international society, which include both states and non-state agents, from interfering with the domestic affairs of peoples through coercive means, such as the threat or use of force, sabotage, and other subversive activities. Peoples should not be forced to accept a political status or adopt a basic structure that is alienated from their public political culture. Also, their pursuit of their own path of development should be respected by the international society and not be thwarted without a legitimate reason. When a people's right to non-intervention is violated, it is entitled to the right to defend itself from external interference with proportional and necessary means. Such violation also generates a duty for the international society to respond appropriately if the people whose right is violated cannot stop the intervention by itself.

It should be emphasised that it is *peoples*, rather than *states*, who are entitled to the right to pursue their own conception of domestic justice without external interference under the principle of non-intervention. A people refers to a collective of individuals who have a shared public political culture and it may not form a fully independent state, which, according to the classic definition, refers to a political entity that enjoys a monopoly of the use of force within a certain territory.[58] Sometimes multiple peoples may co-exist within a single state. For example, countries such as India and China are made up of different peoples which apparently do not have a single shared political culture. Under the principle of non-intervention, a people's right to determine its political status means that it could choose to integrate into a 'multi-people' state or become fully political independent. For peoples that choose the former, they are entitled to make claims against the state to properly accommodate their unique public political culture. For those who opt for the latter, they are entitled to the rights to secede from the existing state and declare independence.[59] The right of peoples, rather than states, to non-intervention can give rise to a range of complicated issues, including territorial rights, toleration, devolution of power, federalism, etc., which this thesis has no space to cover.

b. Basic Human Rights

The principle of basic human rights demands that every people's individual members are entitled to a list of basic rights and liberties that enable them to have a sufficient level of

[58] The distinction here is borrowed from Rawls in *The Law of Peoples*, 27-30. For the definition of state, see Max Weber, "Politics as a Vocation," in *From Max Weber: Essays in Sociology*, ed. Hans H Gerth and Charles W Mills (New York: Oxford University Press, 1948).
[59] For relevant discussions, see Alan Patten, "Self-Determination for National Minorities," in *The Theory of Self-Determination*, ed. Fernando R. Tesón (Cambridge: Cambridge University Press, 2016); Jens David Ohlin, "The Right to Exist and the Right to Resist," ibid.

capabilities to deliberate and pursue a conception of justice.[60] The list of human rights serves two purposes. First, it identifies the essential internal conditions a people needs to secure in order to be self-determining. For self-determination to be possible, the members of a people must possess certain mental and intellectual capabilities to deliberate on their public political culture and decide what a just society should be. They also need the resources to set up and maintain a basic structure that is capable of pursuing and realising a conception of justice. The members of a people could only develop and exercise the essential capabilities and obtain the essential resources when certain political, social, and economic conditions are present. The standard of human rights is decided to identify the freedoms and resources individuals need to have for those conditions to be sufficiently met. Second, the principle of basic human rights imposes limits on peoples' claim and exercise of the right to non-intervention presented above.[61] The normative foundation of the right to non-intervention is that it facilitates the self-determination of peoples. It follows that any claim to non-intervention would become invalid if it would actually undermine a people's capacity for self-determining. Given that securing basic human rights is an essential condition for self-determination, a people that is incapable of protecting the human rights of its members or actively involved in human rights violations would have no right to demand other agents in the international community stay away from its internal affairs. The standard of basic human rights is therefore a precondition for any people to claim the right to non-intervention.

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[60] The idea of capability here is identical to the one advocated by theorists who are in favour of the "capability approach." It refers to individuals' real opportunities to have access to functionings. The conception of human rights here, however, does not follow the capability approach as it has a different normative foundation. For the capability approach see: Sen, "Equality of What."; *The Idea of Justice*, Part 3.
[61] Rawls, *The Law of Peoples*, 79-80.

To identify which rights and liberties should be included in the list of human rights, it has to be decided which rights and liberties are *essential* without which individuals would have grave difficulties in developing and exercising their necessary capabilities for collective self-determination. While a definite list of rights would inevitably be difficult to draw up, there are three categories of rights and liberties whose importance are evident. The first one comprises the rights that guarantee *personal security* and among them are the right to life and the right to bodily integrity. The protection of these rights is indispensable to maintaining a sufficient level of social stability and enabling individuals to engage in meaningful social interactions, both of which are a prerequisite for any collective pursuit of a conception of justice to be possible. The second category of rights covers basic *political freedoms*, including, but not limited to, the freedom of conscience, the freedom of speech, and the freedom of assembly. They are essential because without these basic freedoms the individual members of a people would not have the opportunity to openly deliberate and discuss the issues of justice; and as a result, it would be difficult, if not impossible, for a people to come up with a publicly recognised and accepted conception of justice the pursuit of which underlies the value of collective self-determination. The third category of rights consists of basic *welfare rights* which include the right to subsistence, the right to health care, and the right to education. These rights are essential for individuals to have an adequate standard of living that enables them to effectively exercise their basic political freedoms. They also provide the social and economic bases for collective actions to be possible.

The conception of *basic* human rights demanded by international justice here is neither liberal nor egalitarian. It is non-liberal in the sense that its normative foundation is the right to *collective* self-determination rather than the normative individualism to which

most liberal theories subscribe. It is non-egalitarian in the sense that it is *sufficientarian* in nature as the purpose is to enable the members of a people to develop and exercise sufficient capabilities for collective self-determination. That said, the list of human rights demanded by international justice in certain ways overlaps with the list of rights and liberties demanded by liberal egalitarianism. Most obviously both emphasise the rights and freedoms that secure the conditions for individuals to adequately develop and exercise their capacity for deliberating and pursuing a conception of justice. The major difference between the two is that international justice does not entitle individuals to the right to claim an egalitarian distribution of economic goods and resources while liberal egalitarian justice does.

Under the principle of basic human rights, the agents of international society have a duty to secure the rights and freedoms of the individual members of each people. The primary duty bearers are states. They should arrange their basic structure in the ways so that citizens' basic freedoms are protected and their access to adequate welfare is guaranteed. However, there are occasions when states may not be capable of fulfilling their duty due to various reasons, such as underdevelopment, natural disaster, or civil unrest. Besides that, sometimes states themselves are actually the biggest threat to human rights, especially those of minorities. When states themselves fail to protect the rights and freedoms of their citizens, the duty falls on the international society to provide necessary assistance and stop the human rights violations. This would create a legitimate reason for the agents of the international society to intervene with proportional and necessary measures—actions which would be otherwise forbidden under the principle of non-intervention.

By justifying human rights on the ground of collective self-determination, the account of human rights presented above is able to avoid the frequent criticisms levelled against the sufficientarian conception of human rights that is commonly found in internationalist theories of justice. According to one criticism, the principle of human rights in internationalist theories seems to be an *ad hoc*, reluctant concession made to accommodate the concerns of global egalitarianism rather than a principled demand.[62] For example, Miller's view that we have the obligation to respect the human rights of others even if they have no special relation with us is at odd with his relationalist theory in rejecting global egalitarianism, and this gives rise to the question of whether Miller's theory is able to provide any principled argument in support of the obligations of human rights.[63] Call this the problem of arbitrariness. Besides that, another criticism against the internationalist argument for a sufficientarian principle of human rights is that any equal concern for human individuals would inevitably generate enough momentum to carry the argument towards a commitment to global egalitarianism.[64] It is argued that once the internationalist theory accepts the intrinsic equal moral worth of human individuals, it would be difficult for the theory to limit the obligations of human rights to only including a minimal list of basic rights. Call this the problem of excessive momentum.

The principle of basic human rights defended in this section can avoid the problem of arbitrariness because its normative basis is the same culturalist theory of justice that justifies liberal egalitarian justice for domestic democratic societies and rejects

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62 Caney, *Justice Beyond Borders: A Global Political Theory*, 81; Laura Valentini, "Cosmopolitan or Social Liberal? Review of D. Miller, National Responsibility and Global Justice," *Global Justice: Theory Practice Rhetoric* 1, no. 2 (2009); "Coercion and (Global) Justice," *American Political Science Review* 105, no. 1 (2011): 206.

63 Leif Wenar, "Human Rights and Equality in the Work of David Miller," *Critical Review of International Social and Political Philosophy* 11, no. 4 (2008): 404.

64 Ibid., 402; Valentini, "Cosmopolitan or Social Liberal? Review of D. Miller, National Responsibility and Global Justice."

global egalitarianism. It does not create an exception to the culturalist theory of justice or relies on a separate normative ground that is randomly selected to justify a particular set of international duties. Rather, the principle works as an integral part of a culturalist argument for the two-tiered, internationalist conception of justice by following the same culturalist framework that gives content to and justifies the domestic and other international principles of justice which a democratic society is expected to follow. In short, there is a principled, rather than an *ad hoc*, defence behind the demands of human rights argued above. Apart from that, the principle of basic human rights is also able to avoid the problem of excessive momentum because its normative argument is not the typical one that is found in other internationalist theories of justice. The account of human rights above is not justified by the concern for the equal moral worth of human individuals but by peoples' right to collective self-determination. This means that, on the one hand, it makes no concession to the premise that may generate the momentum to carry the argument to reach the global egalitarian conclusion. On the other hand, it provides a principled reason to defend the sufficiency not equality position by tying the justification of human rights to providing the necessary social, political, and economic conditions for collective self-determination.

c. Non-domination

The principle of non-domination demands that peoples are free from the threat of arbitrary power possessed by external agents. It follows the contemporary republican idea that non-intervention alone is insufficient for securing freedom and independence.[65] Even if intervention is absent, an agent's autonomy would still be significantly curtailed

[65] See Pettit, *Republicanism: A Theory of Freedom and Government*, Chapter 2.

when domination is present. Domination exists when an agent possesses the capacity to exert power on an arbitrary, unchecked basis over others.[66] By possessing such capacity, the dominating agent can exercise *unrestrained* control to frustrate, replace, or manipulate the preferences and options of the dominated agents without reference to their interests or opinions.[67] For domination to happen it does not require the exercise of arbitrary power to be *actually* manifested; an agent's *potential* to exert that power against another agent at will itself is sufficient to form a relationship of domination.[68] In such a relationship, the dominated parties' freedom and independence are significantly curtailed as they are at the mercy of others. By being aware of their vulnerability, the dominated parties would be propelled to second-guess the wishes of the dominating parties and adjust their plans and behaviours accordingly.[69]

One important insight of the republican account of domination for international justice is that the mere capacity and potential to intervene at will is a threat to the self-determination of a people even if no intervention is materialised eventually. A people would not be free and independent to pursue its own conception of justice if it is in a regime of constant self-invigilation and inhibition. Republican theorists, such as Pettit and Laborde, are aware of the domination that exists on the international stage.[70] The forms of domination identified in their theories can be roughly summarized into two types. The first type is related to the inequalities between rich and powerful international agents and their poor and weak counterparts.[71] The sheer strength of the former, in both

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[66] For more details about the republican conception of domination, see ibid., 52; "A Republican Law of Peoples," *European Journal of Political Philosophy* 9, no. 1 (2010): 73-74.
[67] Pettit, *Republicanism: A Theory of Freedom and Government*, 55; "A Republican Law of Peoples," 74.
[68] "A Republican Law of Peoples," 78.
[69] Ibid.
[70] Ibid.; Cecile Laborde, "Republicanism and Global Justice," *European Journal of Political Theory* 9, no. 1 (2010).
[71] "Republicanism and Global Justice," 59.

military and economic terms, would enable them to bully the latter with little to no consequences. The unaccountability of powerful international agents, whether they are state or non-state bodies, is a threat to the self-determining capacity of peoples that are in a much-disadvantaged position as they would be in a state of vulnerability that they are moved to act by the will of the rich and powerful rather than of their own.[72] The second type of international domination is related to what might be called 'dire dependency.'[73] An agent is in dire dependency on another if it relies on the latter to have access to goods and resources that are essential for its normal functioning. For example, a state, A, would be direly dependent on another state, B, when A relies on B as the only source of water or energy supply. A people in dire dependency on other international agents would not be sufficiently independent for self-determination as it would be dependent on the will of others over which it has little influence or control.

Under the principle of non-domination, there are at least three types of duty international agents should conform to. The first one, obviously, is that international agents must refrain from exploiting their advantaged position to frustrate or manipulate peoples that are in a disadvantaged position. Secondly, they also have an obligation to assist peoples in less advanced countries to develop the necessary social and economic infrastructure that enables them to attain the essential internal conditions for self-determination without submitting themselves to a relationship of dependency. As mentioned above, certain internal conditions must be met for a people to be capable of self-determining and those conditions may not be available to some peoples due to reasons such as underdevelopment. While international aid and resources transfer may

[72] Ibid., 63.
[73] Pettit, "A Republican Law of Peoples," 77-78.

be useful for poor countries to attain the essential conditions in short term, it may not be sustainable in the long run and, worse, the reliance on external aid may subject the poor countries to a relationship of dependency which the principle of non-domination aims to eliminate in the first place. Hence, a more appropriate form of assistance is to help the less developed countries build up a competent social and economic infrastructure with which they would not be in dire dependency on others to become fully functioning agents. Finally, the third duty generated by the principle of non-domination is that international agents should establish or reform international institutions to ensure that power exercised in the international arena is held accountable. This is what Laborde refers to as the 'critical' strategy of political empowerment.[74] The purpose is to introduce an international regulatory framework under which relatively disadvantaged peoples could have access to resources that allow them to better defend their interests and independence. Those resources may include the commitment to collective security, the guarantee of emergency financing, and networks for cross-border cooperation. A well-functioning international regulatory framework would help secure the independence of relatively disadvantaged peoples by empowering them with the resources to counter external forces. It would also put a check on the powerful international agents by ensuring that their attempt to exert domination would have consequences.

4.4.4 Short Recapitulation

This section has presented how a distinct set of principles of international justice can be constructed by critically interpreting the fundamental ideas and beliefs of the political

[74] Laborde, "Republicanism and Global Justice," 62.

culture on the international stage. Given that the international public culture is significantly different from the public culture found in modern constitutional democracies, the question international justice needs to address is not how fair social cooperation between free and equal citizens could be achieved; rather, it is how peoples could attain the necessary conditions that enable them to have sufficient capabilities for self-determination. For this reason, the liberal egalitarian principles that apply to modern constitutional democracies are not appropriate to address the question of justice raised at the international level. That question should instead be addressed by the principle of non-intervention, the principle of basic human rights, and the principle of non-domination. Each of these principles aims to secure an essential condition for peoples to be capable of self-determining their own destiny. The principle of non-intervention guarantees peoples the freedom to pursue their own conceptions of justice without unjustified interference from other international agents. The principle of basic human rights ensures the social and economic conditions that enable peoples to adequately develop and exercise the capabilities necessary for becoming self-determining agents. The principle of non-domination prevents any international agents from having the capacity to exert arbitrary power on others—a pre-condition that must be met for the other two principles to have the intended effects. The above has only offered a brief sketch of the three principles. They will be further elaborated on and specified in later chapters in due course.

4.5 Conclusion

This chapter has established a culturalist case for a two-tiered, internationalist conception of justice. It rejected the cosmopolitan position which advocates for applying the

principles of liberal egalitarian justice globally. It also dismissed the parochial statist position which argues that no principle of justice is applicable beyond state borders. The above chapter first developed a culturalist theory of justice which argues that the principles of justice appropriate for a society are constructed by critically interpreting the public political culture of that society. It then employed the culturalist theory to justify why liberal egalitarian principles of justice can only apply to domestic societies that have a relevant public political culture upon which those principles could be formulated and justified. After that, it used the culturalist theory to explain why a sufficientarian conception of justice that centres on the right to collective self-determination should rule the international basic institutions. The culturalist argument and the two-tiered, internationalist account of justice developed in this chapter are subjected to various criticisms and challenges. The next chapter is devoted to addressing those criticisms and challenges.

Chapter 5

Pluralism, Status Quo, and Interpretation

5.1 Introduction

This chapter responds to three common critiques against the culturalist argument for the two-tiered, internationalist conception of justice. The first one accuses the culturalist argument of underestimating the level of pluralism within domestic constitutional democratic societies while exaggerating the one at the international level. The second type of challenge argues that the culturalist argument is guilty of status-quo bias and fails to question the arbitrariness of cultural membership. The third type of challenge rejects the culturalist argument's interpretation of the point and purpose of the international basic structure made in the previous chapter and proposes an alternative that is more friendly to global egalitarianism. This chapter aims to answer these three challenges in turn.

5.2 Pluralism

The pluralism challenge consists of two parts. The first one argues that the culturalist argument underestimates the fundamental disagreements among the members of a constitutional democratic society. On the one hand, it contends that the principles of liberal egalitarian justice would not be justified inside a constitutional democratic society, if a shared, relevant public political culture is the prerequisite for those principles to be applicable to a particular society. On the other hand, it points out that, if liberal egalitarian principles are justified within a constitutional democratic society despite its dissenting

minority, then they should also be justified to regulate the international basic structure despite the deep value pluralism among peoples. The second part of the pluralism challenge argues that the culturalist argument ignores the fact that different peoples can share the same political culture. It contends that the political culture that forms the normative basis of liberal egalitarian justice can be identified across different societies. For this reason, even though liberal egalitarian principles may not be applicable globally, they should at least apply to peoples who share a similar political culture. This section responds to these two critiques from the pluralism challenge in turn.

5.2.1 Domestic Pluralism

The first pluralism challenge argues that the culturalist argument would not only deny the applicability of liberal egalitarian justice in the international arena but also within constitutional democratic societies. The thrust of the culturalist argument is that liberal egalitarian principles are only appropriate to regulate the basic structure of modern constitutional democratic societies where citizens share a public political culture upon which those principles can be constructed and justified. However, it may be argued that it is mistaken to assume that a 'shared' public political culture can be found within constitutional democratic societies.[1] For example, in the U.S., there are closed communities (such as the Amish and Haredim), religious fundamentalists, Anarchists, and hardline Libertarians, among others, who do not share or fully agree with the values and beliefs that constitute the cultural basis for liberal egalitarian justice. As pointed out by George Klosko, the political culture in the U.S. according to empirical research is far

[1] O'Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*, 20; Caney, *Justice Beyond Borders: A Global Political Theory*, 14, 81.

more divisive than what is envisioned in Rawls's theory.[2] Apart from that, the rise of far-right populism and the increasingly polarised politics in democratic societies after the financial crisis in 2008 reveals the prevalence of fundamental, incommensurable disagreements among the citizens in those societies over justice. Therefore, it is mistaken to assume that the members of constitutional democracies share a single political culture upon which liberal egalitarian principles can be constructed and justified. If this is the case, it seems that the culturalist argument used to reject global egalitarianism could also be used to reject applying liberal egalitarian justice to constitutional democratic societies. For in both cases there are members who do not share the norms, values, and beliefs that are requisite for constructing and justifying the liberal egalitarian principles of justice.

An inadequate response to the above challenge would be to argue that, despite the dissenting members, liberal egalitarian principles would still be the *most appropriate* principles to regulate the basic structure of constitutional democratic societies where the majority of members share a political culture that supports those principles. This is because such a response would be accused of double-standard.[3] It is argued that the culturalist argument cannot consistently claim that liberal egalitarian principles can be justifiably imposed on non-liberal *citizens* within democratic societies *despite* their disagreements, while it argues that the same principles cannot apply to govern non-liberal *peoples* in the international society *because of* their disagreements.[4] If the culturalist argument sees the fundamental disagreements between different peoples' political

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[2] George Klosko, "Rawls's "Political" Philosophy and American Democracy," *American Political Science Review* 87, no. 2 (1993).

[3] Theorists have raised a similar critique against Rawls's asymmetrical treatments towards illiberal peoples in the international society and illiberal citizens within democratic societies. See Thomas Pogge, "An Egalitarian Law of Peoples," *Philosophy & Public Affairs* 23 (1994): 216-17; Kok-Chor Tan, "Liberal Toleration in Rawls's Law of Peoples," *Ethics* 108 (1998); Andrew Kuper, "Rawlsian Global Justice: Beyond the Law of Peoples to a Cosmopolitan Law of Persons," *Political Theory* 28 (2000): 648-53.

[4] Barry and Valentini, "Egalitarian Challenges to Global Egalitarianism: A Critique," 507.

cultures in the international society as the reason for liberal egalitarian principles to be inappropriate there, it must also reject those principles as being appropriate for domestic societies where there are similar fundamental disagreements. But if the culturalist argument sees such disagreements as no barrier for liberal egalitarian principles to be applicable to domestic societies, then it must also accept that the same is true for the international society.

A proper response to the challenge of domestic pluralism is to admit that the political culture that gives the content to and justifies liberal egalitarian justice is not, and cannot be expected to be, shared by everyone in constitutional democracies. The culturalist argument does not assume that each society is a single ethnic community unified by a common set of values and beliefs. For it accepts deep value pluralism, in both domestic and international societies, as inevitable given the moral autonomy of individual persons to form, revise, and act from their normative judgments and beliefs. In this regard, the culturalist argument concedes that to say that liberal egalitarian principles are justified within modern democratic societies is to mean that they are justified to the members of those societies who share a relevant public political culture. It accepts that in a pluralistic world it would be almost impossible for liberal egalitarian justice to be unanimously justified in any societies, including those with a long and deep constitutional democratic tradition.

By admitting that liberal egalitarian principles would not be justified to the non-liberal members in constitutional democratic societies, the culturalist argument is able to avoid the accusation of double-standard. But this is insufficient to address the core challenge of domestic pluralism, that is, the culturalist argument fails to explain how liberal egalitarian principles can be the justified principles to regulate the basic structure

of a society where there are non-liberal communities who do not share the cultural framework that justifies those principles. In response to this challenge, the culturalist argument suggests that it is necessary to first investigate whether the disagreements are indeed fundamental or simply nominal. Sometimes different groups may appear to have incommensurable views and beliefs due to toxic rhetoric and divisive partisanship. And underneath the war of words the seemingly non-liberal communities may actually be able to find normative common ground with the liberal majority. Therefore, although the culturalist argument accepts the existence of deep value pluralism in today's world, it thinks that giving up the effort to find common ground prematurely is mistaken.

If the disagreements within constitutional democratic societies are indeed genuinely incommensurable, the culturalist argument contends that they should justify their rule to non-liberal communities by the principles of *international* justice rather than liberal egalitarian justice. From a culturalist perspective, non-liberal communities that reside within democratic societies should be recognised as *peoples* who are entitled to pursue their own conception of social justice. For this reason, democratic societies are under an obligation to accommodate the unique political cultures of non-liberal communities so as to respect their right to self-determination. This may involve devolution of power or federalism that enables local communities to have their own legislative bodies to decide their own rules. Another option may be outright secession or partition that allows those communities to become fully politically independent. In cases where the populations have been too commingled for these options to be feasible, a democratic society may need to negotiate compromises with non-liberal minority groups in the hope that a *modus vivendi* could be achieved.[5] It needs to be emphasised that the

[5] John Gray, *Two Faces of Liberalism* (Oxford: Polity Press, 2000), 128-30.

demand to respect minorities' right to self-determination applies not only to democratic societies but also to non-democratic societies where there are sizable liberal communities. For instance, it can be argued that authoritarian China has a duty under the conception of international justice defended in the previous chapter to recognise and respect the rights of its liberal enclaves, such as Hong Kong and Taiwan, to pursue their own liberal conception of justice and determine their political status.

There is no silver-bullet solution to mediate the relation between different peoples who reside in the same territory while having fundamental disagreements over the issues of justice. But the point is that any proper solution should be justified by the principles of international, rather than liberal egalitarian justice. In this regard, the culturalist argument contends that a constitutional democratic society should deal with non-liberal communities based on mutually recognised principles, or at least mutual interests, rather than casting them as 'unreasonable,' 'irrational,' or worse. This response to the domestic pluralism challenge may raise the question of whether the culturalist argument suggests that democratic societies should tolerate, or even respect, peoples with repugnant ideology and beliefs, such as Neo-Nazis and white supremacists, and recognise their right to self-determination under the principles of international justice. The answer is no. As pointed out in the previous chapter, the precondition for any people to claim the right to self-determination without external intervention is that it must honour basic human rights. It is self-defeating for any people to claim the right to self-determination while rejecting the conditions necessary for self-determination to be possible. This means that peoples like Neo-Nazis and white supremacists would not be entitled to the right to self-determination since they could not be expected to satisfy that precondition. Therefore, the culturalist argument for the internationalist conception of justice would

not demand democratic societies, or any societies, to recognise and accommodate the right to self-determination of any peoples with repugnant ideologies that show no respect for the principle of basic human rights.[6]

5.2.2 International Pluralism

Another pluralism challenge argues that the culturalist argument fails to recognise the fact that different societies may share the same public political culture. The challenge concedes that it may be true that at the international level there lacks a universally shared public political culture upon which liberal egalitarian justice can be constructed and justified. However, it contends that such a relevant political culture is not exclusive to one single society but is prevalent, at least, in many western societies, such as those in Northern America and Europe. The challenge then contends that, if liberal egalitarian principles should apply to regulate the relation of peoples whose members share a relevant political culture, then the principles should apply to regulate the relation between democratic societies whose citizens share a set of similar norms and beliefs. The thrust of the international pluralism challenge is that the culturalist argument may be able to reject global egalitarianism in a non-ideal world, but nonetheless it would still justify some form of *regional* egalitarian justice across democratic societies. In other words, the international pluralism challenge argues that liberal egalitarian justice according to the culturalist argument should also apply to the international arena though on a more limited scale than what cosmopolitans propose.

[6] Following Rawls's terminology, it can be said that for any people to have a rightful claim to self-determination it must be at least 'decent.'

To respond to this challenge, it is necessary to first clarify what it means to say that democratic societies 'share' a public political culture. To say that different democratic societies 'share' a public political culture is to mean that the citizens of those societies recognise and accept a similar set of norms and values to mediate their respective *domestic* political relations. That is, those societies each respectively affirm a similar public political culture to which their own basic structures are expected to adhere. To illustrate, the U.K. and the U.S. can be said to 'share' a similar public political culture because the citizens of those states seem to recognise and accept a similar set of liberal norms and democratic traditions as the normative basis that regulates the political relation in their *respective* societies. The international pluralism challenge suggests that the fact that different democratic societies share a similar domestic public political culture can be stretched to mean that the same norms and values also apply to mediate the relation *between* those societies, or *among* the members of those societies. It then claims that the democratic societies' shared domestic public political culture constitutes the normative foundation upon which liberal egalitarian principles could be constructed and justified to regulate the relation between those societies. This claim is, however, mistaken.

As pointed out in the previous chapter, public political culture is 'public' in the sense that it contains a set of norms, values, and ideals publicly recognised and accepted by the members of a society to mediate *their* relation under a shared basic structure. In this regard, the members of a public political culture are defined by 1) their sharing a common set of political values and beliefs, and 2) their recognition and acceptance of the normative authority of those values and beliefs in mediating the political relation in which they stand. A public political culture, hence, does not express its member's *general* judgments on the normative standards and ideals that apply to *any* relation-mediating

basic structure; rather, it indicates the members' normative beliefs over how advantages and burdens should be distributed by the *particular* basic structure that oversees *their* political relation. The limited domain of public political culture entails that each (not each type of) political relation is an autonomous distributive sphere. This is because a political relation's distributive criteria and standards are informed by a set of norms and values that is normatively binding only within that relation. For this reason, even though democratic societies share a similar public political culture to mediate their respective domestic relation, it does not follow that they recognise and accept the same norms and ideals as normatively binding in mediating their intersociety relation.

To illustrate, consider the case of the European Union (EU). The EU is a supranational organisation whose members are mostly constitutional democratic societies.[7] These societies can be said to share a similar public political culture upon which liberal egalitarian justice could be constructed and justified to regulate their respective domestic basic structures.[8] However, the fact that they share a similar public political culture to mediate their respective domestic relations does not mean that the same set of norms and values are accepted to mediate their relation within the EU. For instance, J. H. H. Weiler contends that the norms of democracy that undergird the political institutions in the member states of the EU are not part of the background culture against which the EU operates.[9] In his view, the realisation of democratic ideals, as they are understood in EU members states, has never been the source of legitimacy

[7] Admittedly a number of Eastern European countries, notably Hungary and Poland, have taken an illiberal turn in recent years.
[8] This is obviously a very simplified account for the sake of the argument.
[9] J. H. H. Weiler, "The Political and Legal Culture of European Integration: An Exploratory Essay," *International Journal of Constitutional Law* 9, no. 3-4 (2011): 679-80.

for the EU.[10] This can be explained not only by the enduring 'democratic deficit' that plagues the EU institutions and governance, but more importantly, also by the lack of urgency and resolve from the EU to address the deficit. The disregard for democratic accountability and representation which would have provoked a public outcry within the member states of the EU has never been perceived as a legitimacy crisis that could derail the EU project.

The EU's lack of commitment to the same set of norms and ideals that mediate the domestic relations in constitutional democracies is hardly surprising. For it is evident that what mediates the relation within the EU is a public political culture essentially aligned with the international *jus cogens* discussed in the previous chapter. The most obvious evidence is the EU's commitment to the collective self-determination of its member states. This commitment is reflected by the aim of the EU to create 'an ever closer union among the *peoples* of Europe' that respects their equality as well as their identities inherent in their fundamental political and constitutional structures.[11] It is also manifested in the EU decision-making process that emphasises the consent from each member state rather than the kind of democratic consent found at the national level. There are ongoing debates over the nature of the EU.[12] But it should be uncontroversial to say that the public political culture of the EU is different from the one shared by its member states to mediate their respective domestic relations. For this reason, even though liberal egalitarian principles could be justified to regulate the respective domestic

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[10] "Europe in Crisis--on 'Political Messianism', 'Legitimacy' and the 'Rule of Law'," *Singapore Journal of Legal Studies* (2012): 254.
[11] Article 1 (emphasis added) and Article 4.
[12] See Richard Bellamy, *A Republican Europe of States: Cosmopolitanism, Intergovernmentalism and Democracy in the Eu* (Cambridge: Cambridge University Press, 2019).

basic structures of EU member states, it does not follow that the same set of principles could be justified to regulate the interstate relation within the EU.

From a culturalist perspective, the reason why liberal egalitarian principles could be justified within a democratic society is that they are constructed upon the values and ideals recognised and accepted by the citizens of *that* society as normatively binding in mediating their internal relations. To decide whether liberal egalitarian justice is also justified to regulate the relation between democratic societies, the key is not whether those societies share a relevant public political culture in mediating their respective domestic relations, but whether they accept the same set of values and ideals as normatively binding in mediating the relation *between* themselves. The answer to the latter is apparently no. As pointed out in the previous chapter, the relation between members of the international society is mediated by a set of norms and values that is fundamentally different from the one found within democratic societies. And as the above example of the EU demonstrated, this is true even in the relation between democratic societies. Instead of individual liberty and democratic equality, the international public political culture emphasises the right to collective self-determination and the equality of peoples. The reason why liberal egalitarian principles cannot be justified to govern the relation between democratic societies then is that those principles could not be constructed and justified upon the public political culture recognised and accepted by democratic societies as normatively binding in mediating their intersociety relation. Therefore, the problem of the pluralism challenge is that the democratic societies' domestic public political culture which it focuses on is essentially irrelevant in deciding the principles of justice applicable to regulate the intersociety relation between those societies.

5.3 Status Quo

The second type of challenge against the culturalist defence for the two-tiered, internationalist conception of justice is the status-quo bias critique. This critique comes in two different versions. The first one is the charge that the culturalist argument is unduly *conservative* due to its bias in favour of the status quo. It is argued that by using a society's existing cultural practices as the normative basis for constructing and justifying the principles of justice, the culturalist argument would be guilty of accepting the status quo uncritically.[13] Call this the conservativism critique. The second version of the status quo bias critique is the charge that the culturalist argument mistakenly permits the principles of justice to be determined by existing cultural practices that are *arbitrary* from a moral point of view. It is argued that given that the cultural membership of individuals is largely determined by factors they have no control over, such as birthplace and citizenship, what the culturalist argument actually proposes therefore is to determine the rights and advantages to which a person is entitled by the arbitrary facts of the human world. Call this the arbitrariness critique. This section rejects both the conservativism and arbitrariness critiques.

5.3.1 Conservativism Critique

The thrust of the conservative critique is that the interpretive method employed by the culturalist argument to defend the two-tiered, internationalist conception of justice is an inherently conservative one that hampers moral progress. A useful discussion of this critique can be found in Valentini's works in which she argues that the interpretive

[13] O'Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*, 21-23; Caney, *Justice Beyond Borders: A Global Political Theory*, 49; Valentini, *Justice in a Globalized World: A Normative Framework*, 75.

method is destined for producing principles of justice that cannot be too detached from the status quo, because those principles are significantly constrained by the existing cultural practices upon which they are constructed and justified.[14] From her perspective, given that the interpretive method presupposes that the appropriate principles of justice must be those that can *fit well* with existing norms and values, the principles resulting from the interpretive process would inevitably be biased in favour of the status quo rather than critical of it.[15] Her criticism against the interpretive method, in short, is that it affirms the status quo uncritically. And her charge of conservativism levelled against the culturalist qua interpretive argument for the two-tiered, internationalist conception of justice is that the argument is destined for producing principles that echo, rather than challenge, the international status quo. For example, she argues that, if the principles of international justice are constructed by interpreting the existing international law and discourse, which are essentially statist in nature, it is inevitable that those principles would, in all likelihood, be statist as well.[16] In her view, the conservativism inherent to the interpretive method would risk hampering moral progress in today's globalised world by allowing philosophical imagination to be constrained by existing, positive morality.[17]

The response to the conservativism critique is that there is nothing inherently wrong with a theory of justice being constrained by certain facts of the status quo. Any plausible theory of justice must inevitably take for granted certain contingent facts and practices of the status quo. For the point of a theory of justice is to respond to the questions over how advantages and burdens ought to be distributed within a human

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[14] "Global Justice and Practice-Dependence: Conventionalism, Institutionalism, Functionalism," *The Journal of Political Philosophy* 19, no. 4 (2011): 408.
[15] *Justice in a Globalized World: A Normative Framework*; "Global Justice and Practice-Dependence: Conventionalism, Institutionalism, Functionalism," 408.
[16] *Justice in a Globalized World: A Normative Framework*, 100.
[17] Ibid., 99.

relation that exists under certain given historical and social circumstances.[18] This is evident in the contemporary liberal egalitarian theories' general acceptance that the design of principles of justice should be constrained by what Rawls refers to as the circumstances of justice, i.e. certain general facts of human society, such as the coexistence of individuals and moderate scarcity.[19] To illustrate, take a look at Valentini's global egalitarian theory. Valentini's theory is built upon her observation of the international status quo that individual societies are not separate islands isolated from each other but are participants of an international order in which they are interlinked with each other.[20] She argues that the interconnectivity between individual societies in *today's* globalised world inevitably creates different forms of 'international interactional coercion' that need to be justified by global principles of justice.[21] In this regard, Valentini's conservative critique against the culturalist qua interpretive argument can actually apply to her own theory of justice as well. It can be argued that, if principles of justice are designed to specify the rights and duties of the members who participate in today's globalised, interconnected international order, those principles would inevitably be biased in favour of, rather than critical of, the international status quo characterised by global interconnectedness. The point here is not to accuse Valentini of double-standard. Rather, it is that any theory of justice is inevitably constrained by certain elements of the status quo since there is no way to think and conceptualise the issues of justice in a vacuum. The right question to be asked, therefore, is not whether a theory of justice should take certain facts of the status quo as given, but what kind of facts theorists

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[18] David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), 18-19.
[19] Rawls, *A Theory of Justice (Revised Edition)*, 109-12; *Political Liberalism (Expanded Edition)*, 36.
[20] Valentini, *Justice in a Globalized World: A Normative Framework*, 182-87.
[21] Ibid., 188-89. A similar line of argument can also be found in Onora O'Neill's *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*, Chapter 4.

should take into account when developing a theory of justice. This question is addressed in the next part of the section.

One possible counterargument to the above response is that, although being biased in favour of the status quo may not be problematic per se, the problem of the bias inherent in the culturalist theory of justice is that it would lead to a *morally repugnant conclusion*. Call this the repugnance critique. According to this critique, a society's cultural practices are not the appropriate normative foundation for deciding the principles of justice because there are cultures that hold morally repulsive views, such as those in favour of racial supremacism and the subjugation of women.[22] The concern is that, if the principles of justice are constructed and justified by interpreting a society's public political culture as the culturalist argument proposes, then a racist and sexist political culture would inevitably generate and justify principles that are, in all likelihood, racist and sexist. In other words, a culturalist conception of justice, by accepting that the criteria and standards of justice applicable to a society are constrained by its cultural practices, would be unable to generate principles to criticise and condemn political cultures that contain morally repulsive views and the actions that follow those views, such as enslavement, persecution, and genocide. It is argued that for this reason the culturalist qua interpretive argument would lead to a *repugnant conclusion* that suggests the condoning and toleration of cultures that embrace morally obnoxious views and practices.[23] This repugnant conclusion alone, according to Valentini, is sufficient to rebut the culturalist qua interpretive argument. For she believes that any plausible moral methodology 'must have guarantees against morally repugnant conclusions.'[24] The problem of the culturalist

[22] Caney, *Justice Beyond Borders: A Global Political Theory*, 32.
[23] Ibid.; Simon Caney, "Defending Universalism," in *Reconstituting Social Criticism: Political Morality in an Age of Scepticism*, ed. Shane O'Neill and Iain MacKenzie (London: Palgrave Macmillan, 1999), 21.
[24] Valentini, *Justice in a Globalized World: A Normative Framework*, 98.

argument, then, is not that it is biased in favour of the status quo per se but elements of the status quo that are considered morally repulsive.

One possible response to the repugnance critique is to argue that the critique fails to engage with the culturalist theory of justice in a meaningful way. The repugnance critique is built upon a simple premise that certain views, such as those in favour of human rights abuses, are objectively and universally repulsive. Based on this premise, the critique argues that the culturalist theory cannot be a plausible theory of justice because its interpretive methodology is unable to yield principles that rule out such repulsive views. The problem of this argument is that it cannot simply assume or take for granted the truth of the premise that certain views must be repulsive from a moral point of view. From a culturalist perspective, different societies, due to their different public political cultures, would have different criteria and standards for evaluating whether a particular view is repulsive or not. To say that a view is repulsive under a culturalist account is not to mean that the view is repulsive from an objective, transcendental moral standpoint; rather, it is to mean that the view contravenes some considered convictions deeply held by a society's members who share a particular public political culture. In this regard, the culturalist theory of justice rejects the premise of the repugnance critique outright and contends that a morally repulsive view is always a view repulsive *to* a particular society. For this reason, the repugnance critique cannot reject the culturalist theory by simply asserting that certain views are objectively and universally repulsive, because doing so would be simply question-begging. What it needs to demonstrate is that the culturalist theory is wrong to reject the premise by explaining and justifying why the moral repulsiveness of certain views is objective and transcends cultural differences. The repugnance critique offers no such explanation and justification, however. Therefore, as

pointed out by Caney, the repugnance critique does not really amount to an argument against the culturalist theory of justice.[25] For it only reports the theorists' belief that certain views and practices are intolerable but that does not constitute a justification for the condemnation.[26] In short, the culturalist theory cannot be rejected simply because it does not generate principles that affirm the theorists' normative beliefs.

Theorists who level the repugnance critique could argue that the above argument has misinterpreted the critique's normative pull. Recall that the central claim of the repugnance critique is that the culturalist theory's failure to condemn views that are widely considered repulsive would produce a morally repugnant conclusion that demands the condoning and toleration of such views. It could be said that, by this, the repugnance critique does not intend to accuse the culturalist theory of failing to rule out *any* views that are considered grotesque. Instead, given the critique's accentuation of repulsive practices such as enslavement and the subjugation of women and racial minorities, its accusation should be seen as a more specific one over the culturalist theory's potential failure to offer normative resources for criticising views in favour of the violations of *basic human rights*. In this regard, the 'repugnant' conclusion of the culturalist theory which the repugnance critique abhors should be understood as the demand to condone and tolerate human rights abuses in societies whose public political cultures contain views in favour of those abuses. It could be argued that the reason why this conclusion is 'repugnant' is not that it fails to account for universalist theorists' belief over the objective, universal repulsiveness of such views, but that it contravenes the conviction deeply held by the international society that no violation of fundamental human rights should ever

[25] Caney, *Justice Beyond Borders: A Global Political Theory*, 33.
[26] Ibid.

be tolerated. The previous chapter has pointed out that the members of the international society share a commitment to the norm of fundamental human rights. They recognise and accept the doctrine of human rights as among the international peremptory norms—norms that are seen as absolute and no derogation from them is considered permissible under any circumstances. The international society's commitment to the protection of basic human rights means that they would find the demand to tolerate the abuses of those rights morally obnoxious. It could then be said that the problem of the culturalist theory is that, by failing to provide normative resources to condemn societies whose public political cultures contain views in favour of human rights abuses, it would yield a conclusion which could not be justified to the international society.

This revised version of the repugnance critique has made a significant concession to the culturalist theory by affirming the role *existing* normative judgments and beliefs play in the theorisation of justice. According to the revised repugnance critique, the conviction held by the international society that human rights abuses should never be tolerated itself constitutes an evaluative criterion for determining whether a particular theory of justice is acceptable or not. In other words, beneath the critique is the claim that a theory of justice is plausible only if it can generate principles that fit well with the existing considered judgments held by a particular society. This is exactly what the culturalist theory of justice argues for and the point of its interpretive method is to offer a framework capable of yielding principles that can be supported by a society's deepest normative beliefs. Hence, the revised repugnance critique is in agreement with the culturalist theory over the importance of existing normative judgments. What the critique is concerned about is that the culturalist qua interpretive argument would lead to a

repugnant conclusion that contravenes a fundamental belief held by the international society.

To respond to this concern, it can be argued that it is mistaken for the repugnance critique to claim that the culturalist theory would have no normative resources to criticise societies whose public political cultures contain views in favour of human rights abuses. For internal criticisms could be made within public political cultures that hold views contravening the human rights doctrine.[27] As pointed out in the previous chapter, it is almost inevitable that the norms and values inside a political culture would be in tension or even conflict with each other. For example, within a public political culture that contains views in favour of practices that violate human rights, it is possible to also identify elements critical of human rights abuses. The conflicting views and beliefs that exist within a public political culture, according to the culturalist theory, trigger the questions of justice that the interpretive method seeks to address. And the principles of justice resulting from the interpretive method would provide the primary normative basis for reevaluating and criticising the existing beliefs and convictions within a public political culture. The members of a public political culture would have reason to revise or abandon a particular belief if it is incompatible with a set of principles capable of accounting for a broad range of their other normative judgments. For such incompatibility indicates that that particular belief is unable to meet the criteria of justice justified by the members' otherwise coherent value-belief system. In short, the potential of internal criticisms demonstrates the theoretical resources possessed by the culturalist theory to criticise and condemn views in favour of human rights violations.

[27] A popular version of this defence can be found in Michael Walzer, *Interpretation and Social Criticism* (Cambridge, MA; London: Harvard University Press, 1987), 35-66.

To illustrate, consider a society that has a public political culture which holds racist views that support depriving people of colour of political rights on the one hand, while a strong belief that the exercise of state power is only legitimate if it is democratically authorised by the people on the other hand. A culturalist argument against the society's racist views would seek to expose the tension between its belief in those views and its commitment to democratic authority. For example, it may argue that democratic authority is grounded on the realisation of equal citizenship which would be impossible if a society denies a significant number of citizens the right to participate in politics on equal terms with their fellow citizens. In this regard, the commitment to the ideal of democratic authority gives the society a normative reason to question and reject its own racist views. The society's public political culture itself hence provides the very normative resources for criticising its own racist views.

The above has demonstrated how the culturalist qua interpretive argument can respond to the revised version of repugnance critique by pointing out the potential of internal criticisms within a public political culture. A culturalist theory of justice is able to justify criticisms against a society's human rights abusing practices even if its public political culture contains views in favour of such practices. It does so not by appealing to some transcendental, universal moral principles, but by appealing to the other judgments and beliefs identified within the society's public political culture that supply its members the normative reasons to scrutinise and denounce human rights abuses. It is therefore inaccurate to claim that a culturalist theory of justice would demand the international society to condone and tolerate human rights abuses because the theory is unable to provide resources for criticising such abuses that happen within societies whose public political cultures contain views in favour of such abuses.

A possible argument against this response would be that internal criticisms are possible only when a public political culture contains elements critical of human rights abuses. It could be argued that in some societies their political cultures may be too saturated with morally repugnant views and beliefs that no meaningful internal criticism could possibly be made.[28] As argued by Onora O'Neill,

> some traditions and some sensibilities devalue and demean certain sorts of agents, whose standing, achievements and communications they *systematically* disregard or belittle. Their procedures and practices for self-criticism will probably also devalue and demean those agents. Discrimination and oppression may not only be embedded in superficial, ostensibly revisable aspects of life, but also rooted in ways of interpretation and adjudication, so will form and limit the critical potential internal to those traditions and sensibilities.[29]

O'Neill's argument calls attention to what Fricker Miranda refers to as the problem of 'hermeneutical lacuna' in a society plagued by structural or systematic injustices.[30] Its concern is that the public political culture of a structurally unjust society may be heavily distorted and hence unable to provide the necessary hermeneutical resources, such as concepts and narratives, to challenge the norms and conventions that uphold the unjust systems. This is because in such a society, the subjugated and oppressed may be systematically denied the adequate opportunity to participate in the interpretive practices and process of reason-giving upon which the norms and conventions that constitute the society's public political culture are generated.[31] In short, from O'Neill's point of view, a structurally unjust society would perpetuate the norms and conventions that uphold the unjust systems by systematically distorting the public political culture to deny the

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[28] Caney, *Justice Beyond Borders: A Global Political Theory*, 33.
[29] O'Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*, 22, emphasis added.
[30] Miranda Fricker, "Powerlessness and Social Interpretation," *Episteme* 3, no. 1-2 (2006): 97.
[31] Tamara Jugov and Lea Ypi, "Structural Injustice, Epistemic Opacity, and the Responsibilities of the Oppressed," *Journal of Social Philosophy* 50, no. 1 (2019): 10-11.

hermeneutical resources capable of challenging those norms and conventions. For this reason, it could be argued that in societies where human rights abuses are structural, any attempt of internal criticism would likely become a reaffirmation of the norms and beliefs that support the unjust system rather than the opposite. O'Neill's argument, therefore, seems to expose the limitation of internal criticism, since it identifies a scenario where the culturalist theory cannot dismiss the repugnance critique by pointing out the potential of internal criticisms within a society's public political culture.

There can be two responses to O'Neill's critique. The first one is to question whether it is factually true that no internal criticism is possible within a structurally unjust society whose public political culture is saturated with views and conventions that seek to perpetuate the unjust system. Many societies in today's world are thought to be plagued by structural injustices. Among them are the western societies, most notably the U.S. and the U.K., that are accused of being structurally racist. It is argued that in these societies the history of slavery, racial discrimination, and segregation is ingrained in their institutional and cultural practices which results in the perpetuation of the subjugation and abuses suffered by racial minority groups.[32] If O'Neill's critique is true, then no criticisms should be possible within the public political cultures of western societies that are distorted by structurally racist practices. However, this is clearly not the case. For it is evident that the unrealised ideals and the unfulfilled promises found in the public political cultures of those societies remain the most accessible and effective normative basis for criticising their racist practices. For instance, criticisms against the racist traditions and conventions in the U.S. are often anchored on the promise of equal

[32] Joe R. Feagin, ed. *Systemic Racism* (New York: Routledge, 2006); Robbie W. C. Tourse, Johnnie Hamilton-Mason, and Nancy J. Wewiorki, *Systemic Racism in the United States* (New York: Springer, 2018).

opportunity for all and the aspiration to 'form a more perfect union' that are entrenched in the country's public political culture. As pointed out above, the different norms and conventions that constitute a public political culture are likely to be in tension and conflict with each other. Such tensions and conflicts do not cease to exist in structurally unjust societies to provide the ground for internal criticisms to be made within the public political cultures of those societies. The problem of O'Neill's critique, in short, is that it seems to have exaggerated the ability of a structurally unjust system to distort and manipulate a society's discourse of justice.

Another problem of O'Neill's critique is that, even if a society's *domestic* public political culture is thoroughly corrupted by the structurally unjust systems to the point that no hope of internal criticism is available, the *international* public political culture it subscribed to would likely provide the normative basis for criticising its human rights-abusing practices. Structurally unjust societies in today's world are not isolated societies. Instead, they are participants of an international order mediated by a distinct public political culture that comprises a set of international peremptory norms. And among those norms, as pointed out in the previous chapter, is the right to collective self-determination. This means that structurally unjust societies share a strong belief that they should be free to pursue their conception of justice without unwarranted external interference. (Indeed, societies that are plagued with systematic injustices and human rights violations tend to be the most vocal supporters of the right to collective self-determination.) Their claim to the right to collective self-determination, it can be argued, provides a normative basis for internal criticisms to be made against their practices in favour of human rights abuses.

The right to collective self-determination, as argued in the previous chapter, is inseparable from the principle of *basic* human rights.[33] This is because the protection of an adequate set of basic rights and liberties constitutes the necessary condition for a people to collectively deliberate and pursue their own conception of justice. The principle of basic human rights argues that three types of rights and liberties are essential for collective self-determination to be possible.[34] They are the rights that ensure personal security (such as the right to bodily integrity), basic political freedoms (such as the freedom of thought and the freedom of speech), and basic welfare rights (such as the right to subsistence and the right to education). There can be reasonable disagreements over which rights and liberties are actually essential for collective self-determination to be possible. But it is safe to assume that any reasonable conception of human rights would rule out practices that are widely regarded as repulsive, including enslavement, subjugation of women, and persecution of racial minorities. Given the close connection between collective self-determination and the protection of basic human rights, a structurally unjust society that makes a claim to the former has implicitly committed itself to the latter. It follows that criticisms could be made against the society's human rights abuses or views in support of such abuses by pointing out the conflicts between those abuses and its belief in the right to self-determination. In this case, what makes internal criticisms possible is not the conflicting views and beliefs identified in the society's domestic public political culture (as discussed in the previous response), but the tension between the domestic and international public political cultures which the society has subscribed to. This demonstrates how internal criticisms are still possible even if the

[33] See Chapter 4, session 4.4.3*b*.
[34] See ibid. for a more detailed discussion.

domestic public political culture of a society is thoroughly corrupted by its structurally unjust system. They are possible because the international public political culture the society subscribed to provides the normative resources for condemning the views of its domestic public political culture.

The above has explained how the culturalist theory of justice can respond to the revised version of the repugnance critique. It pointed out that the critique fails because the culturalist theory is able to provide the international society with the normative resources for criticising societies that engage in human rights abuses even if those societies' public political culture contains views in support of such abuses. However, it may be argued that the above argument is only able to partially address the concerns raised by O'Neill's critique which emphasises how a structurally unjust system could distort a society's political culture. Other than denying the potential of internal criticisms, such distortion may also raise questions over whether a public political culture could indeed exist in a structurally unjust society to represent what the people in that society actually believe and accept. In societies plagued by structural injustices, their political norms and conventions may be manipulated by the society's dominating ethnic groups or, worse, bent to the wishes of an authoritarian state that actively persecutes dissenters. Therefore, the culturalist theory, by seeking to construct principles of justice upon *existing* political norms and values, may be accused of exhibiting a problematic bias towards a status quo under which societies' cultural practices are subjected to distortion and misrepresentation.

The problem with this bias is that it seems to cast doubt over the culturalist theory's claim about the fact of deep value pluralism in today's world and hence undermine its argument against cosmopolitan egalitarianism. Given that the political

norms and values of many societies in today's world are marred by manipulation and indoctrination, it may be suggested that the seemingly fundamental disagreements they display should be questioned and challenged instead of taken as the basis for conceptualising and theorising justice. It may be pointed out that the reason why some societies' norms and conventions appear incapable of providing a fertile ground for liberal egalitarian justice is that they are heavily distorted by suppression and indoctrination. For example, the political culture displayed in an authoritarian society should not be regarded as an accurate representation of what its citizens actually believe because freedom of thought and expression is forbidden. Therefore, it may be argued that deep value pluralism is just a mirage and peoples living in different societies would be able to reach similar judgments and generate shared beliefs upon which liberal egalitarian justice could be constructed and justified if their reasoning is not distorted by oppression, indoctrination, and manipulation.[35] In other words, it may be contended that liberal egalitarian justice would be universally justified when *favourable social and political conditions* are present. Call this the *idealisation* critique.

In response to this critique, the culturalist theory of justice agrees that a public political culture can represent what the members of a people or society actually recognise and accept only when certain favourable conditions are present. As argued in the previous chapter and repeated above, a culturalist theory of international justice emphasises that several external and internal conditions must be fulfilled in order for a people to pursue and realise its own conception of justice constructed upon its public political culture. And among those conditions is the protection of the rights and liberties that enable the members of a people to form their own judgments and critically evaluate

[35] Caney, *Justice Beyond Borders: A Global Political Theory*, 50.

existing political norms and traditions. In this regard, the culturalist theory does not dispute that, in a society where human rights abuses are structural, its political norms and conventions may be distorted by oppressive and manipulative systems and hence fail to express its citizens' actual beliefs and judgments. Indeed, a culturalist conception of international justice would argue that the members of the international society have the obligation to remove the domestic suppression and manipulation that prevents collective self-determination from being exercised. However, the culturalist theory rejects the idealisation critique's claim that peoples living in different societies would eventually come to recognise and accept a similar set of norms and values in favour of liberal egalitarian justice under favourable social and political conditions. For even if such conditions are present, there is no guarantee that different peoples would end up with a similar public political culture due to the moral *autonomy* of individuals.

One of the central tenets of liberal egalitarianism is the view that individual persons are autonomous agents capable of making decisions based on their own reasons. The concept of individual autonomy has different facets and one of them is moral autonomy, that is, the capacity of individuals to determine and critically reflect upon their own normative judgments and principles on which they will act.[36] The manifestation of moral autonomy in the realm of politics is what Rawls refers to as the moral power to have a sense of justice. To say that individuals are morally autonomous does not mean that they are able to make moral decisions completely independent of the influence of the social and cultural reality in which they are situated. As rightly pointed out by Gerald Dworkin, individual persons' beliefs and convictions are always influenced by their

[36] Gerald Dworkin, *The Thought and Practice of Autonomy* (Cambridge: Cambridge University Press, 1988), 48.

surrounding environment and historical circumstances.[37] What is essential for moral autonomy is not individuals' capacity for 'inventing' or 'originating' moral judgments independent of any external influence; instead, it is individuals' capacity for *deciding for themselves* which moral reasons and ideals to accept or reject and reflect upon such decisions.[38] The debate over the idea of moral autonomy is beyond the scope of this chapter. But the bottom line is that morally autonomous persons are not destined or programmed to accept or reject any particular moral framework or doctrines. They may be influenced or nudged by the external environment into believing a particular view or making a particular judgment; however, their beliefs and judgments are never *determined* by the external environment.

If individual persons are morally autonomous, there is no reason to believe that they would eventually recognise and accept a similar set of judgments and beliefs in favour of liberal egalitarian justice when favourable social and political conditions are present. For believing that would assume that individuals' normative judgments and beliefs are somehow determined by the social and political environments in which they are situated. And such an assumption is incompatible with the view that individual persons are autonomous agents. Therefore, even though there is good reason to argue that the public norms and values of many societies in today's world are distorted by structurally unjust systems, it does not follow that liberal egalitarian justice should be assumed to be justified in those societies when the distortion is removed. Due to their autonomy, the members of different societies may continue to have different beliefs and judgments over the issues of justice under favourable conditions where structural

[37] Ibid., 36, 38.
[38] Ibid., 37.

oppression is absent. And their disagreements may continue to result in different public political cultures among different societies. The moral autonomy possessed by individual persons means that there is simply no reliable way to assume or predict what public political culture they would eventually recognise and accept. In short, the problem of the idealisation critique is that it is built upon an assumption that is incompatible with the view that individual persons are morally autonomous.

5.3.2 Arbitrariness Critique

Now move to the second version of the status-quo bias critique—the arbitrariness critique. According to this critique, a society's public political culture should not be taken as the basis for the construction and justification of justice because the cultural circumstances into which individual persons were born are arbitrary from a moral point of view.[39] This critique relies on an intuition that undergirds many cosmopolitan egalitarian theories.[40] That is, the life prospects of individuals should not be influenced by morally arbitrary factors they have no control over, such as birthplace, race, and gender. The critique's concern is that the culturalist theory of justice, by exhibiting a bias in favour of existing public political cultures, would erroneously permit individuals' entitlements to be determined by morally arbitrary social circumstances.

As discussed in the previous chapter, the membership of a public political culture is intertwined with the membership of a shared basic structure in a particular political

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[39] David A. J. Richards, "International Distributive Justice," in *Ethics, Economics and the Law*, ed. J. R. Pennock and J. W. Cahpman (New York: New York University Press, 1982); Beitz, "Cosmopolitan Ideals and National Sentiment," 595.

[40] See Caney, *Justice Beyond Borders: A Global Political Theory*; Charles R. Beitz, *Political Theory and International Relations* (Princeton, NJ.: Princeton University Press, 1999); Tan, *Justice without Borders: Cosmopolitanism, Nationalism and Patriotism*; Pogge, "An Egalitarian Law of Peoples."; *Realizing Rawls* (Ithaca: Cornell University Press, 1989).

society.[41] For a public political culture is a set of norms and conventions publicly recognised and accepted by the members of a political society to mediate their relations. A person's membership in a public political culture, hence, depends on the society of which she is a member. If a society's public political culture, as claimed by the culturalist theory of justice, is the normative foundation upon which principles of justice are constructed and justified, the rights and benefits a person could claim according to the principles of justice would be significantly influenced by her citizenship or nationality. For example, a poor person from a society with public norms and values in favour of liberal egalitarian principles would have a justified ground to make claims to a more extensive set of rights and benefits than she would have been in a society with a deep libertarian tradition. In this regard, some cosmopolitan egalitarians may argue that the culturalist theory cannot be a plausible theory of justice because it allows citizenship and nationality—factors that are morally arbitrary—to influence individual persons' entitlements.[42]

Cosmopolitan egalitarians influenced by luck egalitarianism argue that a person's citizenship and nationality are no less contingent than her race, sex, and skin colour. In their view, permitting different persons to have unequal opportunities on the basis of their different citizenships is as morally repugnant as permitting discrimination on the basis of race and caste.[43] For cosmopolitan egalitarians like Caney, Beitz, and Gilabert, the content and justification of justice should be informed by factors not contingent on social and historical circumstances. And the factors they believe justice should be

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[41] See Chapter 4.2 *c*.
[42] This type of cosmopolitan egalitarian arguments is sometimes called 'non-relational' cosmopolitan arguments.
[43] Simon Caney, "Cosmopolitan Justice and Equalizing Opportunities," *Metaphilosophy* 31, no. 1 (2001): 115. A similar view can be found in Pogge, *Realizing Rawls*, 247.

grounded on are some relevant human properties shared by all persons in the world that constitute their *moral personality*. According to Caney, the relevant properties are persons' 'common needs, common capacities, and common ends.'[44] And for Beitz and Gilabert, the relevant properties are what Rawls calls the two moral powers of persons, namely, a capacity for a sense of justice and a capacity to form, revise, and pursue a conception of the good.[45] Despite their differences, they all argue that since the relevant properties are shared by all persons in the world, the principles of justice that are constructed in response to those properties should be global in scope.

The culturalist theory's response to the arbitrariness critique is similar to its initial response to the conservativism critique, that is, there is nothing inherently wrong with a theory of justice to permit individual persons' entitlements to be influenced by factors they have no control over. As pointed out above, theories of justice are inevitably constrained by the historical and social circumstances under which the questions of justice arise. And the circumstances of justice, by putting constraints on how the principles of justice should be devised, would unavoidably influence what individual persons are entitled to claim on the ground of justice. For example, the claims individuals could make are highly dependent on the *historical period* they are situated in. Many claims of justice, such as free medical care for all, social insurance, and state-financed pension, that seem perfectly reasonable in *today's* industrialised world were simply impossible, say, two hundred years ago due to the vastly different levels of economic and technological developments. According to the arbitrariness critique, the period of history individuals are situated in can be said to be arbitrary since no one can have any control over the

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[44] Caney, *Justice Beyond Borders: A Global Political Theory*, 36-37, 265.
[45] Beitz, "Cosmopolitan Ideals and National Sentiment," 595; Gilabert, *From Global Poverty to Global Equality: A Philosophical Exploration*, 195-96.

historical circumstances she was born into. However, it is unlikely that anyone would find it problematic for a theory of justice to permit individuals in today's world, solely due to the fact that they were born in a more developed age, to make far more extensive claims of justice than the persons living in the pre-industrial age. This is because the point of any theory of justice is to respond to the specific questions of justice that arise under given historical and social circumstances. In other words, the theorisation of justice presupposes the constraints from the historical circumstances that are always contingent and arbitrary to the persons situated in them.

Even if cosmopolitan egalitarians disagree with the above response, it is unclear how their own theories could fare better than the culturalist theory in preventing individual persons' entitlements from being influenced by factors they can have no control over. To illustrate, consider the theories of Caney, Beitz, and Gilabert mentioned above. Their theories seek to provide a 'non-arbitrary' basis for justice that is grounded on the 'relevant moral properties' of individual persons that constitute their moral personality. However, they ignore the fact the individual persons' possession of those properties itself is also contingent and arbitrary. Species in the world have no control over what capabilities and properties they were born with (unless there is solid proof for reincarnation). For instance, the fact that human beings have higher intelligence than cats and dogs is not an outcome determined by their voluntary choice or effort; instead, it is simply a result of brute genetic luck for which no one can be held responsible. In other words, the capabilities and properties possessed uniquely by human beings but not other animals are no less arbitrary than sex, race, and birthplace. Therefore, by grounding justice on the unique attributes shared universally by all persons, the cosmopolitan egalitarian theories of Caney, Beitz, and Gilabert actually permit individuals' entitlements

to be decided by factors morally arbitrary from a moral point of view. To say otherwise is to confuse universality with non-arbitrariness.

The above has argued that there is nothing inherently wrong with the culturalist theory of justice to permit individual persons' entitlements to be influenced by factors outside their control. It has also been argued that the cosmopolitan egalitarian theories that attempt to offer a non-arbitrary basis for justice are unsuccessful. However, they are insufficient to show why the culturalist theory of justice should be preferred over its cosmopolitan egalitarian counterparts. For the above arguments have only demonstrated that the culturalist theory and the cosmopolitan egalitarian theories both ground justice on factors that are contingent and outside human control. They have yet answered the question of why public political culture, rather than the properties possessed by human persons universally, should be the ground of justice.

One possible way to answer this question is to point out the importance of public political culture's *normative* nature that is absent from the fact about the properties possessed by human individuals. The problem of grounding justice on certain universal human attributes is that those attributes do not have any normative implications *by themselves*. The fact that all individual persons possess certain properties, such as the capacities to be rational and reasonable, only informs what they are capable of doing and achieving. It does not entail the normative relevance of those properties or explain how the possession of those properties turns individual persons into the ultimate units of concern in the thinking of justice. There is simply no necessary logical link between what individual persons *are* and how they *ought* to be treated or what rights they ought to be entitled to. In other words, an apparent gap can be found between the factual statement about human attributes and the normative statement about their significance in justice

emphasised by the theories of Caney, Beitz, and Gilabert. Their theories' problem, then, is that they fall prey to Hume's 'is-ought fallacy' according to which no normative conclusion can be inferred from non-normative facts.[46]

The culturalist theory avoids this problem by grounding justice on a society's public political culture that expresses its members' *normative* beliefs and values. From a culturalist perspective, the normative beliefs and values that trigger the questions of justice are also the basis for answering those questions. The theory regards the questions of justice as being triggered by the disagreements between the members of a society who share a public political culture. And it seeks to settle such disagreements by proposing a set of higher-order principles that are constructed upon and justified by the considered normative judgments and convictions identified in the public political culture. In this regard, the culturalist theory of justice attempts to draw a normative conclusion from the normative judgments and values held by individuals who are members of a shared public political culture rather than from some non-normative facts about human beings. That said, a culturalist conception of justice does not necessarily reject the claim that certain human properties are relevant in the thinking of justice. For example, a culturalist conception of liberal egalitarian justice may emphasise the need to respect the capacities of what Rawls calls the political conception of persons interpreted from the public political culture of constitutional democratic societies.[47] However, the culturalist theory of justice argues that human attributes can be normatively relevant not because such relevance is a quality that defines those attributes, but because those attributes are recognised and accepted by a public political culture as relevant factors in the thinking of

[46] David Hume, *A Treatise of Human Nature* (Oxford: Clarendon Press, 1888), Section 1, Book 3.
[47] Rawls, *Political Liberalism (Expanded Edition)*, 29-35.

justice. In other words, what distinguishes the culturalist theory of justice from the cosmopolitan theory is not that the former rejects the normative relevance of certain human attributes but that it rejects such relevance can be explained without a cultural basis.

This section has defended the culturalist theory of justice against the challenges from the status-quo bias critique. It first rejected the conservative critique by arguing that there is nothing inherently wrong with a theory of justice relying on certain contingent facts of the status quo. It then rejected two modified versions of the conservative critique. It argued against the repugnance critique by pointing out the potential of internal criticisms and the limits of structural injustices. And it argued that the idealisation critique is implausible because it is incompatible with the view that individual persons are autonomous. The second half of the section discussed the arbitrariness critique. It contended that the critique is unsuccessful because the idea of justice presupposes the constraints from certain contingent facts that are arbitrary. It also pointed out that the cosmopolitan egalitarian theories that seek to provide a non-arbitrary basis for justice actually ground their arguments on morally arbitrary factors. Finally, the section ended by explaining why public political culture should be preferred over human attributes as the ground for justice despite their equally arbitrary nature.

5.4 Interpretation

This section discusses Aaron James's argument that attempts to justify international egalitarian principles by employing a constructivist qua interpretive method that is similar to the one used by the culturalist theory of justice. James's theory rejects cosmopolitanism and argues that the existence of the international order demands a

distinct set of principles of justice to regulate the societies that are particular in that order.[48] His theory does not attempt to offer a general conception of international justice; instead, it focuses on the practice of international trade and proposes that internationalist justice should include a set of egalitarian principles to regulate the international structure within which the global economy operates.

James's theory is based on the view that societies which participate in the global economy are engaged in a special form of relation mediated by what he refers to as an 'international market reliance practice.'[49] This practice is maintained by a set of mutually recognised 'expectations' that are specified by formal international treaties and informal shared understandings.[50] Using the constructivist qua interpretive method, James's theory seeks to construct a set of principles that are justified to regulate the practice of international trade based on a moralised characterisation of the practice's organising purpose obtained by interpreting the 'expectations' shared by the members participating in the global economy.[51] James proposes that the organising purpose of international trade should be the mutual augmentation of *national* (aggregate or average) income between equal trading societies which lack special entitlement to any particular level of gain.[52] And based on this interpretation, he argues that international trade should be regulated by three principles of justice:

> *Collective Due Care*: trading nations are to protect people against the harms of trade (either by temporary trade barriers or 'safeguards,' etc., or, under 'free trade,' by direct compensation or social insurance schemes).

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[48] James, *Fairness in Practice: A Social Contract for a Global Economy*, Chapter 4.
[49] Ibid., 37.
[50] Ibid., 40.
[51] Ibid., 28.
[52] Ibid., 167-68.

> *International Relative Gains*: national income gains due to specifically to international trade are to be distributed equally, unless greater gains flow (e.g. via special trade privilege) to poor countries.
>
> *Domestic Relative Gains*: gains for a given trading society are to be distributed equally among its affected members, unless inequality of gain is reasonably acceptable to them all (e.g. according to domestic distributional principles.[53]

Before evaluating James's argument, it is necessary to make a couple of notes. The first one is that he has never stated clearly what interpretive data his judgment about the point of international trade is made upon. In particular, it is unclear whether the 'practice' of international trade his interpretation targets refers to a set of *institutional* rules or a set of *normative* judgments and beliefs. If it is the former, then the theoretical framework of James's theory is similar to Sangiovanni's institutionalist practice-dependent theory which has been rejected in Chapter Three. Since it is pointless to discuss institutionalism again here, the discussion below assumes that the practice his interpretation targets is a set of normative judgments and values that mediate the relation among the societies that participate in international trade. In this regard, James's theory can be seen as being grounded on the international norms over how trade *should* be conducted between different societies. Those norms may include some judgments against labour exploitation and beliefs in favour of fair trade. The second point to note is that James's theory may not be a direct critique of the culturalist conception of international justice outlined in the previous chapter. As pointed out above, James does not argue for a conception of international egalitarian justice that applies to international relations in general. His egalitarian principles for international trade are not derived from

[53] Aaron James, "A Theory of Fairness in Trade," *Moral Philosophy and Politics* 1, no. 2 (2014): 180-81.

a more general conception of international justice; instead, they are devised exclusively to regulate international trade. Hence, those principles could be compatible with the sufficientarian principles of the culturalist conception of international justice. It is possible that upon a set of general international principles of justice there are more specific principles that apply to some practices under the international order.

Now turn to evaluate James's theory. The major problem of James's attempt to justify egalitarian principles for international trade is that it is built upon a questionable characterisation of the point of international trade. According to James, the point implicit in the norms and expectations that mediate the relation between the members participating in international trade is simply to 'augment national incomes.' However, his basis of this characterisation seems to be nothing more than the observation that the aim of augmenting national income is 'specified in over two hundred years of international economic argument since Adam Smith.'[54] This creates questions over whether his characterisation is actually based on the existing practice of international trade.[55] Apart from the lack of clarity, the deeper problem of his characterisation is that there is ample evidence that international trade is not always regarded or used as the means for societies to augment national incomes. To name a few examples:

> *Political/diplomatic symbolism*: The trading relationship between South Korea and North Korea was established mainly to symbolise and promote South-North reconciliation. Another example is the free-trade relationship within the Commonwealth of Nations that signifies their historical ties to the British Empire.

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[54] *Fairness in Practice: A Social Contract for a Global Economy*, 40-41.

[55] A similar concern is shared by Risse and Wollner. They question whether James's theory is indeed a constructivist qua interpretive one in nature since his arguments seem to rely on standalone moral reasonings. See Mathias Risse and Gabriel Wollner, "Critical Notice of Aaron James, Fairness in Practice: A Social Contract for a Global Economy," *Canadian Journal of Philosophy* 43, no. 3 (2013): 388.

Peace: The European economic integration characterised by its internal frictionless market is motivated partly by the wish to establish sustainable peace so that the continent would not be devastated by another war.

Promoting human rights: Over the past two decades, the U.S. expanded its trading relationship with China in the hope that growing trade and open markets would improve the human rights situation in China.[56]

The takeaway here is not that different societies seek to achieve different ends through international trade; rather, it is that the above aims are seen as *legitimate* under the practice of international trade. In other words, the existing practice of international trade recognises and accepts that there are different legitimate aims other than the augmentation of national income which societies can pursue from the global market.[57] More damaging to James's characterisation of the point of international trade is that the diversity of aims pursued by different countries entails that losses from international trade are not seen as morally troubling or illegitimate *in* themselves. It is commonly accepted that societies may trade-economic gains for political or diplomatic interests. For example, a society may accept a deficit from international trade with another country in exchange for cooperation in other areas, such as national security. This may explain why the massive deficits suffered by many countries, most notably the U.S., the U.K. and Australia, from international trade are not automatically seen as the consequences of an unfair global market. In short, the norms that govern international do not seem to

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[56] In his speech supporting China's W.T.O. membership, the then U.S. President Bill Clinton said that: 'By joining the W.T.O., China is not simply agreeing to import more of our products; it is agreeing to import one of democracy's most cherished values: economic freedom. The more China liberalizes its economy, the more fully it will liberate the potential of its people … And when individuals have the power, not just to dream but to realize their dreams, they will demand a greater say.'

[57] Admittedly, James seems to be aware of the possible diversity of interests pursued in international trade. See *Fairness in Practice: A Social Contract for a Global Economy*, 147. Unfortunately he mentioned it only in passing and does not follow up the issue.

contain strong normative beliefs that income from trade should be the only good created and distributed by international trade and that income deficit resulting from international trade is unacceptable.

Not only does James's characterisation of the point of international trade fail to find support from existing practice, but his characterisation is also in tension with a fundamental norm that governs the international basic structure, that is, the commitment to collective self-determination. What is implied by the diverse aims pursued by different countries in international trade is that there is no consensus among societies over the types of good that should be distributed by the global economy. This is an inevitable consequence given that societies are self-determining agents. To say that societies are self-determining is to mean that they have the capacity to determine their own conceptions of political, social, and economic development in light of their own cultures and traditions. Based on their different conceptions of development, self-determining societies would have their own conceptions of national interests and ends which they seek to pursue and realise through international trade. And the fact of deep value pluralism means that their interests and ends cannot simply be generalised into the augmentation of national income as suggested by James. In this regard, the problem of characterising the point of international trade as solely the augmentation of national income is that it disrespects, or at least disregards, the self-determining capacity of societies participating in international trade.

To conclude, if the point of international trade is to be characterised by interpreting the existing practice of international trade, the augmentation of national income is unlikely to be the interpretive outcome. And if James's egalitarian principles for international trade are devised to answer the question of how the income generated

by international trade ought to be distributed among trading societies, those principles are unlikely to find justification from the existing norms that govern international trade. In other words, James's theory is unsuccessful because it fails to provide a plausible characterisation of the point of international trade which functions as the standpoint upon which principles of justice are constructed.

5.5 Conclusion

This chapter has defended the culturalist theory of justice against three different types of critique—the pluralism critique, the status-quo bias critique, and the alternative interpretation critique. Within the discussion, it has also rejected some popular cosmopolitan approaches to justify global egalitarianism, such as appealing to the potential repulsive conclusions if cosmopolitanism is rejected and the attempts to ground justice on the properties shared by all persons. This chapter and the previous two chapters together offered a rather comprehensive defence for the two-tiered, internationalist conception of justice. Under this conception of justice, the liberal egalitarian constraints on the exercise and claim of private property rights proposed in Chapter Two should be interpreted as the constraints of *social* rather than global justice. This means that the priority of the disadvantaged requires a society to prioritise the interests of its disadvantaged citizens rather than the global poor; the demand for fair contribution requires individuals to make a fair financial contribution to support their society's just distributive scheme; and the requirement of membership requires that the requisite for individuals to make claims to the benefits of liberal egalitarian justice against a society is their possession of the citizenship in that society. The next three chapters further elaborate on these constraints on private property rights within an internationalist

framework and apply them to discuss three different cases of international movement of financial assets—capital outflows, profit shifting, and personal asset emigration. They argue that in each case those constraints justify a society to restrict the freedom of individuals and corporations to move their financial assets out of the country.

Chapter 6

Capital Outflows: The Case for Restrictions

6.1 Introduction

This chapter discusses the implications of liberal egalitarian justice and international justice on the outflows of financial capital. The global financial regime as it is known today is characterised by the *liberalisation* of international capital movement that gives individuals and firms largely unfettered freedom to move their financial capital out of the country *as they see fit*. Under this regime, individuals and firms in most countries, especially the developed economies, are allowed to move an unlimited amount of capital from one country to another at any time they please with minimum constraints. Their freedom is restricted only when it may threaten national security, such as investments in the military projects of a hostile country, or when it may be used for criminal purposes, such as sponsoring foreign terrorist organisations. Other than these narrowly defined constraints, individuals and firms are free to invest in foreign countries, move their production lines there, and expand their business across borders. The free international movement of capital, on the one hand, may help facilitate a more efficient global allocation of capital and accelerate economic growth in capital-scarce countries. However, on the other hand, it may hurt the workers in capital-exporting countries and poses a threat to the ideals of basic human rights and collective self-determination. This leads to the questions about whether the existing global financial regime is defensible, and in particular, whether the demands of justice would demand a society to adopt a more restrictive approach to capital outflows.

This chapter argues that a society committed to liberal egalitarianism has good reasons, of both domestic and international justice, to impose more robust constraints on the freedom of capital emigration. It is structured as follows. The next section argues that, under the demand of the priority of the disadvantaged, a society should restrict the outflows of capital to prevent the economic interests of the disadvantaged from being sacrificed for the gains of the well off. Section Three discusses the 'compensation argument' proposed by James Christensen and Aaron James which suggests that the problem identified in Section Two can be addressed through compensating the disadvantaged members for their losses caused by manufacturing relocation and offshoring. Section Four points out the egalitarian deficits of the liberalisation of capital outflows that cannot be compensated by material goods. Section Five turns the focus to international justice and argues that a society should deny capital outflows to societies where human rights violations are rampant to avoid being complicit in supporting the unjust regimes there. Section Six argues that to respect the right of self-determination of other good standing members of the international society a society ought to control the capital outflows to prevent transnational corporations from subjecting developing countries to their intervention and domination. Section Seven concludes the discussions and deals with the potential conflicts between social and international justices.

6.2 Taking from the Poor and Giving to the Rich

This section argues that the priority of the disadvantaged gives a liberal egalitarian society an obvious reason to restrict capital outflows. That is, a society should restrict the freedom of individuals and firms to move their capital out of the country to prevent the interests of the disadvantaged social members from being sacrificed for the gains of the

already well-off members. To understand the inequitable distributive effects of capital outflows, consider the negative impacts they brought to the low-skilled, low-educated workers, especially those from the manufacturing sector, in advanced economies in the past four decades.

The freedom of capital outflows creates winners and losers within developed societies. The usual winners are entrepreneurs, firm executives, fund managers, and anyone who is able to exploit the investment opportunities in foreign countries. By being allowed to move their financial assets out of the country freely, investors and firms are able to relocate their capital to countries that can generate better returns for investments. For example, firms in advanced economies can lower their production costs by relocating their production lines to developing countries where wages are low and regulations are lax. According to economists, the liberalisation of international mobility is a major contributing factor to the rapid income growth of the richest population in developed countries since the late-1970s.[1] However, such gains of the rich are often reaped at the expense of the less advantaged members of their societies. There are plenty of empirical studies showing that capital outflows are likely to worsen the life of the low-skilled, low-educated workers in advanced economies. They are made worse off by capital outflows because the relocation of capital displaces their jobs and undermines the welfare state on which they depend.

Capital relocation is often followed by job relocation. By moving their capital out of the country, corporations have also moved the jobs associated with their investments

[1] For example between 1980 and 2014 the top 1 percent earners in the U.S. saw their income grow by more than 200 percent. See Thomas Piketty, *Capital in the Twenty-First Century* (Cambridge, MA: The Belknap Press of Harvard University Press, 2014), Chapter 8; Thomas Piketty and Emmanuel Saez, "Distributional National Accounts: Methods and Estimates for the United States," in *NBER Working Paper* (National Bureau of Economic Research, 2016).

to other countries. The job displacement caused by capital outflows can be illustrated by the relocation of manufacturing jobs from developed countries to developing countries in the past four decades. Following the liberalisation of international capital flows, there has been an ongoing trend for manufacturing companies from advanced economies to offshore their production lines to developing countries in hope of taking advantage of the lower costs there. This resulted in a large scale of deindustrialisation in advanced economies and the displacement of manufacturing jobs in those countries.[2] According to François Bourguignon, since 1980 manufacturing's share of total jobs has been halved in the U.S., more than halved in the U.K., and fallen by about a third in Germany.[3] Although the loss of manufacturing jobs can be partly explained by automation, corporate downsizing, and changes in the structure of consumption, there can be no denial of the role played by offshoring. For example, Daron Acemoglu et al. estimate that manufacturing offshoring to China alone has cost the U.S. 2.0-2.4 million jobs in manufacturing between 1999 to 2011.[4] Displaced workers often experience a period, sometimes a prolonged period, of time without a stable income. And they usually find it difficult to get a new job that offers a wage comparable to their previous one. For instance, Lori G. Kletzer estimates that displaced U.S. workers, even when continuously employed,

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[2] Lori G. Kletzer, "Trade and Job Loss in Us Manufacturing, 1979-1994," in *The Impact of International Trade on Wages*, ed. Robert C. Feenstra (Chicago: Chicago University Press, 2000); *Job Loss from Imports: Measuring the Costs* (Washington DC: Institute for internaitonal economics, 2001); "Trade-Related Job Loss and Wage Insurance: A Synthetic Review," *Review of International Economics* 12, no. 5 (2004); "Globalization and Job Loss. From Manufacturing to Services," *Economic Perspectives* 29, no. 2 (2005); Dani Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy* (London: W. W. Norton & Company, 2011), 56, 87; Maarten Goos, Alan Manning, and Anna Salomons, "Explaining Job Polarization: Routine-Biased Technological Change and Offshoring," *The American Economic Review* 104, no. 8 (2014).

[3] François Bourguignon, *The Globalization of Inequality* (Princeton: Princeton University Press, 2017), 80.

[4] Daron Acemoglo et al., "Import Competition and the Great Us Employment Sag of the 2000s," *Journal of Labor Economics* 34, no. 1 (2016).

face a permanent loss of between 8 per cent to 25 per cent of pre-displacement income.[5] In short, the experience of advanced economies demonstrates that the harm inflicted by capital outflows on the manufacturing workers in capital-exporting countries is not only short-term job displacement but also the worsening of long-term economic prospects.

Apart from job displacement and wage loss, the free international capital emigration also places downward pressure on the welfare state from which many low-skilled workers have benefited. This is because the liberalisation of cross-border capital mobility creates an international tax competition that erodes the tax base for welfare spending. The exit threats by corporations and investors to move their capital out of the country would trigger a 'race to the bottom' among countries which seek to attract or retain capital investments within their jurisdictions by lowering taxes and deregulating businesses.[6] Lucas Bretschger and Frank Hettich argue that international tax competition is responsible for the steady declines in corporate tax rates in OECD countries from 1967 to 1996.[7] And Johannes Rincke and Michael Overesch estimate that, in the absence of tax competition, the mean corporate tax rate of Western European countries in 2006 would have been about 12.5% higher than its actual level.[8] The problem brought by the international tax competition to the welfare state is the erosion of governments' revenue-

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[5] Lori G. Kletzer, "Earnings after Job Displacement: Job Tenure, Industry, and Occupation," (Williamstown: Department of Economics, Williams College, 1989).

[6] Dani Rodrik, *Has Globalization Gone Too Far?* (Washington D.C.: Institute for International Economics, 1997); Lucas Bretschger and Frank Hettich, "Globalisation, Capital Mobility and Tax Competition: Theory and Evidence for Oecd Countries," *European Journal of Political Economy* 18 (2002); Nita Rudra, *Globalization and the Race to the Bottom in Developing Countries* (New York: Cambridge University Press, 2008); Hannes Winner, "Has Tax Competition Emerged in Oecd Countries? Evidence from Panel Data," *International Tax and Public Finance* 12 (2005); Johannes Rincke and Micahel Overesch, "What Drives Corporate Tax Rates Down? A Reassessment of Globalization, Tax Competition, and Dynamic Adjustment to Shocks," *The Scandinavian Journal of Economics* 113, no. 3 (2011).

[7] Bretschger and Hettich, "Globalisation, Capital Mobility and Tax Competition: Theory and Evidence for Oecd Countries."

[8] Rincke and Overesch, "What Drives Corporate Tax Rates Down? A Reassessment of Globalization, Tax Competition, and Dynamic Adjustment to Shocks."

raising capacity and their tax base for welfare spending.[9] Philipp Genschel argues that tax competition since the 1980s has systematically reduced the tax autonomy of the governments in OECD countries by preventing them from raising taxes and expanding the welfare state in response to the growing social demands.[10] And according to Tae Kuen Kim and Karen Zurlo, capital movement openness has caused a reduction in social expenditure in developed welfare states from 1980 to 2001 regardless of their welfare regime type.[11] The decline of the welfare state tends to hurt low-skilled workers more than their better-off counterparts due to the former's greater reliance on state-sponsored welfare benefits. This has put further downward pressure on the income level of low-skilled workers who are already under the threat of job displacement by international capital mobility.

The above paragraphs have shown how the freedom of capital outflows can have uneven effects on different groups within a society. That is, it can disproportionally benefit the already better-off members, including firm owners, fund managers, and bankers, while worsening the life of low-skilled, uneducated workers who are already in a disadvantaged position.[12] This uneven effect can explain the increasing income disparity and economic inequalities in many countries over the past three decades.[13] It should be

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[9] Assaf Razin, Efraim Sadka, and Chang Woon Nam, *The Decline of the Welfare State: Demography and Globalization* (Cambridge, MA: MIT Press, 2005); Tae Kuen Kim and Karen Zurlo, "How Does Economic Globalisation Affect the Welfare State? Focusing on the Mediating Effect of Welfare Regimes," *International Journal of Social Welfare* 18 (2009); Walter Korpi, "Welfare-State Regress in Western Europe: Politics, Institutions, Globalization, and Europeanization," *Annual Review of Sociology* 29, no. 589-609 (2003); Philipp Genschel, "Globalization, Tax Competition, and the Welfare State," *Politics & Society* 30, no. 2 (2002).

[10] "Globalization, Tax Competition, and the Welfare State."

[11] Kim and Zurlo, "How Does Economic Globalisation Affect the Welfare State? Focusing on the Mediating Effect of Welfare Regimes."

[12] Joseph E. Stiglitz, *Globalization and Its Discontents Revisited* (London: W. W. Norton & Company, Inc., 2018), 18.

[13] Philipp Heimberger, "Does Economic Globalisation Affect Income Inequality? A Meta-Analysis," *The World Economy* 43 (2020); Florence Jaumotte, Subir Lall, and Chris Papageorgiou, "Rising Income Inequality: Technology, or Trade and Financial Globalization?," *IMF Economic Review* 61, no. 2 (2013).

noted that the point here is not to claim that capital outflows *necessarily* benefit the rich and harm the less advantaged. No empirical research could possibly justify this very strong claim and the debate among economists over the effects of the liberalisation of international capital movement is far from settled.[14] In this regard, the empirical studies cited above only demonstrate that there is a *real possibility* for capital outflows to make the rich richer and the poor poorer. That said, this very real possibility itself would provide societies committed to liberal egalitarianism a justified reason to deny individuals and firms the unencumbered freedom to move their capital out of the country.

From a liberal egalitarian perspective, the possible uneven effects of the liberalisation of cross-border capital mobility would justify a society to impose stringent constraints on capital outflows in the name of prioritising the interests of the disadvantaged members of society. Chapter Two argued that one liberal egalitarian reason for restricting the claim and exercise of private property rights is 'the priority of the disadvantaged.'[15] Liberal egalitarian justice demands that a society should arrange its basic structure in a manner that prioritises the interests of the disadvantaged members to ensure that the institutional arrangements could be acceptable to every person in the society. And based on the culturalist conception of justice defended in Chapters Three to Five, the 'disadvantaged' whose interests should get prioritised refer to the citizens of society who have a smaller bundle of relevant goods compared to other social members.

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[14] For example of those who disagree that capital outflow would harm the less advantaged, see Tariq Banuri and Edward Amadeo, "Worlds within the Third World: Labour Market Institutions in Asia and Latin America," in *Economic Liberalization: No Panacea*, ed. Tariq Banuri (Oxford: Clarendon Press, 1991); Georffrey Garrett, *Partisan Politics in the Global Economy* (Cambridge: Cambridge University Press, 1998); Torben Iversen and Thmoas R. Cusack, "The Causes of Welfare State Expansion: Deindustrialization or Globalization?," *World Politics* 52, no. April (2000); Georffrey Garrett and Deborah Mitchell, "Globalization, Government Spending and Taxation in the Oecd," *European Journal of Political Research* 39 (2001).

[15] See Chapter 2.4.1

This means that, when a liberal egalitarian society has to make decisions over how to institutionalise private property rights, it should give absolute weight to the rational interests of the disadvantaged members governed by it over those of the more advantaged citizens. The rational interests of the disadvantaged include 1) the interest to have more rather than fewer resources, such as income and wealth, for pursuing their life plans; and 2) the interest to be publicly recognised and respected as morally equal to other social members. Interpreted in light of these two interests, the priority of the disadvantaged offers two criteria for judging whether a society should permit or restrict the freedom of individuals and firms to move their financial assets out of the country. A society is justified to liberalise capital outflows only if doing so 1) would improve, or at least not imperil, the economic well-being of the disadvantaged, and 2) would not threaten the disadvantaged members' status as morally equal to the more advantaged citizens. If any of these criteria is not met, then a society should put constraints on the freedom of capital emigration.

Based on the negative impacts capital outflows brought to low-skilled workers, the priority of the disadvantaged provides a good reason why a liberal egalitarian society should constrain the movement of financial capital out of the country. As pointed out above, capital outflows, while allowing the well-off to reap ever more income and wealth, pose serious threats to undermine blue-collar workers' job security, income, and welfare benefits. This means that low-skilled workers would have a legitimate complaint against their society if it permits frictionless capital emigration. They could rightly protest that the society has ignored its duty of justice under which it should arrange the basic structure in ways that best improve the economic prospects of those who are in disadvantaged positions. For this reason, a society that liberalises capital outflows would be unjust

because it fails to fulfil its obligation to prioritise the interests of the disadvantaged. Such a society, by permitting the economic well-being of the disadvantaged to be sacrificed for the gains of the rich and powerful, *actually* gives priority to the latter over the former. That is, it sees the interests of the more privileged members as carrying greater weight and more worth promoting than those of the less advantaged in the arrangement of the basic structure and public policy.

If this is the case, a society that liberalises capital outflows would also fail to honour its commitment to the ideal of equality which demands the basic structure to publicly recognise and respect the equal moral worth of citizens. This egalitarian demand, as discussed in Chapter Two, has a distributive and a relational interpretation.[16] According to the former, the realisation of the egalitarian ideal requires an equal distribution of the rights and liberties citizens are entitled to by virtue of their moral personality. And according to the latter, it requires an egalitarian relation in which citizens can stand to another as equals. The egalitarian ideal to which the liberalisation of capital outflows poses a threat due to its bias towards the rich over the poor is the *relational* one. By permitting the already well-off to advance their economic interests at the expense of those of the disadvantaged, a society that liberalises capital outflows would give rise to an objectionable social relation characterised by what Elizabeth Anderson calls 'the hierarchy of standing.'[17] In a relation of unequal standing, the interests of those occupying superior social or economic positions are given special weight in the arrangements of the basic structure, especially when their interests conflict with others; and the interests of those occupying inferior positions are neglected or carry little weight.[18] A society that

[16] See Chapter 2.2.
[17] Anderson, "Equality," 4.
[18] Ibid.

facilitates or maintains such an inegalitarian relation is unjust because it fails to give due recognition and respect to the disadvantaged by marginalising their interests in the arrangements of the basic structure. In this sense, it would be unjust for a society to liberalise capital outflows because, by permitting the less advantaged members' job security, income, and welfare benefits to be sacrificed for the gains of the rich, it regards the interests of the disadvantaged as less worthy, or even expendable, in face of those of the more privileged members.

One possible response to the above argument is to point out that its empirical premise relies too much on the harmful effects on the manufacturing workers in developed countries. First, it may be questioned whether the economic well-being of blue-collar workers should be the focal point for assessing capital outflows' normative acceptability. While manufacturing workers tend to be hit hardest and most directly by capital outflows, they are often not the absolute worst-off group in society. There are many people, such as those working for minimum wage or under zero-hour contracts, who are economically worse off than workers in manufacturing. If people who are in more disadvantaged positions than manufacturing workers are benefited from capital outflows, according to the priority of the disadvantaged, it seems that a society would have a legitimate reason to permit investors and firms to move their capital overseas despite the negative effects on manufacturing workers. Second, it may be questioned whether the above argument also applies to developing countries as well. Although most liberal democracies in today's world are economically developed countries, there is no necessary connection between a society's commitment to liberal egalitarian ideals and its economic development level. By focusing on the manufacturing workers in developed countries, it may be argued that it is unclear if the above argument could offer any

guidance on how a developing country committed to liberal egalitarianism should deal with capital outflows.

The response to the question of whether the focus should be shifted from manufacturing workers to the absolute worst-off groups in society is that capital outflows are unlikely to improve the situations of the latter. On the one hand, the job displacement caused by capital relocation would indirectly harm the absolute worst-off members of society. For the disappearance of manufacturing jobs would deprive the worst off of an important ladder for upward social mobility. And the increased supply of unskilled labour resulting from deindustrialisation would also place downward pressure on the wage level of low-skilled jobs, for which the worst off tend to work, by reducing the bargaining power of workers.[19] On the other hand, the threats to the welfare state brought by the free international movement of capital would likely worsen the well-being of the worst off. This is because they tend to be even more reliant on the state-sponsored welfare benefits and services than manufacturing workers in society. In short, the harm to blue-collar workers would indirectly worsen the economic well-being of the absolute worst-off groups in society. This means that even if the situations of the absolute worst-off groups, such as those working for minimum wage and zero-hour contracts, are taken into account, a society would still have a legitimate reason to control capital outflows under the priority of the disadvantaged.

The response to the question over the applicability of the above argument to developing countries is that the problems encountered by developed countries would also happen to developing countries. First, capital outflows in developing countries are always followed by job displacement as well. For example, Laurence Ball et al. argue that

[19] Stiglitz, *Globalization and Its Discontents Revisited*, 19-20.

capital flight in Latin American countries in the 1980s was a major contributing factor to the large increases in unemployment in those countries.[20] Second, the liberalisation of capital flows would also erode the welfare state in developing countries. According to Nita Rudra, developing countries integrated into the global capital market are not immune to the race to the bottom and the downward pressure it places on welfare spending.[21] She argues that the immaturity and the low institutionalisation of labour movements in developing countries made it even more difficult for the disadvantaged citizens there to defend their welfare benefits. In short, the freedom of capital outflows causes job displacement and the decline of the welfare state not only in developed countries but also in developing countries. This means that both developed and developing countries would have good reason to control capital outflows in order to protect the disadvantaged members of society.

To say that a society has a justified reason to constrain the freedom of cross-border capital movement does not necessarily mean that it should impose an outright ban on all capital outflows. The priority of the disadvantaged only justifies a society to place restrictions on capital outflows if the flight of financial assets would sacrifice the interests of disadvantaged citizens for the gains of the already privileged. The argument above is based on the premise that there is a *real possibility* for capital outflows to affect different social groups in an inequitable way. It does not deny that under some circumstances capital outflows might bring no harm to the disadvantaged members or be able to benefit everyone in the society. Thus, the priority of the disadvantaged may not justify a blanket ban on capital outflows. And a society should adopt a case-by-case

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[20] Laurence Ball, Nicolas De Roux, and Marc Hofstetter, "Unemployment in Latin America and the Caribbean," *Open Economic Review* 24 (2013).
[21] Nita Rudra, "Globalization and the Decline of the Welfare State in Less-Developed Countries," *International Organization* 56, no. 2 (2002); *Globalization and the Race to the Bottom in Developing Countries*.

approach to control the movement of capital. There could be different ways for a society to control capital outflows without an outright ban. First, a society could demand investors and firms to obtain approval before moving their capital overseas to screen out proposals and projects that would be harmful to the disadvantaged social members. Second, it could put conditions on capital outflows, say, by requiring firms to continue the operation of their factories located inside the country, or by requiring them to pay a hefty capital exit tax to help fund a social insurance scheme that aims to compensate the workers suffered from job displacement. These arrangements, on the one hand, could ensure that capital relocation would be allowed only when it could benefit the disadvantaged members of society, or at least, when it would not negatively affect their economic well-being. Also, by denying investors and firms the freedom to move their assets out of the country at their own discretion, the society could prevent the welfare state from being imperilled by the exit threats from investors and firms that erode the tax base for social spending.

6.3 Why Not Compensation?

A possible critique of the argument presented in the previous section is to argue that the inequitable distributive effects of capital outflows should not be a reason to limit the freedom of individuals and firms to move their capital out of the country. For those undesirable effects could be neutralised by compensating those who are harmed by the liberalisation of capital outflows. Call this the 'compensation argument.' This argument employs a tactic commonly used by theorists who are critical of the global economic order as it is known today but nonetheless do not want to dismantle the fundamental elements of that order. For example, Aaron James, in his discussion of global free trade,

argues that if compensation can and will be arranged, then those who lost out in market liberalisation cannot reasonably object to the global economic order.[22] He suggests that a society is justified to open its market to other countries when it adopts a proper social safety net to ensure that no person's life prospects are worse than they would have been had the society been closed to trade.[23] James's argument is echoed by James Christensen who argues that, by redistributing the gains from trade to compensate those who are harmed, free international trade can be Pareto efficient: some are made better-off while none are made worse-off.[24] Both James and Christensen do not think that barriers to free trade can never be justified, but they consider that trade barriers should be seen only as a second-best solution and only be imposed when no adequate compensatory scheme is possible.[25]

Applying the arguments of James and Christensen to the international movement of capital, it can be argued that a society should not restrict capital outflows when it can set up an adequate compensatory scheme to offset the harms done to the less advantaged members. Proponents of the compensation argument may contend that the liberalisation of capital outflows *per se* is not problematic from a liberal egalitarian perspective. This is because the reason why international capital mobility as it is known today results in the rich getting richer and the poor poorer is that governments across the globe fail to establish adequate schemes that compensate the less advantaged whose economic well-being is harmed. Their point then is that, when adequate compensatory schemes are in place, a society can liberalise capital outflows without causing undue harm to the material well-being of the disadvantaged members. From this point of view, a society that

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[22] James, *Fairness in Practice: A Social Contract for a Global Economy*, 208.
[23] Ibid., 209.
[24] Christensen, *Trade Justice*, 66-67.
[25] James, *Fairness in Practice: A Social Contract for a Global Economy*, 214; Christensen, *Trade Justice*, 71.

liberalises capital outflows cannot be accused of violating the ideal of equality if it provides sufficient compensation to those who are negatively impacted. This is because in such a society the interests of the less advantaged are not sacrificed for the gains of the already-privileged members.

Proponents of the compensation argument may further argue that their approach to addressing the potential problems of capital outflows is *superior to* the approach that favours restrictions presented in the previous section. First, they may contend that the compensation approach can avoid the accusation of levelling down that may be made against the restriction approach. They may claim that one advantage of their approach is that it can preserve the ideal of equality without denying the better off the opportunities to advance their interests by relocating their financial assets overseas. For a society can legitimately liberalise the outflows of capital as long as it provides adequate compensation to those who are negatively impacted. Second, proponents of the compensation argument may contend that their approach can actually better advance the interests of the less advantaged than the restriction approach. Their reason is that a society that takes advantage of the economic efficiency of frictionless free movement of capital across borders can achieve better economic growth and hence have more resources to improve the conditions of the disadvantaged. They may then claim that, if a society wants to advance the interests of the less advantaged, its response to the problems associated with capital outflows should not be the restriction of the freedom of cross-border capital movement, but a compensatory scheme that improves the economic well-being of the worse-off social groups.

The compensation argument has two major flaws, however. The first one is that it is self-defeating. The compensation argument depends on the success of a society to

redistribute the gains generated by international capital mobility to compensate those who are negatively affected. And this usually requires the society to strengthen its welfare state. For example, James suggests that an adequate compensatory social safety net should include 'direct payments and/or social insurance facilities, in the form of unemployment and wage insurance, pensions, education subsidies, job training and placement, employment-stimulating public investment, and so on.'[26] The problem with the compensation argument is that it ignores that the liberalisation of cross-border capital mobility would undermine the very viability of its solution to offset the harms of capital outflows. As the previous section has pointed out, the exit threats of investors and firms to move their capital out of the country would trigger a 'race to the bottom' among countries which seek to attract foreign and retain local capital by lowering their own tax rates. And this global tax competition would result in the erosion of societies' tax bases to provide welfare services and benefits. In other words, the liberalisation of capital outflows would create a power relation that rules out the very strategy proposed by the compensation argument to address the potential injustices generated by capital outflows.

The second problem of the compensation argument is that it is limited to addressing the injustices of the liberalisation of capital outflows that can be compensated by material benefits; it offers no useful response to those that cannot. The compensation argument might seem to provide a solution to the injustices discussed in the previous section because the root of those injustices is the negative impacts of capital outflows on the disadvantaged citizens' *economic* well-being, such as the loss of income and welfare benefits. In other words, a society that permits frictionless capital emigration might still be just by using compensatory measures, such as wage insurance and job training, to

[26] James, *Fairness in Practice: A Social Contract for a Global Economy*, 213.

offset the harms suffered by the disadvantaged *when* those harms are compensatable by monetary and welfare benefits. However, the worsening economic well-being is not the only harm capital outflows would inflict on low-skilled workers and not all harms can be compensated by material benefits. Other than threatening the economic prospects of the disadvantaged, another objectionable consequence of the liberalisation of capital outflows is that it enables the capital-owning class to unduly pressure the government and society at large into accepting their agendas by threatening to move their investments and capital to other countries. And the problem of enabling investors and firms to issue such exit threats is that it would lead to the inequality of *power* between the capital-owning class and other citizens, especially the poor, which threatens to corrupt the ideal of equality in both distributive and relational senses. In specific, the inequality of power would corrupt the equal distribution of fair political opportunities and create relations of domination.

The injustices of inequality of power generated by the liberalisation of capital outflows are discussed in the next section. For now, the point is that from a liberal egalitarian perspective the injustices associated with the inequality of power cannot be justified or become tolerable when the victims are 'compensated,' not least by material benefits. This is because improving the victims' material well-being would do little to eliminate or mitigate the root of their sufferings—the unequal power structure. For example, consider the injustice of subjugation that makes slavery morally objectionable. The subjugation of slaves caused by the unequal power between them and their owners would not be eliminated by a generous compensatory scheme that massively improves the slaves' economic well-being, even to the point that they are better off than they would have been had slavery been prohibited. Indeed, seeking to compensate the slaves'

subjugation with material benefits is not only impotent; it is also degrading and humiliating. In short, as the case of slavery has demonstrated, the compensation approach is not an adequate and appropriate one to address the injustices caused by an unequal power structure since it fails to fix the source of those injustices and may even add insult to the injury. For this reason, the compensation argument is unable to justify the liberalisation of capital outflows if the injustices it causes are rooted in an unequal power structure.

6.4 Exit Threats and Unequal Power

One demand of the priority of the disadvantaged is that the basic structure of society must be arranged in a way that ensures those who are in disadvantaged positions are recognised and respected as morally equal to their more privileged fellow citizens. In Section Two above, it is argued that a society that liberalises capital outflows would fail to meet this demand because, by permitting the rich and powerful to advance their interest at the expense of those of the disadvantaged, it would create an inegalitarian relation characterised by the hierarchy of standing. This section discusses two other ways the liberalisation of capital outflows would threaten the ideal of equality by enabling investors and firms to make *exit threats* against the government and society at large. It argues that the ability to make exit threats would allow the capitalist class to have significantly greater bargaining power over other social groups, particularly those who occupy disadvantaged positions. And this inequality of power would pose threats to the ideal of equality in both distributive and relational senses. Therefore, a society committed to honouring the equality of citizens would have another egalitarian reason for constraining the freedom of capital emigration.

The major threat brought by the liberalisation of capital outflows to the distributive egalitarian ideal is the threat to the equal distribution of fair political opportunities among citizens. Under liberal egalitarian justice, individual citizens are entitled to make claims to an extensive list of basic rights and liberties. And an essential right covered by the list is the right to the opportunities to participate in democratic politics and influence its outcome.[27] From a distributive egalitarian perspective, this means that a society is demanded to arrange its basic structure in a way that distributes political opportunities equally among citizens. This demand of justice should not be understood in a purely *formal* sense that simply requires a society to guarantee all citizens an equal set of formal political rights to vote, run for office, engage in public debate, and so on. For a society that secures merely the formal equality of political opportunities would still allow its political process to be pervaded by the rich and powerful who have much more resources to advance their agendas.[28] And such a society, by permitting its political process to marginalise the voices of the less advantaged, would fail to recognise and respect the equal moral worth of all citizens. Therefore, the equality of political opportunities should be understood in a more substantive sense that demands a society to guarantee every citizen the equality of *fair* opportunities to influence the outcome of democratic politics. The equality of fair political opportunities is achieved when individuals who are equally motivated and competent can have a roughly equal chance to influence the outcome of politics, which can refer to the chances to hold public office,

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[27] Thomas Christiano, "Political Equality," *Nomos* 32, Majorities and Minorities (1990) (1990); Dahl, *Democracy and Its Critics*, 84-96.

[28] Karl Marx and Friedrich Engels, *The Marx-Engels Reader*, ed. Robert C. Tucker (New York: W. W. Norton & Co., 1978), 50; Norman Daniels, "Equal Liberty and Unequal Worth of Liberty," in *Reading Rawls*, ed. Norman Daniels (New York: Basic Books, 1975).

affect the result of elections, advance public policy agendas, and so on.[29] It does not require all citizens to have what Dworkin calls the 'arithmetic' equality of influence that all persons possess the equal units of influence on some presupposed metric.[30] For it accepts that certain people in the society, such as parliamentarians, judges, and newspaper editors, would inevitably have greater political influence than others. What the equality of fair opportunities calls for instead is that citizens' chance to influence politics should be solely determined by their motivation and competence but not other irrelevant factors, including sex, religion, socio-economic status, and so on. For instance, it would not be unjust for individuals who cast a vote on election day to have greater influence than those who do not show up, but it would be unjust for a candidate to win an election simply because she has more money to buy advertisements. To realise the equality of fair political opportunities, a society cannot simply guarantee every citizen an extensive set of political rights and liberties; it also needs to facilitate favourable social and economic conditions to prevent political equality from being corrupted by irrelevant factors.

The problem with the liberalisation of capital outflows is that it would corrupt the political equality among citizens by enabling investors and firms to have undue influence within the democratic process by virtue of their ownership of capital. As pointed out above, one consequence of the liberalisation of capital outflows is that investors and firms can advance their agendas by threatening to move their investments and capital to another country. The negative impacts of capital flight on a society, such as massive job losses and falling tax revenues, would put enormous pressure on the government to give in to the interests and demands of the capital-owning class, often at

[29] The idea presented here is closely associated with Rawls's fair value of political liberties. See Rawls, *Justice as Fairness: A Restatement*, 148-49.
[30] Dworkin, *Justice for Hedgehogs*, 391.

the expense of the wishes of the less advantaged citizens. For example, Section Two above demonstrated how corporations have successfully pressured governments across the globe into lowering corporate tax rates in the past four decades despite the fact that it would undermine the financial bases for the welfare state. In short, the liberalisation of capital outflows enables investors and firms to gain incredible bargaining power over other social groups to influence the outcomes of the political process. This political power enjoyed by investors and firms poses a serious threat to the equality of fair political opportunities because it allows a citizen's political influence to be determined by whether she belongs to the capital-owning class capable of making exit threats. The working-class citizens in a society that liberalises capital outflows would find their voices being marginalised not because they are insufficiently motivated or competent, but because they are not capital owners who are able to exploit the leverage made available by the liberalisation of capital outflows. Therefore, from a distributive egalitarian perspective, a society has good reason to control capital outflows in order to prevent the equal distribution of fair political opportunities among citizens from being corrupted by the exit threats of investors and firms.

The inequality of power generated by the liberalisation of capital outflows is also problematic from a relational egalitarian perspective because it would lead to a condemnable social relation in which the capital-owning class is able to *dominate* other social groups. An account of domination was introduced in Chapter Four. To reiterate, domination exists when an agent is capable of exerting arbitrary, unchecked power over another agent.[31] A dominating agent who possesses such power is able to frustrate, replace, or manipulate the preferences and options of the dominated agent without

[31] Pettit, *Republicanism: A Theory of Freedom and Government*, 52.

reference to their interests or opinions.[32] The manifestation of domination does not require the dominating agent actually exercising arbitrary power. The agent's potential to exert that power over another agent at will is sufficient to form a relationship of domination.[33] In such a relationship, the dominated agent, by being aware of their vulnerable position, would be driven to second-guess the wishes of the dominating agent and adjust their plans and behaviours accordingly. A classic example of a relation of domination is the one between slaves and their master: the slaves are dominated by their master not only because the master can impose her will on the slaves with impunity, but also because, by being mindful of their dependence on her goodwill, the slaves are impelled to accommodating their master's desires in an attempt to avoid upsetting her.

A society that liberalises capital outflows would enable the capital-owning class to exert dominating power by, again, threatening to move their capital and business out of the country. This can be explained in two ways. First, the exit threats of investors and firms would enable them to enjoy domination in democratic politics. As argued above, investors and firms can use exit threats to pressure the government into accepting their wishes and agendas. They can do so not necessarily because they have *actually* controlled the democratic procedure and can hence interfere with its decisions at will, but because their potential to wreak havoc on the society's economy would drive the voters and government to accommodate their wishes. Fearing the job losses and economic downturn following capital flight, voters would be hesitant about electing candidates and parties that advocate higher corporate tax rates and the expansion of the welfare state, even if they agree with those policy platforms. On the other hand, to avoid upsetting the

[32] Ibid., 55.
[33] Pettit, "A Republican Law of Peoples," 68.

capitalists, the government would be propelled to enact policies in favour of their interests, such as lower tax rates and removing regulations.

Apart from the domination in politics, the second way exit threats can lead to a relation of domination is that they would enable firms to dominate their workers. The freedom of firms to relocate their business overseas at will would put the employees at the mercy of the firm owners. This is especially true for the manufacturing and back-office workers in developed countries who face stiff competition from workers in emerging economies. As Section Two has pointed out, the lower labour costs in developing countries give firms in rich countries great incentive to offshore their business operations there. The result of this is that firm owners are able to enjoy a very favourable bargaining position against their workers who feel increasingly insecure over their jobs. By being aware of their vulnerable position, workers would be hesitant to make demands against their employers and complain about their treatments. For example, factory workers may reluctantly accept lower wages out of the fear that any protests would drive the firm owner to pack up the production line and move it to a low-cost country. What makes things even worse is that, by knowing that their employees are aware of their vulnerability, firm owners would be confident that they could exploit the workers without facing much backlash. This means that they would have little incentive to track the interests of the workers when they decide to impose a salary cut or reduce employee benefits. In short, from a relational egalitarian perspective, given that the exit threats of the capital-owning class would lead to condemnable, inegalitarian social relations, a society would have good reason to control the outflows of capital. The arguments here demonstrate that, although exit threats are thought to be an important tool that can be used by the disadvantaged to counter the domination they face, when being posed by the

rich and powerful, exit threats could lead to unique forms of domination or deepen the already existing ones.[34]

To conclude, this section argued that the exit threats of investors and firms would undermine the ideal of equality, regardless of whether it is interpreted in a distributive or relational sense. The arguments above, on the one hand, support the claim in the previous section that the liberalisation of capital outflows would generate egalitarian deficits that cannot be compensated by material benefits. The unequal distribution of fair political opportunities and the relations of domination would not be eliminated even if the disadvantaged are generously compensated. On the other hand, they also point out a unique egalitarian reason for constraining the freedom of investors and firms to move their capital out of the country. The egalitarian deficits discussed above are primarily caused by the exit threats of the capital-owning class. And the liberalisation of cross-border capital mobility enables capitalists to make such threats because they are allowed to transfer their assets overseas *at their own discretion*. Therefore, for a society to maintain the ideal of equality, it would have to implement policies that deny capital owners the freedom to make unilateral, unchecked decisions over the movement of their assets. Section Two above pointed out that the possible policies can include: 1) requiring investors and firms to obtain approval before moving their capital overseas, and 2) imposing conditions on capital outflows. These policies would enable the government and society at large to scrutinise and veto the plans of investors and firms to move their capital out of the country. The exact details of the policies would need to be hammered out by the governments of different societies based on their specific circumstances. When properly enacted and implemented, the approval and condition requirements for

[34] Robert S. Taylor, *Exit Left* (Oxford: Oxford University Press, 2017).

capital outflows would significantly reduce the economic pressure investors and firms can place on the society. For the government and society would no longer need to fear the potential economic havoc wreaked by capital flight. This would help decouple political influence from the ownership of capital since investors and firms could no longer use their capital as bargaining chips to advance their own agendas. Apart from that, the removal of exit threats would also prevent firms from enjoying a dominating position against their workers by improving the latter's bargaining power. This is because firms would be more dependent on local workers when they are no longer able to freely relocate their businesses overseas.

6.5 Human Rights Violations and Complicity

The previous sections have discussed why a society committed to liberal egalitarianism has reasons to constrain capital outflows from the perspective of domestic justice. This section and the next turn the focus to the reasons derived from the principles of international justice. Chapter Four argued that a liberal egalitarian society should adhere to three principles of international justice constructed upon an interpretation of the norms and conventions that regulate the interactions between agents in the international arena. They are the principles of basic human rights, non-intervention, and non-domination. In this section, the attention is on the principle of basic human rights which demands the agents of the international society to protect the fundamental human rights of individual persons within and beyond their own borders. It argues that this principle would demand a society constrain capital outflows to countries where human rights violations are widespread and systematic. And it contends that the constraints on capital

outflows are justified even if they are unable to improve the countries' conditions of human rights and worsen the economic well-being of the individuals there.

In today's world, many recipients of international capital flows are repressive regimes. A repressive regime here refers to a polity whose basic structure is arranged in ways that sanction the state to abuse the basic human rights of its citizens. A notable example of repressive regimes that receive a huge amount of foreign capital is China. According to the data from OECD, China was the leading recipient of foreign direct investment worldwide in 2021 as it received USD 177 billion between the second half of 2020 and the first half of 2021, 28 billion more than the United States and 131 billion the United Kingdom during the same period of time.[35] While China is seen by many investors and firms as one of the most attractive destinations for their capital, it is also one of the most repressive regimes in the world. The repressive regime in China has persecuted dissents on a routine basis, cracked down on civil society, established a state-of-the-art mass surveillance system, committed genocide against Uyghurs in Xinjiang (a.k.a. East Turkistan),[36] and recently turned Hong Kong into a police state. There is no surprise that China has been consistently ranked among the lowest by different human rights indexes. For example, The CIRI Human Rights Dataset, which captures abuses that damage the physical integrity of individuals, such as torture, disappearance, and imprisonment for political beliefs, gave China a score of 3 out of 30, making it one of the lowest-ranked countries worldwide.[37] The case of China is not an isolated one. Many other countries

[35] OECD, "Global Fdi Flows Rebound to Exceed Pre-Pandemic Levels," https://www.oecd.org/investment/investment-policy/FDI-in-Figures-October-2021.pdf.
[36] Newlines Institute, "The Uyghur Genocide: An Examination of China's Breaches of the 1948 Genocide Convention," https://newlinesinstitute.org/wp-content/uploads/Chinas-Breaches-of-the-GC3-2.pdf.
[37] David L. Cingranelli, David L. Richards, and K. Chad Clay, "The Ciri Human Rights Dataset," (2014).

plagued by widespread and serious human rights abuses, such as Russia, Saudi Arabia, and the United Arab Emirates, are also popular destinations for foreign capital.

The question then is whether the principle of basic human rights demands the agents in the international society to constrain the outflows of capital to countries with widespread and serious human rights abuses. The principle of basic human rights requires that every people, defined as a collective of individuals who share a common political culture, has a duty to secure the fundamental rights of its members and those of other peoples' members. One implication of this demand is that a people, other than arranging its basic structure in ways that protect the rights of their own members, should also refrain from participating in human rights abuses against the individual members of other peoples. This does not simply require a people to avoid causing any direct harm to the rights of outsiders, but it also requires a people to not support any foreign agents or institutions that violate human rights. Interpreted in this way, the principle of basic human rights would demand a liberal egalitarian society, defined as a political entity whose basic structure reflects the collective will of a people committed to a liberal egalitarian political culture, to put constraints on capital outflows to countries whose regimes are responsible for or actively involved in serious human rights abuses, because it has a duty of international justice to refrain from being *complicit* in the abuses committed by those regimes.

Following the account of Chiara Lepora and Robert E. Goodin, to say that *A* is complicit in the wrongdoings of *B* is to mean that *A* voluntarily performs an action that *contributes* to *B*'s wrongdoings and *knows* that it does so.[38] For an agent to be complicit in

[38] Chiara Lepora and Robert E. Goodin, *On Complicity and Compromise* (New York: Oxford University Press, 2015), 82.

another agent's wrongful actions, she does not need to *participate* in those actions, that is, she does not need to join in with the wrongdoer and do her part towards the *collective end* they share.[39] Her knowingly contributory actions would be pro tanto sufficient. A knowingly contributory action consists of two elements. First, the action needs to facilitate or encourage the wrongdoer's acts without constituting the wrongdoing.[40] Second, the agent who performs the action needs to possess the knowledge of the wrongdoing and knowledge that her actions contribute towards the wrongdoing.[41] To illustrate the account of complicit spelt out here, consider the case of selling weapons to robbers. A gun merchant who sells firearms to a group of robbers may not share their intent to rob a bank and hence she cannot be regarded as taking part in a joint venture with the robbers, but by providing tools to the robbers and by knowing their intent, the merchant would be complicit in the robbery she takes no part in.

Based on the above account, a society is complicit in the human rights abuses committed by another agent, which in most cases refers to a state and its institutions, when it voluntarily and knowingly performs an action that contributes to the abuses. By permitting capital outflows to repressive regimes, a society would be complicit in the human rights violations under those regimes in three ways. First, the society would contribute to supporting the repressive regimes by enabling them to have more financial resources for carrying out repression. Second, it would contribute to offering new capital-raising channels to the firms in repressive regimes that actively participate in human rights abuses. Third, it would contribute to a norm that normalizes repressive regimes by

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[39] Ibid., 80. For an opposite view, see Christopher Kutz, *Complicity: Ethics and Law for a Collective Age* (Cambridge: Cambridge University Press, 2000), Chapter 4; Iris Marion Young, *Responsibility for Justice* (Oxford: Oxford University Press, 2011), Chapter 4.
[40] Lepora and Goodin, *On Complicity and Compromise*, 41-42; Herlinde Pauer-Studer, "Complicity and Conditions of Agency," *Journal of Applied Philosophy* 35, no. 4 (2018): 643.
[41] Lepora and Goodin, *On Complicity and Compromise*, 81.

condoning their abusive practices. Given the overflow of information in today's world, no society can use ignorance as an excuse for being unaware of the human rights abuses committed by repressive regimes and its actions' potential contributory effects to those abuses. This means that when a society contributes to the human rights abuses in other countries by permitting capital outflows to those countries, it can be assumed to do it *knowingly*. A society that pretends ignorance is either self-deluded or inept at performing due diligence.

A society that permits capital outflows to repressive regimes would support those regimes' abusive practices by bankrolling them to maintain and enhance their repressive systems. Capital inflows would enable a society to achieve higher economic growth and therefore increase its government revenue. In a just regime, the increase in revenue may result in better public services, increase welfare provisions, and enhanced social infrastructure. However, in a repressive regime, while it may still spend the increased revenues on socially and economically beneficial ways, it may also invest a (large) portion of the extra money in maintaining its repressive rule and enhancing its abusive mechanisms. For instance, the rapid economic growth in China since the mid-2000s, which was largely driven by the influx of foreign capital, has contributed to enabling the Chinese government to massively increase its budget on 'public security' (*weiwen*), which includes spending on police, domestic surveillance, armed civil militia, and other measures to monitor and crack down on public dissents, from approximately 55 billion USD in 2007 to 174 billion in 2016, a more than threefold increase.[42] With an increased budget, the Chinese government was able to establish the most expansive, and probably

[42] Adrian Zenz, "China's Domestic Security Spending: An Analysis of Available Data," *China Brief* 18, no. 4 (2018). See also Sheena Chestnut Greitens, "Rethinking China's Coercive Capacity: An Examination of Prc Domestic Security Spending, 1992–2012," *The China Quarterly* 232 (2017).

the most sophisticated, mass surveillance system in the world, intensify its settler-colonialisation efforts in Tibet and Xinjiang, and expand the staffing of its already massive security apparatus to stifle any sign of unrest. The case of China demonstrates that a society, by allowing its investors and firms to relocate their capital to a repressive regime, would run the risk of financially assisting the regime to maintain and expand its repressive capacity.

The second way a society would contribute to repressive regimes' abusive practices by permitting capital outflows to those regimes is that it would give financial support to firms that actively participate in the human rights violations there. The liberalisation of international capital movement enables investors and corporations to invest in the local firms in repressive countries. If the capital-receiving country is a reasonably just one that respects human rights, permitting investments into its local firms may not give rise to any concerns of justice. However, if the country is a repressive one, permitting investments into the firms there may be morally objectionable because there is a good chance that those firms actively and knowingly cooperate with the state in carrying out human rights abuses. In repressive regimes, such as China and Saudi Arabia, private firms are often tightly controlled by the state and closely connected to the ruling class. And some firms are propped up by the state specifically for the purpose of exerting influence in the economic sphere or carrying out specific tasks set by the ruling elites. Given their close connection to the state, local private firms in a repressive regime are sometimes deeply involved in the human rights abuses taking place there. Some of them may become part of the military-industrial complex responsible for the abuses by providing assistance to or carrying out orders from the state. For instance, several Chinese companies, including DJI, a popular drone manufacturer, Huawei, a telecom

giant, Tencent, a leading technology conglomerate, and SenseTime, a facial recognition software company, are accused of participating in the human rights abuses in Xinjiang by providing technology and services that facilitate those abuses.[43] In short, by permitting investments to be made into the firms in repressive regimes, a society would risk supporting those firms' participation and involvement in the violations of human rights.

Finally, a society that allows capital outflows to repressive regimes would contribute to the human rights violations there by reinforcing the norm of impunity that would encourage and embolden repressive regimes to continue their abusive practices. Perpetrators of human rights abuses are supposed to be condemned and punished under the international human rights regime. And among the sanctions those perpetrators should be expected to face are financial sanctions, such as an investment ban, that deny them access to any sources of financing they can utilise to continue human rights violations. The problem for a society to permit capital to be invested in repressive regimes then is that, instead of imposing financial consequences on those responsible for the atrocities, it would enable the perpetrators in those regimes to continue enjoying the economic benefits from the inflows of capital and using those benefits for repressive purposes. By failing or being unwilling to cut off the repressive regimes from its financial market, the society would be guilty of *condoning* the human rights abuses in those regimes. And its condoning of the abuses would contribute to reinforcing the norm of impunity that has been plaguing the international human rights regime.[44] This is morally troubling

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[43] Eva Dou, "Documents Link Huawei to China's Surveillance Programs," *The Washington Post* 14 December 2021; Scilla Alecci, "How China Targets Uighurs 'One by One' for Using a Mobile App," *International Consortium of Investigative Journalists* 2019; Demetri Sevastopulo and William Langley, "Us to Blacklist Eight More Chinese Companies Including Dronemaker Dji," *Financial Times* 15 December 2021.
[44] United Nations Human Rights Office, "Impunity and the Rule of Law," https://www2.ohchr.org/english/ohchrreport2011/web_version/ohchr_report2011_web/allegati/10_Impunity.pdf.

because the norm of impunity would encourage or even embolden the repressive regimes to continue their human rights violations; worse, it would undermine the deterrence of the international human rights regime and encourage future abuses. In other words, a society that permits capital outflows to repressive regimes despite their human rights abuses would send those regimes a wrong message that it would turn a blind eye to the atrocities and that the perpetrators would face no consequences for their wrongdoings.

The above has demonstrated three ways a society would be complicit in the human rights abuses in repressive regimes by permitting outflows of capital to those regimes. It would be complicit instead of a participant in the abuses because it may well not share or endorse the intentions of the repressive regimes responsible for the atrocities; it may not even have any malign intent at all. The society may simply want its firms to have more investment options and maintain a good trading relation with those regimes. The wrongness of the society does not depend on the fact that it conspires or colludes with the repressive regimes; instead, it rests on the fact that it contributes knowingly to the abuses committed by those regimes. To avoid being complicit in human rights abuses, a society should restrict the movement of capital to repressive regimes. As emphasised above, restricting capital outflows does not necessarily mean a blanket ban. There are different types of human rights abuses and the scale of those abuses varies in different countries. A society hence should calibrate the constraints it imposes on the outflows of capital to repressive regimes based on the severity of the abuses, the scale of the abuses, and the prospects of improvement. First, the severity of human rights abuses refers to how serious those abuses damage the victims' capacity to participate in collective self-determination. For example, committing genocide against an ethnic group is definitely more severe than using spyware on journalists and political activists. Second, the scale of

human rights abuses refers to how widespread and frequent those abuses are. It needs to be considered whether the abuses are systematic or isolated incidents committed by some bad apples. Third, the prospects of improvement refer to the chances of a repressive regime to improve its human rights conditions. It needs to be considered whether the regime is on a trajectory to liberalising the society and correcting its wrongdoings.

Based on these considerations, a society can decide what kinds of constraints it should impose on the outflows of capital to different repressive regimes. More robust constraints, such as a blanket investment ban, would be appropriate to control the movement of capital to repressive regimes that have committed serious and widespread human rights violations, such as genocide and systematic persecution of racial or religious minorities. On the other hand, milder forms of constraint, such as delaying or refusing to sanction investment projects, would be more suitable to deal with infrequent incidents of abuse that are less severe in nature, such as harassment of journalists and political activists. Apart from that, a society should also consider imposing less stringent constraints or relaxing the financial sanctions on repressive regimes that are on a path of transitioning into a more human rights-respecting society. There are occasions when a repressive regime seeks to embark on reforms that aim to correct past wrongdoings and allow citizens to have greater political and civic freedoms. Maybe a popular uprising has successfully toppled the incumbent government (as in the case of South Korea after the June Democratic Uprising), or maybe the liberal reformist faction of the ruling elites has prevailed in power struggles (as in the case of Taiwan after the death of Chiang Ching-kuo). However, no repressive government can be transformed into a human rights-respecting one overnight. During the period of transition, a reforming regime may still retain many of the repressive legacies left behind by the previous rulers. And its attempt

to get rid of the repressive practices and institutions may also face stiff opposition and threats from the supporters and officials of the old regime. If a repressive regime is embarking on substantial reforms, it should face less stringent financial sanctions than it would have had it shown no sign of reform. For, on the one hand, permitting financial flows to such a regime would no longer amount to an encouragement of further human rights abuses; instead, it would be a signal of encouraging further progress on reforms. On the other hand, the international society has a duty of justice to assist its members to improve their human rights conditions when they may not be able to do them on their own: a reforming regime may need external incentives and support to overcome the reactionary forces within the society.

The above has argued that a society has reason to constrain capital outflows to repressive regimes to avoid being complicit in the human rights abuses committed by those regimes. It should be emphasised that the central claim here is not that financial constraints should be applied because they can *improve* the human rights conditions in repressive regimes; instead, the point is that a society has a duty of justice not to contribute to the wrongdoings in those regimes. In other words, the above argument rests not on any positive duty to help but on a negative duty to avoid complicity. For this reason, the argument above cannot be rejected on the ground that financial sanctions may not be an effective means to improve the human rights conditions of repressive regimes. It is acknowledged that financial sanctions, and actually economic sanctions in general, against perpetrators of human rights are seldom effective to deter the perpetrators from committing further abuses.[45] One recent example is the failure of U.S.

[45] Gary C. Hufbauer et al., *Economic Sanctions Reconsidered* (Washington D.C.: Peterson Institute for International Economics, 2007); T. Clifton Morgan, Navin Bapat, and Yoshiharu Kobayashi, "The Threat and Imposition of Economic Sanctions 1945-2005: Updating the Ties Dataset," *Conflict Management and Peace Science* 31, no. 5 (2014).

sanctions to stop the human rights violations, such as ethnic cleansing, committed by both sides of the Tigray War in Ethiopia. Also, it is conceivable that repressive regimes could find alternative ways to fund their repressive policies and institutions when financial sanctions are imposed on them. For instance, after being sanctioned by the West for its human rights violations under the presidency of Nicolás Maduro, Venezuela was able to immediately find new sources of financing from other repressive regimes, such as China and Russia. Yet, the fact that financial sanctions may not help the victims of repressive regimes is not a justification for a society to continue contributing to the human rights abuses under those regimes. A society may not be able to bring positive changes, but at least it should refrain from adding insult to injury.

However, it may be argued that the problem of financial sanctions is not only that they are often useless to improve the human rights conditions of repressive regimes, but that they would contribute to the economic hardships of the victims of rights abuses in those regimes. Foreign investments are considered an important trigger of economic growth, especially for developing countries. And economic growth generally would help reduce poverty in those countries by providing employment and other economic opportunities to the poor, and by increasing government revenue to enable more money to be spent on infrastructure, health, education, etc.[46] The effect of foreign investment-driven economic growth on poverty reduction is evident in countries like China, Vietnam, and Thailand. If this is the case, a potential problem of restricting capital flows to repressive regimes is that it may leave human rights violations as they are while aggravating the economic hardships of the victims of rights abuses.[47] In other words,

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[46] David Dollar and Aart Kraay, "Growth Is Good for the Poor," *Journal of Economic Growth* (2002).
[47] Mathias Risse, "Fairness in Trade I: Obligations from Trading and the Pauper-Labor Argument," *Politics, Philosophy & Economics* 6, no. 3 (2007): 365.

financial sanctions on repressive regimes may penalise the poor living under those regimes who have already suffered from rights abuses, making their situations even worse than they would have been had no sanctions been imposed. For example, one argument against imposing an investment ban on companies involved in the human rights abuses in Xinjiang is that such a ban may end up penalising the Uyghurs by costing them their jobs. It may be argued that, given their ineffectiveness, the financial sanctions imposed on repressive regimes are nothing but a moral gesture used by a society to *signal* its non-complicity. In this view, the problem for a society to impose sanctions on repressive regimes despite the economic hardships of the victims of rights abuses there is that it may be guilty of what might be called 'moral narcissism,' that is, it sees its own moral cleanliness or purity as more important than the actual well-being of the oppressed living under repressive regimes. It may then be contended that a society should continue permitting capital outflows to repressive regimes despite their troubling human rights situations. This is because, while doing so may compromise the society's moral integrity, it would at least help alleviate the economic hardships of the victims of rights abuses in repressive regimes.

There are two responses to this counter-argument. The first one is that, although financial sanctions may be unable to improve the human rights conditions in repressive regimes, they can still have morally significant impacts by communicating a robust signal of disapproval.[48] On the one hand, such a signal may help discourage future abuses by stigmatising the repressive regimes. Financial sanctions impose not only economic costs but also reputational and legitimacy costs on repressive regimes. They exert what Cooper

[48] Bryan R. Early and Amira Jadoon, "Do Sanctions Always Stigmatize? The Effects of Economic Sanctions on Foreign Aid," *International Interactions* 42, no. 2 (2016).

Drury and Timothy Peterson call the 'outcast effect' on the sanctioned regimes that makes them ostracised and stigmatised in the international society.[49] Due to its stigmatising effect, imposing financial sanctions on repressive regimes may help counter the norm of impunity discussed above by signalling a commitment to standing up for human rights and sending a warning to potential perpetrators that human rights abuses are not going to be condoned.[50] In this sense, while a society may not improve the human rights conditions in repressive regimes by financial sanctions, it may help contribute to discouraging future abuses and preventing human rights violations from being normalised.

On the other hand, a robust signal of disapproval communicated by financial sanctions can convey solidarity with the dissenters and activists in repressive regimes. The sanctions imposed on a repressive regime for its human rights violations are often regarded as a vindication of the struggles of the dissenters and political activists in that regime who fight for greater freedom and political representation. They do not only lend credibility and legitimacy to the cause of the human rights struggles; they also signal that other agents in the international society are ready to stand up for the victims of rights abuses in that regime. This explains why human rights activists in repressive regimes are often vocal supporters of sanctions against their own countries. For instance, Bishop Desmond Tutu, risking treason charges, was a leading proponent of punitive sanctions against the Apartheid regime in South Africa.[51] And a recent example is that the democratic activists in Hong Kong, knowing that their economic prospects would likely

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[49] Cooper Drury and Timothy Peterson, "Sanctioning Violence: The Effect of Third-Party Economic Coercion on Militarized Conflict," *Journal of Conflict Resolution* 55, no. 4 (2011).
[50] Alexandra Hofer, "The Efficacy of Targeted Sanctions in Enforcing Compiance with International Law," *American Journal of International Law* 113 (2019).
[51] David Crary, "Tutu Calls for Economic Sanctions against South Africa," AP News, https://apnews.com/article/9657ea631dc8cd6ae090453489e61591.

be hurt, have repeatedly called for international sanctions against the city. In short, through imposing financial sanctions on repressive regimes, a society can contribute to supporting and encouraging the human rights struggles in those countries. This may not bring any immediate success to the struggles, but international solidarity nonetheless can be important to the long-term perseverance of the struggles in face of endless oppression and persecution. For the lack of outside recognition and support may exert a devastating demoralising effect on those who participate in the human rights struggles.

The above has demonstrated that while financial sanctions may not stop the human rights abuses in repressive regimes, they may still contribute to the promotion of human rights by countering the norm of impunity and conveying solidarity with the dissenters and activists of human rights struggles. However, this response may not be satisfactory as it only argues against the claim that a society would achieve nothing other than signalling its non-complicity by imposing financial sanctions on repressive regimes; it does not answer whether financial sanctions on repressive regimes are justified in face of the economic hardships suffered by those living under those regimes. To answer this question, it is necessary to clarify what duty of justice a liberal egalitarian society owes to the global poor. This leads to the second response to the argument against imposing financial sanctions on repressive regimes. That is, while a liberal egalitarian society has a robust duty of justice to avoid contributing to the human rights abuses in foreign countries, it has a rather limited duty of justice to alleviate the economic hardships of the poor living outside its border. Under the two-tiered, internationalist conception of justice defended in previous chapters, the principles of liberal egalitarian justice do not apply globally or internationally and the international arena is governed by a distinctive set of principles of justice that are neither liberal nor egalitarian. A liberal egalitarian society

hence has no duty of justice to improve the economic well-being in the same way it does to its own disadvantaged members. To its own disadvantaged members, the society has a duty to prioritise their interests to ensure an *egalitarian* distribution of economic goods and benefits; but to the global poor, it only has a *sufficientarian* duty to ensure that they can meet an adequate standard of living that enables them to participate in collective self-determination. In other words, under the internationalist conception of justice, a society has a duty of justice to avoid *absolute* poverty in other societies but not *relative* poverty between different societies. This means that a liberal egalitarian society has a rather limited moral obligation to address the economic hardships faced by the poor in other countries. It has a duty to only ensure that the global poor would not fall below an absolutely minimal level of economic well-being.

Given its limited duty to non-members, a society would not violate any duty of international justice if its decisions to put constraints on the capital outflows to repressive regimes would hurt the economic prospects of the poor living in those regimes, as long as the damage would not deny them from having a minimally acceptable standard of living. This, on the one hand, would justify a society to restrict capital outflows to prioritise the economic interests of its own members over those of foreigners. The first half of this chapter argues that a society has good reason to put constraints on capital outflows to protect the economic interests of its disadvantaged members. One implication of such constraints is that they may negatively impact the workers in potential recipient countries by denying them employment and other economic opportunities that would follow the inflows of capital. However, from the internationalist perspective, this would not violate any demand of justice since a society does not have a duty to improve the economic well-being of foreign nationals beyond an absolutely minimal level.

On the other hand, a society's limited duty to address the economic hardships of non-members also means that it would be justified to impose financial sanctions on repressive regimes to avoid complicity in their violations of human rights even if the sanctions would worsen the economic prospects of the citizens of those regimes. The reason is that a society would fail to honour its commitment to human rights by being complicit in the abuses in repressive regimes, but it may not violate any duty of justice by depriving the citizens in those regimes of the economic benefits and opportunities created by capital inflows. A society's decision to impose financial sanctions on repressive regimes would give rise to the concerns of justice only when the sanctions would inflict on the citizens in those regimes severe economic hardships that deprive them of a minimally acceptable level of well-being. If this is the case, it may be argued that a society has reason to continue permitting capital flows to repressive regimes where absolute poverty is rampant, given that foreign capital generally would lead to economic growth and would therefore help reduce poverty. It may also be argued that a society should stop imposing further financial sanctions on a repressive regime if they may deprive the citizens there of the access to basic necessities, such as food and medicine (for example, financial sanctions may generate inflationary pressures that make basic necessities no longer affordable to ordinary households).

These two claims may be true. There seems to be no reason for a society to impose financial sanctions on a repressive regime in the name of human rights if doing so would deny the citizens of that regime the essential socio-economic conditions for the exercise of those rights. However, if the permission for capital outflows is justified on the ground of assisting the foreign nationals suffering from absolute poverty, the legitimate destinations of capital flows would be significantly limited. A society has reason

to permit capital flows only to repressive regimes where the citizens there are unable to meet an absolutely minimal standard of living. This means that some of the major capital recipients in today's world, such as China and Saudi Arabia, would no longer be legitimate destinations of capital flows due to their level of economic development. Besides that, it is also questionable whether permitting capital outflows is the most appropriate means to address absolute poverty in other countries. First, as discussed in detail in the next section, capital inflows to developing countries may subject those countries to the domination and intervention of international firms. Second, capital investments may be too slow and ineffective to address the humanitarian crises often associated with absolute poverty, such as famine and outbreaks of disease. Therefore, if a society wants to assist the poor in repressive regimes, there may be more appropriate alternatives to permitting capital outflows to those regimes, such as humanitarian aid and injecting funding into local NGOs. It should consider permitting capital outflows only when other more appropriate alternatives are unavailable.

To conclude, this section argued that the principle of basic human rights provides a society with good reasons to control the outflows of capital to repressive regimes. It contended that a society that permits capital outflows to repressive regimes would run the risk of being complicit in the human rights abuses committed by those regimes. After that, it argued that in considering what kinds of financial sanctions a society should impose on repressive regimes, a society should take into consideration the severity of the abuses, the scale of the abuses, and the prospects of change in those regimes. Finally, it addressed the counter-argument which claims that capital outflows to repressive regimes should continue despite their troubling human rights records because they help improve the economic well-being of the victims of rights abuses. In the next section, the focus

turns to the implication of the principles of non-intervention and non-domination on capital outflows.

6.6 Interference and Domination

Other than the principle of basic human rights, international justice also requires a society to adhere to the principles of non-intervention and non-domination. The principle of non-intervention, as discussed in Chapter Four, requires the agents in the international society to refrain from interfering with the exercise of the right to collective self-determination by good-standing peoples. Under this principle, peoples should be free to decide on their own political system and their own form of social, economic, and cultural development in light of their own public conception of justice. This prohibits agents in the international society, including both states and non-state agents, from interfering with the domestic affairs of peoples through coercive means, such as the use of force and sabotage, and non-coercive means, such as manipulation. On the other hand, the principle of non-domination demands that peoples should be free from the threat of arbitrary power possessed by external agents. It argues that the threats to the freedom and independence of peoples do not only come from the *actual* intervention from outside agents but also from the *potential* of the agents to exert unchecked power on the peoples to frustrate, replace, or manipulate their preferences without reference to their interests and opinions. This means that, for peoples to exercise the right to self-determination in a meaningful sense, what needs to be eliminated are not just the acts of intervention but also the power structure that enables some agents in the international society to carry out those acts at will. In what follows, this section argues that a society should restrict capital

outflows, especially to developing countries, to prevent international firms from exerting dominating power on other societies and interfering with their domestic affairs.

Foreign capital, as pointed out above, is often regarded as a catalyst for economic growth in developing countries. It provides developing countries with a shortcut to take off their economies without the laborious process of domestic capital accumulation. Foreign capital does not only help finance local development projects, inject investments into the local economy, and generate employment opportunities for the local population; it also brings sophisticated production and organisation methods, new technologies, and connections to the international market in developing countries. However, these benefits may come with a hefty price. The reliance on foreign capital may place developing countries in a vulnerable position against transnational corporations. This can be explained in two ways. First, transnational corporations are financially much more powerful than the states in many developing countries. The net worth of leading transnational corporations is more than many states in the world. For example, the cash that Apple has on hand exceeds the GDPs of two-thirds of the countries in the world.[52] And its revenues in 2017 were higher than the GDP of Portugal in the same year. Second, developing countries, with their economies propped up by foreign capital, may depend on transnational corporations for goods, services, employment, and government revenues. No example can better illustrate such dependency than the 'banana republics' in central America, which refer to countries whose economies were largely dominated by a few transnational companies. For example, the United Fruit Company effectively controlled the economy of Guatemala between late-19th century and mid-20th centuries.

[52] Parag Khanna, "These 25 Companies Are More Powerful Than Many Countries," *Foreign Policy*, 15 March 2016.

It at one point owned 40% of the arable land, all railways, and all radio stations in the country.[53] And it earned the nickname 'El Pulpo' (the octopus) since its tentacles reached all sorts of business, from hospitals to laundries. In short, developing countries' weak financial strength and economic dependency both contribute to the imbalance of power between them and transnational corporations. And this imbalance of power may subject developing countries to the intervention and domination of transnational corporations. If this is the case, a potential problem for a society to permit capital outflows to developing countries is that by doing so it may contribute to the intervention and domination of transnational corporations in those countries.

Transnational corporations pose a threat to the collective self-determination of the peoples in developing countries because their financial strength enables them to have enormous power to interfere with the politics in those countries. The financial prowess of corporations from more developed countries can hardly be rivalled by the locals in developing countries. This means that in those countries transnational corporations are in a unique position of strength to wield political influence and advance their interests, sometimes against the will of the general public. In other words, instead of expressing the will of the peoples, the politics of countries whose economies are dominated by foreign capital often reflects the interests of transnational firms. There are different ways transnational firms can interfere with the politics in developing countries. Minor interference involves offering bribes to politicians and government officials in exchange for policy favours and tax deals.[54] More serious interference involves transnational corporations using their financial power to influence who would be in the positions of

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[53] Peter Chapman, *Jungle Capitalists* (Edinburgh: Canongate Books, 2007); Dan Koeppel, *Banana: The Fate of the Fruit That Changed the World* (New York: Hudson Street Press, 2008).
[54] Charles Goodsell, *American Corporations and Peruvian Politics* (Mass., Cambridge: Harvard University Press, 1974), 95-106.

power. They may seek to influence the election outcomes by financing the campaigns of the candidates they favour or threatening the electorate to vote for their favoured candidates with economic consequences, such as divestment. They may even make attempt to manipulate the election results into going their way. For example, after the 1970 Chilean presidential election, American corporations with vast business interests there, including International Telephone & Telegraph and Anaconda Copper, conspired to overturn the election, which was won by the socialist Salvador Allende, by attempting to buy off the members of the National Congress to confirm a more business-friendly candidate as the winner and launching a propaganda campaign against Allende through right-wing newspapers. Most extreme interference involves transnational corporations financing a coup against the incumbent government to install someone favoured by them. For example, United Fruit Company and its associates financed and conspired with the conservatives to overthrow the government in Honduras after their exploitative business plans were rejected by the liberal incumbent government.[55]

Admittedly, while transnational corporations have enormous power to interfere with the politics in developing countries, they tend to refrain from using such power, at least not in broad daylight, except in extraordinary circumstances. The more serious forms of interference, such as conspiring to overturn the result of elections and overthrow the incumbent government, are especially rare. This is because explicit political interference may lead to backlash at home and abroad as it is an obvious violation of international norms. Besides that, transnational corporations' *dominating* position in developing countries means that, more often than not, they can get things to go their way without making explicit interference. The economic dependency of developing countries

[55] Chapman, *Jungle Capitalists*.

on foreign capital to keep their economies running would put them at the mercy of transnational corporations. Fearing the *potential* economic havoc that may follow the withdrawal of capital, the governments in developing countries may feel compelled to second guess the wishes of transnational corporations and adjust their policies accordingly. For example, the governments may adopt a neoliberal economic model that champions low taxes and limited welfare provisions despite knowing that it is detrimental to the economic prospects of the working poor. Besides that, in developing countries that are democracies, voters may avoid voting for candidates who may upset foreign firms. In short, as argued in Section Four above, the exit threats of corporations to move their investments out of the country, even when they are not issued explicitly, would often be enough to pressure the government and the society at large to accommodate their wishes and desires. And transnational corporations' ability to get things to go their way by leveraging developing countries' awareness of their vulnerable position is a classic form of domination.

The above paragraphs explained how transnational corporations may subject developing countries to their interference and domination. For this reason, a society may violate the principles of non-intervention and non-domination by permitting capital outflows to developing countries. Again, this does not entail that there should be a blanket ban on capital outflows to developing countries. But a society should put appropriate constraints on the freedom of firms to invest in developing countries to ensure that the firms would not be able to leverage its financial prowess to interfere with the politics of those countries and to prevent a relationship of dependency from being developed. For example, a society may permit firms to make investments in foreign countries on the condition that they do not make political contributions to the politicians

and political parties in those countries. Besides that, it may require firms to sell off part of their assets held in foreign countries to the locals to ensure that they do not have a monopoly on the economy in those countries. There is no one-size-fits-all solution. And a society should calibrate its constraints impose on firms based on the actual circumstances of the recipient countries, such as their actual level of development and their institutional strength.

6.7 Conclusion

This chapter has argued that there are reasons of domestic and international justice for a liberal egalitarian society to impose stringent constraints on the outflows of capital. The point of the constraints is not to deny individuals and corporations the right to move their private property out of the country; instead, they are to ensure that such a right would not be exercised in ways that are incompatible with the egalitarian ideal and international justice. The arguments above demonstrate that a liberal egalitarian society would be deeply unjust by participating in the global financial regime as it is known today. As pointed out at the beginning of the chapter, the existing global financial regime gives individuals and firms unfettered freedom to move their capital out of the country as they see fit with minimum restrictions. Their freedom is limited basically only on national security and crime prevention grounds. This chapter showed that a society that participates in today's global financial regime would fail to give due respect to its disadvantaged citizens, be complicit in the human rights abuses in repressive regimes, and contribute to violating the right to collective self-determination of the peoples in developing countries.

One possible concern over the arguments in this chapter is that a liberal egalitarian society's commitments to domestic and international justice may conflict with each other. The two-tiered, internationalist conception of justice, by rejecting the global application of liberal egalitarian justice, preempted many difficult dilemmas faced by cosmopolitan egalitarianism. However, this does not prevent a society from encountering scenarios in which it finds its obligations to its own citizens being in conflict with its duties owed to the agents beyond the border. In the case of capital outflows, for example, it is conceivable that a society may be able to improve the economic prospects of its disadvantaged citizens by permitting its firms to invest in repressive regimes (provided that the firms are required to repatriate their overseas profits and contribute them to the welfare programmes). Apart from that, a society that aims to protect its disadvantaged workers by denying firms from relocating their capital overseas may deprive the poor in other countries of the means to lift themselves out of absolute poverty.

The conflicts between domestic and international justices seem particularly challenging to the two-tiered, internationalist conception of justice that is built upon a culturalist theory of justice. Recall that the central claim of the culturalist theory is that principles of justice are constructed to answer the questions of justice triggered *within* a political relation mediated by a common public political culture shared by its members. This means that each particular set of principles of justice has a domain of authority limited only to the particular relation it is meant to regulate. In this regard, the two sets of principles constructed to regulate respectively the relations of citizens in a liberal democratic society and the peoples in the international society are distinct and independent. They are distinct and independent in the sense that they do not share a common normative basis (i.e. a common public political culture) upon which a priority

order or some higher-order doctrines can be derived to settle the potential conflicts between those principles. Hence, from a culturalist perspective, the tensions and conflicts between the obligations generated by the principles of social justice and principles of international justice may be incommensurable and irreconcilable. This lack of determinacy may be considered problematic. The culturalist theory disagrees, however. For it accepts that deep value pluralism, which refers to the fundamental, unresolvable disagreements over justice among different cultures, is inevitable if individuals and peoples are seen as morally autonomous. The incommensurable conflicts between the principles of liberal egalitarian justice and of international justice are just another proof of the fact of deep value pluralism.

The fact that there may not be any higher-order doctrines or mediating principles to resolve the conflicting demands of social and international justices does not mean that a society can do nothing to deal with such conflicts. One obvious thing a society should do is that it should strive to minimise the compromises it has to make when it cannot fully satisfy two conflicting demands of justice. For example, a society that imposes an investment ban to protect local disadvantaged workers should consider providing humanitarian aid to the global poor who lack adequate access to basic necessities. This would enable the society to take its duty of social justice seriously while honouring its commitment to universal human rights. It is true that if a society spends generously on humanitarian aid, it would have less money to spend on its own welfare programmes that prove benefits and services to the disadvantaged citizens. In this regard, a society may have compromised its commitment to social justice by honouring its duty of international justice. However, compared to the mass unemployment of workers and the absolute poverty suffered by the global poor, a small dent in the welfare budget seems a reasonable

compromise to be made. In face of conflicting demands of justice that are incommensurable, a society inevitably must need to make compromises and sometimes difficult decisions. What should be expected from the society is that it should endeavour to fulfil the conflicting duties to the greatest possible extent.

Chapter 7

Offshore Finance and Fair Contribution

7.1 Introduction

This chapter discusses the injustice of tax avoidance facilitated by offshore income and asset shifting. Tax revenues are usually the most important sources of income for a country to pay for its public expenditures, such as on security, social services, welfare, and so on. For this reason, governments around the world in general have low tolerance toward individuals and firms who attempt to evade paying their shares of tax. One problem encountered by many governments to fill their coffers in today's increasingly integrated global economy is that the liberalisation of international financial movement enables very rich individuals and multinational firms to avoid paying taxes by moving their taxable income and assets to tax havens that promise financial secrecy and low, or even no, tax. Tax *avoidance* is different from tax *evasion* mainly in the sense that the latter is illegal while the former is morally questionable but perfectly legal. However, to many people, what is legal is the real scandal. While it is widely accepted that it is unjust for billionaires and multinational firms to avoid paying their shares of tax, there lacks a systematic account of the injustice of tax avoidance facilitated by today's global financial regime. The purpose of this chapter is to offer an account of why it is unjust for a society to permit individuals and firms to transfer their taxable income and assets out of the country.

This chapter is organised as follows. The next section first introduces how the liberalisation of international financial movement facilitates tax avoidance by enabling

individuals and firms to transfer their income and assets to tax havens. Section Three and Four discuss why it would be unjust for a liberal egalitarian society to permit offshore income and asset shifting in light of the demand for fair contribution. Section Three argues that the injustice of enabling tax avoidance cannot be properly explained by interpreting the duty of fair contribution as requiring individuals to make a contribution proportional to the benefits they receive from social cooperation. Section Four contends that the duty of fair contribution should instead be interpreted as demanding citizens of a society to pay their fair due to the collective pursuit of a public conception of justice. Section Five deals with the objection that liberal democratic countries today may not be entitled to deny citizens from moving their taxable income and wealth out of the country because of the injustices in their institutions and policies. Section Six concludes the chapter.

7.2 Offshore Finance and Tax Avoidance

Multinational corporations earn multi-billion profits each year, but the taxes they pay are much lower than expected. For example, according to a report from the Fair Tax Foundation, the six biggest Silicon Valley companies, including Amazon, Facebook, Google, Netflix, Apple, and Microsoft, on average paid only 15.9% of tax on their profits to the U.S. government over the period 2010 to 2017 when the statutory corporate tax rate was 35%.[1] The tax gap between what the 'Silicon Six' actually paid and what they were supposed to pay equates to USD155.9 billion of lost tax revenues for the U.S. government during that period of time.[2] In many cases, not only do multinational

[1] Fair Tax Mark, "The Silicon Six and Their $100 Billion Global Tax Gap," (Manchester: Fair Tax Foundation, 2019), 14.
[2] Ibid.

corporations pay far little than they are supposed to pay, they actually pay no tax at all. For instance, it is reported that Amazon paid no tax in Europe in 2020 despite collecting a record income of €44 billion.[3] Another example is Starbucks, which paid no tax in the U.K. between 2008 and 2011.[4] Moreover, a study from the Institute on Taxation and Economic Policy (ITEP) shows that 60 of the Fortune 500 companies paid no federal income tax in the U.S. in 2018 while making massive profits.[5] There are different reasons that explain why multinational corporations pay little or even no tax. Some may actually be involved in illegal tax evasion practices, such as making a false declaration to tax authorities. But in today's global economy where financial movement is highly liberalised, many corporations can avoid paying tax to the countries where their profits are made by simply moving their taxable income and assets to tax havens.

Tax havens refer to territories and jurisdictions that offer financial secrecy and very low to no tax for foreign investors and corporations. Notable tax havens in the world include the British Virgin Islands, Bermuda, Luxembourg, the Cayman Islands, Ireland, and so on. By moving their taxable income and assets to these countries, on the one hand, multinational corporations can pay a much lower tax rate than they would have to pay had they retained their income and assets in their home countries. For instance, a U.S. company that shifts its profits to the British Virgin Islands is subject to 0% instead of 21% of corporate tax. On the other hand, corporations can also use tax havens to hide their income and assets from the scrutiny of the tax authorities in their home countries. Some tax havens, such as the Cayman Islands and Luxembourg, have tough secrecy laws

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[3] Rupert Neate, "Amazon Had Sales Income of €44bn in Europe in 2020 but Paid No Corporation Tax," *Guardian*, 4 May 2021.
[4] Tom Bergin, "Special Report: How Starbucks Avoids Uk Taxes," *Reuters*, 15 October 2012.
[5] ITEP, "60 Profitable Fortune 500 Companies Avoided All Federal Income Taxes in 2018," https://itep.org/notadime/.

specifically designed to shield the identity of the beneficiary owners of firms. This means that a country's tax authorities would encounter huge difficulties to trace a company's income and assets if it holds them with an anonymous shell company account in a tax haven. The financial secrecy offered by tax havens can be illustrated by the fact that the world knew very little about the massive scale of offshore financing utilised by global elites and multinational corporations to hide their income and assets until the publication of the Panama Papers by the International Consortium of Investigative Journalists (ICIJ).[6]

While multinational corporations have enormous incentives to move their income and assets to tax havens, no government would allow them to do so in broad daylight. To take advantage of tax havens, multinational corporations need to engage in some unscrupulous but legal tax planning and accounting practices. The most well-known and notorious practice is 'transfer pricing,' or more accurately, transfer *mis*pricing.[7] Originally, transfer pricing refers to the rules used by multinational corporations and tax authorities for determining the prices of transactions between related companies under common control or ownership. Those rules are designed to enforce the 'arm's-length principle' according to which the intragroup transfer prices should reflect the market prices used for transactions between unrelated companies.[8] However, nowadays, the term transfer pricing is mostly used to refer to the accounting

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[6] ICIJ, "The Panama Papers: Exposing the Rogue Offshore Finance Industry," https://www.icij.org/investigations/panama-papers/. After the publication of the Panama Papers, ICIJ made further revelations in the Paradise Papers and Pandora Papers, see "Paradise Papers: Secrets of the Global Elite," https://www.icij.org/investigations/paradise-papers/; "Pandora Papers," https://www.icij.org/investigations/pandora-papers/.

[7] To have a sense of the legality of transfer pricing, search 'tax avoidance transfer pricing' on Google and there is a list of advertisements from firms that provide the service.

[8] Joel Barker, Kwadwo Asare, and Sharon Brickman, "Transfer Pricing as a Vehicle in Corporate Tax Avoidance," *The Journal of Applied Business Research* 33, no. 1 (2017): 10.

schemes that enable multinational corporations to transfer their taxable income and assets to tax havens through intragroup transactions with their offshore subsidiaries. To understand the mechanism, here is a simplified example:

> A multinational corporation *Alpha* has two subsidiaries: *Beta* and *Gamma*. *Beta* is based in the U.S. and it generates most income for *Alpha*. *Gamma* is a shell company based in the British Virgin Islands and it holds most of the intellectual property of *Alpha*, such as patents, copyrights, and trademarks. Imagine *Beta* made USD 1 million pre-tax profit. To avoid paying the 21% corporate tax rate in the U.S., *Alpha* seeks to transfer the profit to *Gamma*, which is subject to no corporate income tax under the law of the British Virgin Islands. To do so, *Alpha* arranges a license agreement between *Beta* and *Gamma* in which the former pays the latter USD 1 million each year to use its patents. After paying the licensing fee to *Gamma*, *Beta* can then declare no profit to the tax authorities in the U.S. and pays no tax. This enables *Alpha* to keep all its profit made by *Beta* in a shell company registered at a tax haven. Given that *Beta* is the only licensee of *Gamma* and there are general difficulties in determining the valuation of intellectual property, the U.S. tax authorities would find it difficult to challenge the license agreement for failing to follow the arm's-length principle. For there are no comparable transactions in the market for determining the 'fair valuation' of the patents licensed to *Beta*.

Offshore tax havens are the products of today's globalised economy. And tax-avoiding schemes such as transfer pricing are only possible in a world where cross-border financial movement is highly liberalised. The most direct impact of pervasive tax avoidance is the loss of tax revenues.[9] Alex Cobham and Petr Janský estimate that tax avoidance has resulted in global annual tax losses of USD 500 billion, which amount to over 20% of corporate tax revenues.[10] The loss of tax revenues means that governments have less to spend on public goods and services. For rich and developed countries, this may lead to the scaling down of the welfare state. For developing countries, this may

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[9] Lee Corrick, "The Taxation of Multinational Enterprises," in *Global Tax Fairness*, ed. Thomas Pogge and Krishen Mehta (Oxford: Oxford University Press, 2016), 173-74.

[10] Alex Cobham and Petr Janský, "Global Distribution of Revenue Loss from Corporate Tax Avoidance: Re-Estimation and Country Results," *Journal of International Development* 30 (2018). For a less conservative estimation, see Ernesto Crivelli, Ruud De Mooij, and Michael Kean, "Base Erosion, Profit Shifting and Developing Countries," *FinanzArchiv: Public Finance Analysis* 72, no. 3 (2016).

mean significant fiscal constraints on performing even the most basic functions of government, such as preventing hunger and stopping violence.[11] Another consequence of tax losses is that the tax burden which is supposed to be primarily borne by large firms and wealthy individuals would be shifted onto smaller businesses and ordinary citizens.[12] This would make the tax system become (even more) regressive and further widen the income and wealth inequalities between the rich and the poor.

From a liberal egalitarian perspective, a society that permits the rich and multinational corporations to avoid paying their share of taxes by using offshore tax havens would be problematic and unjust in multiple ways. First, such a society may struggle to fund the social goods and services that are essential for the realisation of justice.[13] As pointed out in Chapter Two, liberal egalitarian justice in general demands a society to provide its citizens generous welfare packages, such as universal access to affordable healthcare, free education and training opportunities for all, unemployment insurance, and so on. And whether a society can satisfy such demands depends on whether it has a steady flow of public funding. An obvious problem brought by tax avoidance to a liberal egalitarian society, hence, is that it would erode the society's tax base that provides the most important source of income for realising the demands of justice.

Second, by permitting the rich and large firms to avoid paying their share of tax, a society would enable the already advantaged to further their economic interests at the expense of the disadvantaged citizens. As pointed out above, while tax avoidance helps

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[11] Jenny Kimmis and Ruth Mayne, "Tax Havens: Releasing the Hidden Billions for Poverty Eradication," (Oxford: Oxfam International, 2000); Alex Cobham, "Tax Evasion, Tax Avoidance and Development Finance," in *QEH Working Paper Series*, ed. Queen Elizabeth House (2005).
[12] Meg Wiehe et al., "Who Pays?," (Washington DC: The Institute on Taxation & Economic Policy, 2018); Gillian Brock, *Global Justice: A Cosmopolitan Account* (Oxford: Oxford University Press, 2009), 125.
[13] Murphy and Nagel, *The Myth of Ownership: Taxes and Justice*, 79-80.

the rich and multinational corporations save billions on taxes each year, it hurts ordinary citizens by threatening their welfare benefits and putting greater tax burdens on their shoulders. In this sense, the injustice of permitting the rich and multinational firms to use offshore tax havens is similar to the injustice of liberalising capital outflows discussed in the previous chapter. That is, both of them allow the economic well-being of those in relative disadvantaged positions to be sacrificed for the gains of the already advantaged. This means that a society would violate the priority of the disadvantaged if it allowed the rich and powerful to move their taxable income and assets to tax havens. The priority of the disadvantaged requires that when a society has to make a choice between different institutional and policy options, it should 1) always prioritise the improvement of the resources and opportunities available to the disadvantaged social groups over the improvement of those in more advantaged positions, and 2) ensure that the disadvantaged citizens are recognised and respected as morally equal to their more advantaged counterparts.[14] Following the arguments in Chapter Six, a society that allows the rich to make themselves even richer by making the poor poorer would fail to satisfy both demands.[15]

But to many people, the most blatant injustice involved in the condoning of tax avoidance is that it fails to secure a *fair contribution* from the rich and powerful. From a liberal egalitarian perspective, a just society is the one that not only facilitates a social cooperation under which every member can receive a fair share of benefits created by the cooperation, but also ensures that the burdens and costs of the cooperation are fairly distributed across the participants. Taxation is among the most important tools used by

[14] For details, see Chapter 2.4.1.
[15] For details of the arguments, see Chapter 6.2 and 6.4.

a society to distribute the financial burdens and costs incurred by the demands of justice.[16] And a just society should arrange its tax system in ways that ensure every member pays her fair contribution to share the costs of social cooperation. A society that permits taxable income and assets to be transferred to tax havens through tax avoidance schemes such as transfer pricing is likely to fail to secure a fair contribution from citizens, especially the rich. The injustice of a society condoning tax avoidance by wealthy individuals and multinational firms is that it fails to respect the equality of citizens by enabling the rich to exploit other good-standing members of society, and by treating the rich as if they belonged to a privileged class on which the demand for fair contribution does not apply. It is blatantly unfair for a society to allow the rich and powerful to avoid paying their shares of tax, while doing everything it can to ensure that ordinary citizens who are unable to take advantage of tax havens would pay their shares in full and without delay.

There seems to be a widely shared intuition that it is unjust for a society to condone the use of tax avoidance schemes such as transfer pricing by the rich and powerful. Therefore, the literature on tax avoidance in recent years has predominantly focused on recommending different policies and methods that can be used by states and international organisations to secure a fair contribution from the rich and multinationals in a globalised economy.[17] However, what is missing in the literature is a systematic account of the injustice of permitting the rich and powerful to avoid taxes by capitalising on the services provided by tax havens. Such an account is important because it sheds

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[16] Colin Farrelly, "Taxation and Distributive Justice," *Political Studies Review* 2 (2004): 185.

[17] For example, see Thomas Pogge and Krishen Mehta, *Global Tax Fairness* (Oxford: Oxford University Press, 2016); Gillian Brock and Rachel McMaster, "Global Taxation and Accounting Arrangements," in *Taxation: Philosophical Perspectives*, ed. Martin O'Neill and Shepley Orr (Oxford: Oxford University Press, 2018).

light on the justification that a society can deploy to prohibit individuals and firms from transferring their taxable income and assets to their offshore accounts in tax havens. The following two sections point out that the injustice of condoning the use of tax avoidance schemes can be understood in two ways based on two different interpretations of the demand for fair contribution presented in Chapter Two—the beneficiary interpretation and the natural-duty interpretation. According to the beneficiary interpretation, the injustice rests on the failure to get the rich to pay a fair return for the benefits they receive from social cooperation. According to the natural-duty interpretation, the injustice rests on the failure to get the rich to pay their fair due to support the collective pursuit of a public conception of justice. Although both interpretations can offer a possible explanation for the injustice of permitting tax avoidance, only the natural-duty interpretation can offer a solid justification for the ban on income and profit shifting to tax havens.

7.3 Fair Contribution: The Beneficiary Interpretation

Chapter Two mentioned that one popular interpretation of the demand for fair contribution is the beneficiary interpretation according to which individuals are required to make a decent contribution to cover the costs of social cooperation in return for the benefits they receive from it.[18] According to this view, the injustice of permitting the use of tax avoidance schemes such as transfer pricing is that it allows the rich who can afford those schemes to benefit generously from social cooperation without making a fair return. In any well-functioning, reasonably just society, firms and business owners can receive a

[18] Rawls, *A Theory of Justice (Revised Edition)*, 96; White, *The Civic Minimum: On the Rights and Obligations of Economic Citizenship*; Richard J. Arneson, "The Principle of Fairness and Free-Rider Problems," *Ethics* 92, no. 4 (1982); Murphy and Nagel, *The Myth of Ownership: Taxes and Justice*, 16.

wide range of goods and services provided by the society's basic structure. To name some of them:

a. Social and economic institutions that facilitate the proper functioning of a market economy, including a system of property rights, regulations on economic transactions, a legal system that enforces contracts and settles disputes, and so on.
b. Infrastructure that strengthens economic activities, such as roads, railways, electricity, telecommunication networks (telephone and internet), and airports.
c. A publicly-funded education system that prepares and trains citizens to work in the economy.
d. Public funding for research and technological developments that can be used for economic purposes.

A social cooperation benefits firms and business owners not simply in the sense that it enables them to receive goods and use services that are publicly funded, but more importantly also in the sense that it *contributes* to their pursuits of income and profits by securing the background conditions that enable such pursuits to be possible and efficient. For example, without a legal system to enforce property rights and contracts, it is hard to envision how most economic activities would still be possible in a modern society; and without a heavily subsidised education system, it would be much more difficult and expensive for firms to recruit skilled workers. Therefore, from the perspective of the beneficiary interpretation, the demand for fair contribution requires firms and business owners to make a decent financial contribution to cover the costs of social cooperation

in return not only for the publicly funded services and goods they enjoy but also for the support they receive in their pursuits of economic interests.

For a society to secure a fair contribution from everyone, it should distribute tax burdens to different individuals and firms *proportionally* to the benefits they have respectively received from social cooperation.[19] Presumably, this means that the economically advantaged who have benefited more from social cooperation should bear a greater share of burdens than the disadvantaged.[20] For example, doctors should assume a greater burden than janitors not only due to the more expensive education the former have received but also due to the more expensive education's contribution to their higher earning potential. Besides that, the society also needs to close the loopholes that provide ways for individuals and companies to circumvent paying their fair shares of taxes. And among the policies that should be implemented is a ban on the cross-border income and profit shifting that is central to international tax avoidance schemes such as transfer pricing. Without such a ban, individuals and firms can circumvent making a fair return to social cooperation by moving their taxable income and assets to their offshore accounts in tax havens. What makes things worse is that the *only* individuals and firms that are able to take advantage of tax avoidance schemes are usually the very rich ones (individuals from a modest background and small firms simply cannot afford the expensive fees to open an account in tax havens and hire accountants to plan an avoidance scheme).[21] This means that in a society where income and profit shifting is not banned, those who are expected to shoulder the greatest shares of burdens under the

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[19] *The Myth of Ownership: Taxes and Justice*, 17; Barbara H. Fried, "The Puzzling Case for Proportionate Taxation," *Chapman Law Review* 2 (1999).
[20] Hayek, *The Constitution of Liberty*, 316.
[21] It would at least be less unfair and unjust if everyone can have the same opportunities to take advantage of tax avoidance schemes.

beneficiary interpretation may end up paying the least. To avoid enabling the rich to become a privileged class that takes advantage of the fruits of social cooperation and exempts from the duty to make a fair return, a society has a reason of justice to ensure that they cannot transfer and hide their income and assets in their offshore accounts.

The problem of the above argument, which might be called the beneficiary argument against offshore finance, is that it may not offer a solid normative foundation to condemn tax avoidance and justify a ban on the use of tax havens if the business model of multinational firms in today's world is taken into account. The central claim of the beneficiary argument is that individuals and firms should pay their fair shares of tax in return for the benefits they have received from social cooperation. However, multinational firms do not benefit from social cooperation in the same way as parochial firms which have all their businesses within a single society do. To understand why, it is necessary to understand how multinational corporations operate in today's world. In a globalised economy, multinational firms conduct business activities all over the world. They sell their products and services in other countries. Also, they have offices across the globe and recruit talents from all nationalities. Besides that, they manage highly decentralised supply chains that span across multiple countries and continents. One prominent example of the global presence of multinational corporations is Apple, a U.S. consumer electronics giant headquartered in California. Apple has offices in 27 countries, retail stores in 25 countries, and 154,000 employees worldwide.[22] The products of Apple are manufactured through complex and far-reaching supply chains. Take iPhone, an iconic Apple product, as an example. iPhone is designed in Cupertino, California and

[22] Statista, "Apple's Number of Employees in the Fiscal Years 2005 to 2021," https://www.statista.com/statistics/273439/number-of-employees-of-apple-since-2005/.

assembled mostly by Foxconn in China, but its parts and components are sourced from more than 200 suppliers in 43 countries on six continents. For instance, the iPhone's camera sensor is from Sony, a Japanese company, its DRAM from Samsung, a Korean company, and its CPU from TSMC, a Taiwanese company.[23] And the parts and components provided by these companies are made from raw materials sourced from countries on different continents, such as Congo, Mongolia, and Russia.[24]

The case of Apple demonstrates that behind the profits of multinational firms is not the social cooperation within a single society but multiple social cooperation*s* in different countries across the globe. For firms that have offshored most of their operations and production lines to other countries, they may not benefit from the social cooperation of the society where their profits are made as much as parochial firms that conduct all their economic activities within the same country. To illustrate, imagine there are two U.S. furniture companies—*Paro* and *Cosmo*. Assume that, all other things being equal, the only difference between the two companies is that the former is a parochial firm while the latter is a multinational. *Paro* is based in the U.S. and conducts all its business activities within the border. It has a back office in Los Angeles, receives loans from a New York bank, sources timber from Maine, hires local designers trained in Boston, and manufactures the final products in North Carolina. On the other hand, *Cosmo* is also based in the U.S. but offshores most operations to multiple countries on different continents. It sets up its back office in New Delhi, secures loans from a London bank, sources timber from Nepal, outsources design works to a group of French designers living in Paris, and assembles the final products in Shenzhen.

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[23] Magdalena Petrova, "We Traced What It Takes to Make an Iphone, from Its Initial Design to the Components and Raw Materials Needed to Make It a Reality," https://www.cnbc.com/2018/12/13/inside-apple-iphone-where-parts-and-materials-come-from.html.
[24] Ibid.

Among the two companies, *Paro* obviously benefits more from the social cooperation in the U.S. than *Cosmo* does. For example, while *Paro* benefits from the U.S. education and training system that produces workers to design and assemble its products, *Cosmo* benefits from the systems in France and China instead. In this regard, following the beneficiary interpretation of fair contribution, it can be argued that the fair return *Cosmo* owes to the social cooperation in the U.S. should be less than *Paro* does. Imagine that both companies made the same amount of pre-tax profit and both are subject to the 21% corporate tax in the U.S. In this case, *Cosmo* seems to have a legitimate complaint of horizontal inequity that it is unfair to ask it to pay the same rate that applies to *Paro* given that the social cooperation in the U.S. has not contributed to its profit as much as it has to *Paro*'s profit.[25] According to the beneficiary interpretation of fair contribution, the tax burdens each firm should share ought to be *proportional* to the benefits it receives from social cooperation, meaning that those who benefited less should shoulder a small share of burdens than those who benefited more. For instance, since *Cosmo* benefits less than *Paro* from the U.S. education system that produces skilled workers, the former should be asked to pay less than the latter to cover the costs of public education expenditure. If the 21% corporate tax rate in the U.S. represents the rate that parochial firms like *Paro* are expected to pay in return for the benefits they receive from the U.S. social cooperation, following the logic of the beneficiary interpretation, it would be unfair to demand *Cosmo* to pay the full rate of tax.

The point here is that *Cosmo* may not violate its duty to make a fair return owed to the U.S. social cooperation, if it decides to move its taxable profit to a tax haven and

[25] Murphy and Nagel, *The Myth of Ownership: Taxes and Justice*, 38.

avoid paying the full rate of tax levied on it.[26] It would still violate its duty if its tax avoidance scheme enables it to reduce its effective tax rate to zero. This is because while it benefits less than a parochial firm like *Paro* does from the U.S. social cooperation, it benefits from it nonetheless. For this reason, it still has a duty to make a fair return. However, if the tax avoidance scheme only enables *Cosmo* to reduce its effective tax rate from 21% to, say, 15%, then it would be much less clear whether it has actually failed to make a fair return on the benefits it receives from the U.S. social cooperation. This is because, following the beneficiary interpretation of fair return, the fact that the U.S. social cooperation contributes less to *Cosmo*'s profit than it does to the profits of parochial firms like *Paro* means that the share of tax burdens the former should bear ought to be smaller than those borne by the latter. It is debatable whether the reduced rate paid by *Cosmo* actually reflects a fair return to the benefits it receives. This would involve a potentially complex and knotty calculation to weigh how much the U.S. social cooperation has contributed to its profits compared to the contribution from foreign countries. But the uncertainty here is enough to show that under the beneficiary interpretation of fair contribution shifting taxable income to tax havens may not violate the duty to make a fair return. In this regard, the beneficiary interpretation may not provide a solid, clear-cut

[26] It needs to be emphasised that the point of the above critique is not that multinational firms which capitalise on tax havens cannot be accused of failing to meet the demand for fair contribution given the lack of a clear case of justice for liberal democratic societies to impose a ban on the use of tax havens. They can. From the perspective of the beneficiary interpretation of fair contribution, the fact that multinational firms have benefited from multiple social cooperations in different societies across the global means that they should make fair returns proportional to the benefits they have received from those societies respectively. For this reason, the practice of multinational corporations to hide their profits in tax havens may still give rise to the concern of unfairness. Take *Cosmo* as an example again. Imagine that it moves a portion of taxable income to a tax haven and reduces its actual tax rate from the supposed 21% to 15%. As pointed out above, the U.S. tax authorities may have troubles to argue that *Cosmo* has acted unfairly. However, it does not follow that *Cosmo* would not violate the demand for fair contribution by using tax havens. This is because according to the beneficiary argument, the foreign countries that have benefited *Cosmo*, including India, Nepal, France, and China, are all entitled to a fair return for their contribution to its income and profits. Therefore, depending on the principles of justice adopted by each country, *Cosmo* may act unfairly if it attempts to avoid paying its fair returns to these countries by keeping its profits in offshore shell companies.

normative basis to justify imposing a ban on multinational corporations whose business model is similar to *Cosmo* from moving a portion, not all, of their taxable income and profits to tax havens.

The case above is no doubt an oversimplified one, but the point should be clear. The challenge posed by multinational firms' mode of operation in today's world to the beneficiary argument is that the beneficiary interpretation of fair contribution actually provides a legitimate reason for those firms to refuse to pay the full tax rate levied on them. In other words, under the beneficiary interpretation, some forms of tax avoidance may be compatible with the demand for fair contribution. The problem here is not that the beneficiary argument offers no justification against the use of tax havens at all. This is not the case because the argument should still be able to offer a strong case for banning parochial firms from transferring any and multinational firms from moving all taxable income to tax havens. Instead, the problem is that the beneficiary argument is not able to offer an unequivocal justification for societies to impose a ban on a common practice of tax avoidance in today's world. Many multinational corporations, such as Apple and Microsoft, use tax avoidance schemes such as transfer pricing to lower their effective tax rates without turning them into zero. They continue paying taxes but only not at their full rates. Applying the *Cosmo* example above, those firms may not have violated their duty to make a fair return by avoiding paying the full tax rates. This is because their globalised operation model suggests that they should bear smaller tax burdens compared to parochial firms whose profits rely heavily on the benefits provided by domestic social cooperation. Whether multinational firms in today's world can *actually* have a legitimate reason to avoid paying their taxes in full would no doubt depend on many other factors

and the empirical picture is too complex for this section to explore in any great detail.[27] That said, what should be clear is that the beneficiary interpretation of fair contribution offers a plausible reason for multinational corporations in today's world to defend their tax-avoiding practices against the criticism that they have failed to pay their fair share.

One possible response to the above challenge is to point out that the reason why societies today may not have a solid and clear-cut case against the tax-avoiding practices by multinational firms is that their tax systems are not arranged according to the beneficiary interpretation of fair contribution in the first place. In other words, the reason why multinational corporations may have a defence for their seemingly problematic practices is that the tax systems in the real world are unjust. The tax rates in most countries today are set based on the earning and income levels of individuals and firms. However, according to the beneficiary interpretation, this is not how tax rates ought to be determined; instead, the rates should be determined based on the actual benefits individuals and firms have received from social cooperation. In this regard, the rates should vary from person to person and firm to firm based on how much they have benefited from social cooperation. It may be argued that in an *ideal* world where a society's tax rates are set in a way that follows the beneficiary interpretation of fair contribution, the challenge above would no longer make sense. It may then be contended that if the societies in the real world reform their tax systems in accordance with the demand of the beneficiary interpretation, they should have a clear-cut, justified reason to impose a ban on the income and profit shifting to tax havens across the broad.

[27] For the potential complexity of calculating a fair return, see Murphy and Nagel, *The Myth of Ownership: Taxes and Justice*, 18.

This may be true. However, the ideal tax system that is arranged according to the beneficiary interpretation of fair contribution is hardly a just one from the liberal egalitarian perspective in the first place. The justice of taxation should not be seen as a separate and self-contained issue; rather, it should be evaluated by how it contributes to a just distributive scheme, which includes the distribution of both benefits and burdens, implemented by the society to satisfy the demands of justice.[28] As argued by Murphy and Nagel, what matters 'is not whether taxes—considered in themselves—are justly imposed, but rather whether the totality of government's treatment of its subjects, its expenditures along with its taxes, is just.'[29] To determine whether a tax system is appropriate for a liberal egalitarian society, it is necessary to decide whether the system can contribute to or undermine the just distributive scheme of the society's basic structure. In this regard, the beneficiary interpretation of fair contribution is not an appropriate guiding principle for a liberal egalitarian society's tax system because it conflicts with the demand of justice. A tax system arranged according to the beneficiary interpretation would burden people with taxes in proportion to the benefits they receive from social cooperation. One problematic demand under such a system is that poor people who rely on the publicly funded welfare provision would be expected to make a fair return for the goods and services they receive. This demand is problematic because it defeats the purposes of welfare provision in liberal egalitarian justice.

From a liberal egalitarian perspective, there are two reasons why a just society should provide welfare to citizens, especially the poor. The first one is to ensure that individuals can develop and maintain their autonomy regardless of personal

[28] Ibid., 14.
[29] Ibid., 25.

circumstances (the autonomy purpose). Publicly funded welfare provision is essential for the poor to obtain the resources and opportunities, such as healthcare and education, for them to develop and exercise their moral powers. This is because poor people often cannot afford those resources and opportunities on their own. Therefore, liberal egalitarian justice generally demands that a decent level of welfare is provided unconditionally.[30] The second reason why a just liberal egalitarian society should provide publicly funded welfare is to narrow the social and economic inequalities in the society (the equality purpose). By taxing the rich and providing generous welfare to the poor, a society can reduce the social and economic gaps between the rich and the poor. Welfare does not only improve the material well-being of the poor; it also helps cultivate their capacities that would enable them to have better social and economic opportunities.

However, if a society's tax system is arranged according to the beneficiary interpretation of fair contribution, both purposes of welfare provision would be defeated. Under such a system, poor people would be required to make a fair return for the welfare goods they receive. This demand would defeat the autonomy purpose because poor people would be deterred from seeking welfare goods and services out of the fear that they cannot afford to pay. In other words, such a demand would effectively deny poor people the resources and opportunities that enable them to develop and exercise their moral powers. The next chapter provides a more detailed discussion on the deterring effect of demanding a fair return from welfare recipients. Besides that, demanding that the poor repay the welfare benefits they receive would also defeat the equality purpose by neutralising the equalising effect of tax and transfer policy. If the purpose of providing

[30] Shlomi Segall, "Unconditional Welfare Benefits and the Principle of Reciprocity," *Politics, philosophy & economics* 4, no. 3 (2005).

welfare to the poor is to narrow the social and economic gaps between them and the rich, it is simply pointless to impose taxes that would widen those gaps. In short, as Murphy and Nagel bluntly declare, the beneficiary interpretation of fair contribution is 'incompatible, as a matter of political morality, with every account of social justice that requires the government to provide any kind of income support or welfare provision whatsoever to the destitute.'[31]

To conclude, this section has argued that the beneficiary interpretation of fair contribution is unable to provide a solid justification for a society to prohibit multinational corporations which have offshored their business activities across the globe from moving part of their taxable income and profits to tax havens. It has also pointed out that the beneficiary interpretation itself is not an appropriate principle to guide the arrangement of a society's tax system due to its tension with liberal egalitarian justice. Therefore, if there is a widely shared intuition that it is morally unacceptable for multinational firms to avoid tax and that it is unjust for a society to condone such practices, this intuition cannot be explained by the beneficiary argument. The next section seeks to offer a more plausible alternative argument by focusing on the duty of the members of society to support a just basic structure that is arranged according to the public conception of justice.

7.4 Fair Contribution: The Natural-Duty Interpretation

As pointed out in Chapter Two, another reason why individuals and firms should make a fair contribution to support a just basic structure is that they have a duty to support the basic structure that is arranged according to a publicly justified conception of justice. Call

[31] Murphy and Nagel, *The Myth of Ownership: Taxes and Justice*, 19-20.

this the natural-duty interpretation of fair contribution. Following the culturalist theory of justice defended in the first half of the thesis, a just basic structure is one that is arranged according to the principles of justice that are justified upon a critical interpretation of the society's public political culture.[32] A just basic structure has the moral authority to demand compliance and support from the members of society because it meets the conditions of legitimacy that are expressed by the political norms and considered judgements deeply held by those members. And this moral authority imposes a duty of justice on the members of society to support and comply with the just institutions that exist and apply to them.[33] The duty of justice can generate different demands. Among those demands is that citizens are required to share the financial costs for establishing and sustaining just institutions. In this regard, taxation is a mechanism for a society to distribute across the society the financial burdens citizens are expected to shoulder due to their duty of justice.

In Chapter Two it is pointed out that, from the perspective of the natural-duty interpretation, what counts as a fair distribution of financial burdens among citizens cannot be determined independently of the society's public conception of justice. This is due to two reasons. First, the institutions that distribute the burdens are part of the basic structure that is subject to the demands of a public conception of justice. Second, the distribution of burdens has impacts on whether the basic structure, considered as a whole, can achieve a distributive scheme that satisfies the demands of justice. The point here is that if the moral basis for a society to levy taxes is that its basic structure is arranged in accordance with the demands of a public conception of justice, the way it distributes the

[32] See Chapter 4 for details.
[33] Rawls, *A Theory of Justice (Revised Edition)*, 99.

financial burdens must also be justified in light of those demands. In this view, a society's distribution of financial burdens is fair when it can contribute to the society's public conception of justice. And this means that in a society where liberal egalitarianism is the justified conception of justice, a fair distribution of burdens should contribute to a distributive scheme that 1) enables the disadvantaged to have more resources to pursue their life plans and 2) ensures the moral equality between the disadvantaged and their more advantaged counterparts. The satisfaction of these two demands requires the tax system of a liberal egalitarian society to be arranged in ways that place greater burdens on the more advantaged, defined by their financial capacity, rather than the disadvantaged. In other words, a just tax system from a liberal egalitarian perspective should be a progressive one that distributes tax burdens proportional to one's financial ability to pay. This is due to two reasons. First, combined with generous provisions of welfare benefits, placing smaller tax burdens on the less advantaged can help improve their resources and opportunities for pursuing their own life plans. Second, progressive taxation can help narrow the income and wealth inequalities that threaten the egalitarian ideal.[34]

In short, the natural-duty interpretation of the demand for fair contribution requires every member of a liberal egalitarian society to pay a fair share of the costs of social cooperation because they have a duty of justice to support the basic structure justified upon the shared public political culture of their society. And each member's fair share of burden should be proportional to her income and wealth level, with the result that the rich bear greater burdens than the poor. In order to secure a fair contribution from every citizen, a society should introduce progressive tax rates, but it is not enough. This is because international tax avoidance schemes such as transfer pricing would enable

[34] See Chapter 2.4.2 for details.

individuals and firms, especially the rich ones, to circumvent paying their fair shares and turn a de jure progressive tax system into a de facto regressive one.[35] In societies where the use of tax havens by the rich is pervasive, tax burdens would be shifted towards small business owners and ordinary citizens who cannot afford the expensive fees for using the services provided by tax havens.[36] In other words, the rich's capitalising on tax havens in effect would create a regressive and inequitable tax system under which the middle-class and the poor pay a higher effective tax rate than the rich. Therefore, other than a progressive tax system, a society also needs to introduce policies to crack down on tax avoidance schemes. Among the policies that should be implemented is a ban on individuals and firms from transferring their taxable income and assets to tax havens. Without such a ban, a society would risk being unjust by condoning tax avoidance and failing to secure a fair contribution from citizens to support the collective pursuit of a public conception of justice.

The injustice of a society that condones tax avoidance can be elaborated in two ways. First, such a society fails to respect citizens as equals. As pointed out above, international tax avoidance schemes are expensive and usually are only affordable to the rich. This means that by condoning those schemes, a society permits a tax loophole that can only be taken advantage of by the rich. The injustice of a society that condones the rich to exploit such a loophole is that it treats the rich as if they belonged to a privileged social class that is exempted from the duty of justice imposed on everyone else in the society. This poses a threat to the relational equality that is fundamental to the liberal

[35] For example, the U.S. has a nominally progressive tax system, but avoidance schemes have turned it into a regressive one in practice. See Emmanuel Saez and Gabriel Zucma, "The Rise of Income and Wealth Inequality in America: Evidence from Distributional Macroeconomic Accounts," *Journal of Economic Perspectives* 34, no. 4 (2020): 18.
[36] Corrick, "The Taxation of Multinational Enterprises," 174.

egalitarian ideal. For the rich are allowed to relate to the less advantaged citizens as superior, rather than equal. Second, the failure to secure a fair contribution from the rich also significantly hinders a society's capacity to realise distributive justice. The above has pointed out that one consequence of tax avoidance by the rich is that the share of tax they are supposed to shoulder would be shifted towards the less advantaged citizens. This would create two problems for the realisation of liberal egalitarian justice. On the one hand, the heavier financial burdens placed on the poor would neutralise the effects of welfare provision on advancing their economic well-being. The economic prospects of the less advantaged citizens would not be improved by the generous provision of welfare if they are saddled with heavy tax bills. On the other hand, shifting the tax burdens onto the less advantaged would also intensify the economic gap between the rich and the poor in society. In this regard, a society that condones tax avoidance by the rich would find it even more difficult to prevent the economic inequalities from becoming excessive and threatening the ideal of equality under which citizens, regardless of their socio-economic backgrounds, should stand to each other as equals.[37]

The above has explained how the natural-duty interpretation of fair contribution provides a liberal egalitarian society with a reason of justice to prohibit income and profit shifting to tax havens. Call this the natural-duty argument against offshore finance. This argument can avoid the problems encountered by the beneficiary argument discussed in the previous section. First, the natural-duty argument can demand individuals and firms to pay their fair tax rates in full even if their income and profits can be partially attributed to the benefits they have received in other countries. Unlike the beneficiary argument, the moral foundation of the natural-duty argument does not rest on the benefits citizens

[37] For details, see Chapter 2.3

have received from social cooperation (though a just basic structure almost certainly benefits everyone in the society). Instead, it rests on citizens' duty to support the just basic structure arranged according to a public conception of justice that is justified to them. From the perspective of the natural-duty argument, the fact that in a globalised economy multinational corporations often offshore their operations to foreign countries is irrelevant. As long as the basic structure of their society is a just one that has the authority to command their support, they have a duty to shoulder a fair share of the costs generated by just institutions and policies.

Second, the ideal tax system according to the natural-duty interpretation of fair contribution is compatible with the realisation of liberal egalitarian justice. The fundamental problem of the beneficiary interpretation of fair contribution is that it is not an appropriate principle to be applied to guide the arrangement of any liberal egalitarian society's tax system. The reason is that a tax system arranged in accordance with the beneficiary interpretation is likely to be incompatible with the just distributive scheme demanded by liberal egalitarian justice. This problem is avoided by the natural-duty interpretation under which the account of fair distribution of financial burdens is informed by a society's public conception of justice. From the natural-duty interpretation's perspective, the moral authority of a society to demand fair financial contribution from citizens is justified upon its basic structure being arranged in accordance with a conception of justice that is publicly justified. For the society to maintain its authority, it needs to also arrange its tax system in a way that would not undermine the justice of the basic structure. In other words, the natural-duty interpretation of fair distribution does not presume any distributive pattern like the

beneficiary interpretation does. And this enables it to be compatible with different conceptions of justice including liberal egalitarianism.

A couple of things about the natural-duty argument need further elaboration. The first one is the obligations of multinational firms and foreigners who make money in the society. The natural-duty argument claims that *citizens* have a duty to make a fair contribution to share the costs of the society's basic structure when it is arranged according to a publicly justified conception of justice. Citizens have such a duty because the basic structure of their society meets the conditions of legitimacy ingrained in their shared public political culture. This gives rise to the questions over how the demand for fair contribution can apply to firms which are not autonomous agents capable of internalising a political culture and foreigners who do not share the relevant political culture. In response, it can be argued that the duty to make a fair contribution can still apply to them because a society has the right to define what rights and obligations apply to firms and foreigners in light of its public conception of justice. First, a society should have the right to decide foreigners' obligations within its border as long as it does not violate their basic human rights. This is a right to which a good-standing political society is entitled under the principle of the right to self-determination. Foreigners who enter the country and stay willingly can be seen as accepting their terms of stay and they are therefore under a duty to follow those terms. The next chapter elaborates on this in greater detail. A society's right to set the terms of stay of foreigners entails that it has the right to request foreigners to financially support its basic structure. In a liberal egalitarian society, this means that foreigners who reside in the society can be asked to share the financial burdens created by a distributive scheme that prioritises the life prospects of the disadvantaged citizens. Second, a society also has the right to define the obligations of

firms and impose tax duties on them. Firms are legal persons whose rights and obligations are created and defined by a society's laws. And a reasonably just society has the right to arrange and adjust its law in light of its public conception of justice. This means that, in a liberal egalitarian society, its basic structure can impose a duty on firms to demand them share the tax burdens and finance the society's just institutions and policies. When a company is set up, its owners have agreed to its potential burdens. Similar to the case of foreigners, the obligation of firms to make a fair contribution comes from two sources: the right of a reasonably just society to decide the terms that apply to them and the firm owners' acceptance of those terms.

The second thing that needs further clarification is that the justification offered by the argument is conditional. According to the natural-duty argument, having a just basic structure is the prerequisite for a society to justify prohibiting individuals and firms from moving their taxable income and assets to tax havens. A society with an unjust basic structure would damage, or even lose, its moral authority to demand compliance and support from its citizens. The members of society should not be under any obligation to support unjust institutions and policies, either financially or through other means. Instead of offering compliance, they actually have a duty of justice to seek positive changes to an unjust system, at least when they can do so without excessive costs to themselves.[38] This means that an unjust society may not be entitled to demand financial contribution from its citizens and the taxes levied on them may be unjustified. It follows that such a society may have no right to prohibit its citizens from moving their taxable income and assets to tax havens under the natural-duty argument. In other words, the natural-duty argument does not see the use of tax havens as morally objectionable per se. Whether a society has

[38] Rawls, *A Theory of Justice (Revised Edition)*, 99.

a reason of justice to condemn tax avoidance depends on whether its institutions and policies on which tax money is spent are just or not. Apart from that, the natural-duty argument also does not reject that tax havens can be used for good under some circumstances. For example, it accepts that the existence of tax havens may enable citizens to avoid financially contributing to the injustices of their society's basic structure by providing them with a way to dodge taxes. It also accepts that the financial secrecy offered by tax havens can be useful for human rights activists and revolutionaries in repressive regimes to hide their financial resources and foreign aid from the scrutiny of their own government. In short, the natural-duty argument condemns tax avoidance by the use of tax havens or other means only to the extent when it happens within a just regime. It denies a repressive regime any rightful complaint against its citizens for refusing to financially support its unjust institutions and policies. If this is the case, then the implication of the natural-duty argument in the real world may not be straightforward because it seems that no society today is a fully just one from a liberal egalitarian perspective. This concern is addressed in the next section.

7.5 Partially Just Societies

When applying the natural-duty argument to the real world, it may be argued that if a society's right to ban the use of tax havens hinges upon its basic structure being just, then many liberal democratic societies today may not have a reason of justice to impose such a ban due to the injustices in their basic structure. This may be the case. However, not all injustices are created equal and it is necessary to distinguish different kinds of injustice before making the judgment over the legitimacy of a society to impose a ban on the use of offshore financial centres. On the one hand, there are cases of injustices that do not

undermine a society's moral authority to demand financial contribution from citizens and its right to prohibit the use of tax havens. From a liberal egalitarian perspective, the most visible injustice that can be found in the basic structures of liberal democratic societies today is excessive income and wealth inequalities that threaten the egalitarian ideal. And such inequalities are considered to be the root cause of other kinds of injustice, such as racism, cross-generational poverty, the domination of the rich in politics, inadequate public service provision, etc. The injustice of economic inequalities does not undermine a society's right to prohibit its citizens from moving their income and assets out of the country. For among the reasons behind the injustice is exactly that the use of tax havens by the rich and powerful has intensified the income gap in society and has undermined the capacity of society to carry out redistributive policies. In a society where economic inequalities are rampant, the demand of justice would require the basic structure to implement measures to ensure that the advantaged members would pay their fair shares. And among the measures is a ban on the transfer of taxable income and assets to tax havens. In other words, the economic injustice which is common in today's liberal democratic societies actually confirms, rather than undermines, the moral authority of those societies to curb the use of tax havens in order to secure the fair contribution from the rich and multinationals.

On the other hand, there are cases of injustices which would no doubt undermine a society's right to demand contribution and hence its legitimacy to prohibit income and asset transfer to tax havens. Among those cases, the most obvious one is the violation of liberal rights and liberties. For example, consider an otherwise just liberal democratic society actively persecuting ethnic minorities and sponsoring racist paramilitary groups to harass the members of those minorities (An approximate real-world example would

be the U.K.'s discriminatory and oppressive policies against the Catholic minority in Northern Ireland before the end of 1990s). There is no justification for the society to require its citizens to finance the persecution and harassment of racial minorities. And for this reason, its moral authority to crack down on tax avoidance by prohibiting the use of tax havens would be put into doubt. For the society's unjust treatment of racial minorities is not entitled to command contribution from its citizens in the first place. The point here is that unjust institutions and policies, such as those violating liberal rights and liberties, have no authority to command financial contributions from citizens. For this reason, if a society's basic structure contains such unjust institutions and policies, its right to levy taxes and crackdown on the use of tax havens would be undermined. To ensure that its authority to collect tax revenues from citizens is not undercut, *ideally*, such a society should reform its basic structure to root out its unjust elements. However, in the real world, substantial reforms in partially just societies are not always possible due to non-ideal, unfavourable social and political conditions, such as the lack of political will and widespread public opposition.[39] And even if reforms are possible, they always take years to come to fruition. Assuming that their unjust institutions and policies are here to stay in the foreseeable future, this leads to the question of the extent to which partially just societies, like the liberal democracies in today's world, can retain the moral authority to demand financial contribution from their citizens and ban the use of tax havens for tax avoidance purposes.

An obvious response to the question is that a partially just society should retain a *partial* right to demand citizens make a financial contribution to support what remains

[39] For the discussion on the issue of non-compliance, see ibid., 8; Zofia Stemplowska and Adam Swift, "Ideal and Non-Ideal Theory," in *The Oxford Handbook of Political Philosophy*, ed. David Estlund (Oxford: Oxford University Press, 2012), 375.

just in the basic structure. A partially just society here refers to a society with a basic structure that is otherwise fully just by the standards of liberal egalitarian justice but contains some persistently unjust institutions and policies. It can be argued that although it is true that such a society's unjust practices should have no right to command citizens' support, it does not change the fact that the just institutions and policies in the same society should still be entitled to the contribution from citizens. In other words, as long as the society is not thoroughly unjust, it should still have the moral authority to demand that its citizens contribute to supporting the institutions and policies that remain just. For instance, imagine an otherwise just society spends 10% of its annual government budget on the persecution of ethnic minorities. While the society has no legitimate claim against its citizens for that part of the budget, it should still be entitled to demand them to pay for the remaining 90% of the budget allocated to just institutions and policies. Therefore, it can be contended that a partially just society should have the right to prohibit individuals and firms from moving *part* of their taxable income and assets out of the country to secure their fair contribution to the just institutions and policies.

This conclusion has two problems when being applied to the tax system of a society in the real world, however. The first one is that taxes are always non-hypothecated, or non-earmarked. Taxpayers under most circumstances are not allowed to earmark their tax payments on specific policies or institutions. They pay the amounts specified by the tax authorities and the government then gets to decide how the money collected from citizens is to be spent. This means that in a partially just society, taxpayers would have no idea and little control over whether their tax money will be used to fund just institutions or those that are unjust. Their tax payments that are intended for supporting just institutions may turn out to be spent on unjust programmes and policies. For

example, when a U.S. citizen pays her income tax to the I.R.S., she can have a legitimate concern that her money would contribute to supporting the interrogation centres at Guantanamo Bay rather than the Medicaid programmes that help the poor pay their medical bills. If taxes are always non-hypothecated in nature, a partially just society's moral authority to levy taxes and curb the use of tax havens would be undermined. This is because the tax money paid to the tax authorities may end up being channelled into funding unjust institutions and policies that have no right to command support and contribution from citizens.

The second problem is that a partially just society's institutions and policies are often Janus-faced, meaning that it is difficult to draw a clear line between those that are just from those that are unjust. In a partially just society, the institutions that carry out injustices are always those that also perform perfectly legitimate functions. For example, the police force is essential for maintaining public order in general but it can also be used as a tool to repress ethnic minorities. This means that even if a partially just society has the right to demand citizens to contribute to the *parts* of the basic structure that are just, and even if the taxes it levies on citizens are somehow hypothecated, there may be no clear way to tell which institutions and policies are just and hence can command financial contribution from citizens. The Janus-faced nature of a partially just society's basic structure entails that taxpayers' financial contribution to just institutions and policies would likely also support the unjust practices in the society. As a result, a partially just society would be denied an unequivocal case against individuals and firms moving their taxable income and asset out of the country. This is because it is unclear whether citizens' tax money would actually be spent on just institutions or those that are unjust.

To conclude shortly, a partially just society's unjust institutions and policies would undermine its moral authority to demand contribution from citizens and hence compromise its right to levy taxes. Such a society's basic structure is entitled to citizens' financial support only towards its just institutions and policies but not those that are unjust. This means that, *in theory*, a partially just society, like many of today's liberal democratic countries, should have the right to impose a partial ban on taxable income and asset transfer to tax havens to secure citizens' contribution to the institutions and policies which remain just. However, given the non-hypothecated nature of taxes and the Janus-faced nature of institutions, the right to issue such a partial ban *in practice* would likely contribute to the injustices in the society. In short, the tax system in a partially just society is likely to be a morally compromised one that helps sustain the society's unjust practices. And for this reason, any ban by a partially just society on the use of tax havens would likely end up being morally compromised as well. If this is the case, then the question is whether the non-ideal reality about taxes and institutions would further undermine a partially just society's right to demand financial contribution from citizens and its legitimacy to crack down on the use of tax havens. The answer to this question depends on whether the society would be a more just one if individuals and firms are prohibited from moving their taxable income and assets to tax havens.

In the real world, given its non-ideal, unfavourable conditions, there are cases when a morally desirable outcome cannot be achieved without inviting some morally undesirable ones.[40] The dilemma presented above is that in a partially just society, while its basic structure should have the right to demand financial support for the institutions and policies that are just, the exercise of this right in practice is likely to also sustain the

[40] A classic example is inflicting civilian casualties in fighting a just war.

existing injustice in the society. In such cases, instead of concerning what a fully just, ideal outcome would look like (such an outcome is impossible in a society suffering from persistent injustice under non-ideal conditions), the theorisation about justice should focus on what would make a society *more* just, or less unjust.[41] This involves making a comparison of different institutional arrangements under non-ideal scenarios and deciding which one would better approximate the ideal picture of justice and help a partially just society transit to a fully just one.[42] Hence, to decide whether a partially just society should have the right to demand citizens to financially support its just institutions and curb the use of tax havens despite the potential morally undesirable outcomes, the decision should be based upon a judgement over whether the exercise of such a compromised right would make the society more just or not. In other words, the question is whether a partially just society with a functioning tax system to collect revenue from its citizens would be more just than one without such a system.

The answer should be affirmative in most cases, including those of liberal democratic societies in today's world, because a society without a steady source of income is likely to descend into thoroughly unjust. Tax revenue is essential for any society in the modern world to maintain the proper functioning of its basic structure. Without proper tax revenue, a society would not only be unable to arrange a basic structure capable of satisfying the demanding requirements of liberal egalitarian justice, it would not even be able to pay for and maintain the institutions that are necessary to meet the demands of minimal justice, including securing the basic subsistence of citizens and protecting their physical integrity. In short, a partially just society that does not have or loses the capacity

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[41] Sen, *The Idea of Justice*.
[42] Rawls, *A Theory of Justice (Revised Edition)*, 89-90.

to collect tax revenue from citizens would no longer be simply partially just and become *totally* unjust, because its basic structure would be unlikely to meet even the absolute minimum standard of justice. Therefore, it should be safe to assume that a partially just society with a functioning tax system is always more just than one without—although the tax revenue in a partially just society may contribute to unjust institutions and policies, it can at least enable the society to maintain what remains just in the basic structure. For this reason, a partially unjust society should have the right to demand financial contribution from citizens to support the just institutions in the basic structure even though the exercise of that right would likely also contribute to the society's unjust practices. It follows that a partially just society should also have the right to prohibit individuals and firms from transferring their taxable income and assets to tax havens in order to secure their fair contribution to the maintenance of the society's just institutions and policies.

That said, it should be emphasised that, as pointed out above, the right possessed by a partially just society to demand citizens' financial support for just institutions is always a morally compromised one. Such a right is compromised in the sense that it is tainted by the injustice of potentially also providing financial support for the unjust programmes and policies of the society. The justification for a partially just society to have the right to levy taxes despite the potential unjust outcomes is not that it has the full backing of the society's public conception of justice, but that under non-ideal conditions it helps facilitate a second-best outcome under which the demands of justice can be better served than under alternative possible arrangements. The major implication of the compromised status of that right is that tax avoidance in a partially just society may be an act of principled disobedience in protest against the unjust institutions and policies in

the society. Taxpayers in a partially just society can have a legitimate complaint that they are forced to financially support the unjust institutions and policies in the society. Their complaint is legitimate when it is guided by the principles of justice that can be publicly justified to regulate the basic structure of society. Such a complaint may not be sufficient to deny the society the right to levy taxes on them. As pointed out in the previous paragraph, on balance, a partially just society should have that right due to the fact that a morally compromised tax system is better than one that does not. Yet, the legitimacy of the complaint means that citizens who seek to avoid taxes out of a sincerely held belief that they should not provide financial support to unjust institutions should be treated as engaging in civil disobedience or conscientious refusal rather than committing an ordinary criminal offence.[43] For example, a U.S. business owner who moves the taxable profits of her company to an offshore account in an attempt to avoid making any financial contribution to the racist police force should not be treated as equal to a billionaire who hides her income and wealth in tax havens due to selfishness and greed. The legal system of a partially just society should afford sympathy and leniency to the former due to her conscientious motive and legitimate grievance behind her action.[44] Her action against the compromised tax system may not be a fully justified one, but her complaint is. Condemnation against tax avoidance and the use of tax havens should be reserved for those who are motivated not by conscientious conviction but pure greed and self-interest, such as the billionaires and multinational firms who hold the bulk of

[43] Consciousness and Principledness are not the only criteria for judging whether an act is qualified as civil disobedience or conscientious refusal. For example, Rawls argues that civil disobedience must also be non-violent, public, and a last resort. See ibid., 327-28. For an opposing view, see Candice Delmas, *A Duty to Resist* (Oxford: Oxford University Press, 2018).
[44] Ronald Dworkin, *Taking Rights Seriously* (Cambridge, M.A.: Harvard University Press, 1976), 260.

anonymous accounts in the British Virgin Islands, Bermuda, Luxemburg, and other tax havens in the real world.

7.6 Conclusion

This chapter examined two interpretations of the demand for fair contribution that can potentially provide a reason of justice for a society to ban individuals and firms from transferring their taxable income and asset to tax havens. It argued that the natural-duty interpretation of fair contribution provides a more convincing argument to justify such a ban than the beneficiary argument in both ideal and non-ideal scenarios. To impose such a ban, a society needs to first draw up a list of tax havens which should comprise jurisdictions that only levy nominal taxes and has layered legal protection of financial secrecy.[45] After that, it can cut off those jurisdictions from its financial system by sanctioning their financial sector that provides offshore financing services for tax avoidance purposes. To prevent citizens and firms from circumventing the sanctions, the society also needs to legislate laws that put an end to financial secrecy. This may involve demanding wealthy citizens and firms declare all their income and assets in foreign countries. Besides that, more robust protection for whistle-blowing may also be warranted to encourage employees and legal firms to report irregularities.

A society that applies robust sanctions and reforms on financial transparency should be able to stop its citizens and firms from moving their taxable income and asset to tax havens. This surely is the nuclear option. For such a ban would not only end the use of tax havens but effectively put an end to the majority of economic activities within

[45] Oxfam, "Stopping the Scandals," https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/bn-stopping-the-scandals-government-recommendations-081117-en.pdf.

those jurisdictions. If the tax havens being targeted by the sanctions are minor players in the world economy, the impact may be minimal. However, if the countries being targeted are those like Switzerland and Netherlands that are highly integrated into the global trade and financial markets, any sanctions against them may cause serious disruptions to economic activities that may outweigh the gains from the ban on the use of tax havens. Therefore, when a society decides how a ban on the use of tax havens should be designed and whether a ban should be imposed at all, it has to weigh the reason of justice to impose the ban (the demand for fair contribution) and other reasons of justice that may oppose to such a ban (the economic well-being of the disadvantaged).

In cases when the cost is far too high, the society should consider alternatives that discourage, rather than prohibit, individuals and firms from moving their income and assets to tax havens. For example, it can consider banning firms that have offshore accounts in tax havens from bidding on government contracts and receiving aid and subsidies. Apart from unilateral actions, a society can also seek cooperation from other good-standing countries to pressure tax havens into reforming their financial systems.[46] Examples would be something similar to what the OECD has done to push for a global minimum corporate tax of 15% and pressure tax havens, such as Ireland and the Netherlands, into adopting it. In short, banning financial transactions with tax havens is perhaps the most sweeping measure a society can take to put an end to international tax avoidance schemes such as transfer pricing. Even if it is justified to impose such a ban to secure a fair contribution from citizens and firms as this chapter has shown, a society should invoke the nuclear option selectively and carefully. That said, a society should

[46] Reuven S. Avi-Yonah, "Hanging Together: A Multilateral Approach to Taxing Multinationals," in *Global Tax Fairness*, ed. Thomas Pogge and Krishen Mehta (Oxford: Oxford University Press, 2017).

always put the option of a sweeping ban on the table and use it as a tool of deterrence that enhances the effects of other measures to crack down on tax avoidance.

Chapter 8

Emigration, Social Membership, and the Movement of Personal Assets

8.1 Introduction

This chapter argues that a liberal democratic society has the right to impose financial burdens on emigrants to stop them from leaving with all their assets and property. In doing so, it rejects what Anna Stilz calls the 'liberal orthodoxy' that assumes the *unqualified* right of individuals to leave any particular state.[1] To say that a person has an unqualified right to leave is to mean that she can unilaterally renounce her membership in a political society and remove herself from the territorial jurisdiction of that society at will. If such a right was justified, it would be morally wrong for a state to forcibly stop its citizens from leaving and changing their nationality, or condition the right to leave by imposing costs, such as financial burdens, on those who opt for emigration. The unqualified right to leave is seen as being codified in the Universal Declaration of Human Rights which states that 'everyone has the right to leave any country, including his own,' and that 'no one shall be arbitrarily … denied the right to change his nationality.'[2] It also receives support from theorists, including Joseph Carens, Phillip Cole, and Michael Blake.[3] In their view, the unqualified right to leave is a natural conclusion drawn from the

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[1] Stilz, "Is There an Unqualified Right to Leave?," 57.
[2] UN General Assembly, "Universal Declaration of Human Rights," https://www.un.org/en/universal-declaration-human-rights/.
[3] Joseph H. Carens, "Aliens and Citizens: The Case for Open Borders," *The Review of Politics* 49, no. 2 (1987): 258-59; Phillip Cole, *Philosophies of Exclusion: Liberal Political Theory and Immigration* (Edinburgh: Edinburgh University Press, 2000), 43; "Towards a Symmetrical World: Migration and International Law," *Ethics and Economics* 4, no. 1 (2006); Brock and Blake, *Debating Brain Drain: May Governments Restrict Emigration?*, Part II.

commitment of liberal egalitarianism to individuals' right to freedom of movement and its indispensability to personal autonomy. This position, however, is rejected by other theorists, including Anna Stilz, Lea Ypi, and Gillian Brock.[4] They believe that the right to freedom of movement does not have an absolute priority over other moral concerns and it can be legitimately restricted by the demands of fair contribution and distributive justice. The purpose of this chapter is to contribute to this debate by discussing whether a society can impose financial conditions on emigrants and deny them from bringing their personal property with them when leaving the country.

The scope of this chapter is narrowed to focusing on *economic migrants* who seek long-term settlement and citizenship in another country for non-essential economic reasons, such as better career prospects and a higher standard of living.[5] It is assumed that the society from which economic migrants want to leave is a *reasonably just* one from a liberal egalitarian standard, that is, it is capable of securing the liberal rights of its citizens and maintaining a fair distribution of social and economic goods. Under this assumption, economic migrants do not head for the door due to any unjust grievances or deprivation. They are not political migrants who leave the country to escape political violence or religious persecution. They are also not economic refugees who flee to escape famine or destitution. This chapter aims to address what financial requirements and conditions a reasonably just liberal democratic state can legitimately impose on those who seek to renounce their citizenship. The conclusion it reaches therefore may not be applicable or relevant to emigrants who leave the country out of desperation or necessity.

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[4] Ypi, "Justice in Migration: A Closed Borders Utopia?."; Brock and Blake, *Debating Brain Drain: May Governments Restrict Emigration?*, Part I; Stilz, "Is There an Unqualified Right to Leave?."
[5] David Miller, *Strangers in Our Midst: The Political Philosophy of Immigration* (Cambridge, MA: Harvard University Press, 2016), 94.

This chapter proceeds as follows. The next section discusses two popular theories that attempt to justify attaching financial conditions to emigration. It first examines *the beneficiary theory* which argues that emigrants should pay before they leave because they have a duty to make a fair return for the social welfare they received in the past. It argues that the theory fails because the beneficiary principle is not an appropriate principle for distributing the costs of welfare provisions in the first place. After that, the second part of the section discusses *the distributive justice theory* that tries to justify regulating emigration by pointing to the potential damages emigration can do to the realisation of justice. It argues that the theory is unsuccessful when it is interpreted from a cosmopolitan perspective. The third section of the chapter discusses how the two-tiered, internationalist conception of justice defended in this thesis responds to the justice of emigration. It first presents an original theory—*the social membership theory*—to justify taxing both emigrant citizens and emigrants who decide to renounce their citizenship in their home country. After having presented the social membership theory, the section moves to defend the internationalist version of the distributive justice theory and explains how it can avoid the problems encountered by the cosmopolitan version. Section four concludes the chapter.

8.2 The Beneficiary Theory and the Distributive Justice Theory

This section examines two theories that attempt to justify attaching requirements and conditions on those who seek to give up their citizenship and leave the society. Theorists who argue against the unqualified right to leave generally take the position that while individuals have a strong claim to the right to leave, that claim should be countervailed

by other equally important moral considerations.[6] In their view, a liberal state should recognise and respect individuals' right to leave because the opportunity to relocate to another country is often instrumental to protecting the personal autonomy interests that ground basic liberties.[7] They, however, contend that it does not follow that the right to leave is absolute and cannot be subject to regulations that aim to secure other legitimate moral objectives. Regulating emigration, according to Stilz, does not amount to prohibiting exit. For a regulation is a only law or condition that 'places a cost on leaving compared to a situation in which no such law [or condition] exists.'[8] In short, regulations do not stop people from leaving; they only make it more costly. Theorists who support putting regulations on emigration propose two theories—the beneficiary theory and the distributive justice theory—to justify their position. They believe that while their arguments may not justify completely forbidding emigrants from leaving the country, they would permit a liberal democratic state to condition and qualify the right to leave.[9]

Before proceeding to discuss the two theories, it should be noted that they are thought to offer a justification not only for imposing financial requirements on emigrants but also for demanding compulsory services from them.[10] There is reason to be sceptical over whether the arguments that justify taxing emigrants would also justify coercing emigrants to perform services. This is because the former involves restricting individuals' private property rights, which is a *non-basic* right, while the latter involves the free choice

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[6] Stilz, "Is There an Unqualified Right to Leave?," 66.
[7] Ibid. Similar view is shared by Ryan Pevnick who argues that the right to leave itself is not a basic right and its importance is due to its being instrumental to the exercise of basic rights. See *Immigration and the Constraints of Justice* (Cambridge: Cambridge University Press, 2011), 96-98.
[8] Stilz, "Is There an Unqualified Right to Leave?," 58.
[9] Ibid., 59.
[10] Ibid., 57, 70; Brock and Blake, *Debating Brain Drain: May Governments Restrict Emigration?*, 48-51.

of occupation, which is a *basic* liberty.[11] This distinction can be illustrated by the intuition that while it is justified for a government to tax the rich to support a publicly funded health care system, it is morally perverse for it to force trained individuals to perform duties in hospitals, with or without pay.[12] Therefore, the arguments that permit a liberal state to restrict emigrants' exercise of property rights may not give the green light to compulsory service. For the bar of justification for the latter is considerably higher than the former. However, since the focus of this thesis is on the international movement of assets, the discussion below concentrates only on whether the beneficiary theory and distributive justice theory provide a legitimate reason for imposing financial burdens on emigrants. It does not make a judgement on whether the theories can justify demanding emigrants to perform compulsory service as well.

8.2.1 The Beneficiary Theory

The beneficiary theory argues that emigrants who before received benefits as citizens should reciprocate by paying back their fair share to compensate for the capital invested and resources spent on them. As elaborated in Chapter Two, a society that answers to the demands of liberal egalitarian justice is required to provide citizens with a wide range

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[11] One notable feature of liberal egalitarianism is what Jason Brennan and John Tomasi refer to as 'economic exceptionalism' according to which economic liberties, such as the right to private property and the right to contract, are denied the status of 'basic liberties' that is enjoyed by civil and political liberties, such as the free choice of occupation and the freedom of speech. This entails that economic liberties are generally given a lesser degree of protection than civil and political liberties. The reason for this asymmetrical treatment is that, from an egalitarian perspective, economic liberties should be regulated according to the demands of social justice. If a vast number of economic liberties is included into the list of basic liberties, there would be little room for manoeuvre to realise a fair distribution of economic resources. For the discussion of economic exceptionalism, see Rawls, *Political Liberalism (Expanded Edition)*, 228; *Justice as Fairness: A Restatement*, 44-45; Jason Brennan and John Tomasi, "Classical Liberalism," in *The Oxford Handbook of Political Philosophy*, ed. David Estlund (New York: Oxford University Press, 2012); Freeman, "Capitalism in the Classical and High Liberal Traditions."; James W. Nickel, "Economic Liberties," in *The Ideal of a Political Liberalism: Essays on Rawls*, ed. Victoria Davion and Clark Wolf (Lanham: Rowman & Littlefield Publishers, Inc., 2000).

[12] This intuition is also illustrated in Blake's 'kidnapped/prevented local' analogies, see Brock and Blake, *Debating Brain Drain: May Governments Restrict Emigration?*, 130-31, 75.

of welfare benefits. These benefits can range from major welfare schemes, such as universal access to education and publicly funded health care, to relatively minor social services, such as subsidised school meals and daycare centres. Apart from these welfare benefits, any reasonably just society is also expected to provide different public goods, including security, courts, transportation network, etc. Citizens living in a liberal democracy, therefore, are typically entitled to a rather long list of services and goods paid for by public money. High-skilled individuals usually benefit even more given that they tend to receive more publicly funded educational benefits than others.

According to Brock, a society that spends heavily to satisfy citizens' needs and develop their human capital is entitled to fair returns on its spending.[13] She points out that a mutually beneficial scheme requires everyone to make sacrifices by, for example, paying taxes or complying with laws.[14] In virtual of 'the requirements of reciprocity, fair play, or general considerations of fairness,' by being beneficiaries, citizens in a liberal democracy, especially those well-endowed, should assume a fair share of the burden.[15] Those who fail to reciprocate the benefits and services supported by others' cooperation and sacrifices are guilty of free riding. To ensure a reciprocal relationship is realised among citizens, a society is entitled to demand fair returns from those who received social benefits and services. For this reason, Brock argues that it is legitimate to demand emigrants make a fair return to compensate for the benefits they received as citizens in the past.

This conclusion drawn by Brock is shared by Stilz.[16] She, however, is aware that it may be argued that more often than not citizens have no choice to decide whether to

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[13] Ibid., 67-68.
[14] Ibid., 65.
[15] Ibid.
[16] Ypi has a similar view, see "Justice in Migration: A Closed Borders Utopia?," 412.

accept the benefits provided by the state or not.[17] If this is the case, then it is problematic to demand that emigrants pay a fair return because it is morally objectionable to ask someone to pay for a benefit that is forced upon her.[18] Stilz suggests that while this objection is plausible, it may not apply to the case of skilled emigrants.[19] For those people often voluntarily accepted their heavily subsidised education and training programmes. She uses the example of a state-trained surgeon to illustrate this point:

> Her fellow citizens cooperated to provide her with an educational benefit, which she voluntarily accepted, and in doing so, she acquired an obligation to reciprocate the benefit. She was not forced to accept a free medical education from the state. Once she enters the bargain, she has a responsibility to pay back the special benefits she received.[20]

Stilz believes that the voluntary acceptance of benefits would justify obligations on high-skilled emigrants to reciprocate the publicly funded education they willingly accepted. Due to these obligations, a society is then justified to impose financial requirements on high-skilled emigrants through measures such as exit tax.

The thrust of the beneficiary theory is that, since citizens owe their society a fair return for the benefits they received, they have a duty to settle their unpaid due if they decide to leave the society for good. In this regard, the normative basis of the theory seems to be the beneficiary interpretation of fair contribution discussed in the previous chapter. Recall that according to the beneficiary interpretation, a person who benefits from social cooperation has a duty to pay her fair bit that is proportional to what she receives.[21] In Chapter Seven, it is argued that the beneficiary interpretation is not an

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[17] Stilz, "Is There an Unqualified Right to Leave?," 71.
[18] Stilz illustrates this point by referring to Nozick's famous example of the free PA system in his *Anarchy, State, and Utopia*, 93-95.
[19] Stilz, "Is There an Unqualified Right to Leave?," 71.
[20] Ibid.
[21] Rawls, *Political Liberalism (Expanded Edition)*, 16; White, *The Civic Minimum: On the Rights and Obligations of Economic Citizenship*, 52-54; Segall, "Unconditional Welfare Benefits and the Principle of Reciprocity," 336-37.

appropriate principle to guide the distribution of the costs of welfare provision. The reason is that it would lead to a problematic demand that poor people who rely on publicly funded welfare provisions would be required to make a fair return for the goods and services they receive. Such a demand on welfare beneficiaries would defeat the purpose of welfare provision by neutralising its effects on improving the resources and opportunities available to the less advantaged citizens. For they would be deterred from seeking welfare goods and services out of the fear that they may not afford to pay.

Consider the case of health care provision, which is widely accepted as essential welfare demanded by liberal egalitarian justice. Should citizens be given free, unconditional access to health care, or should they be asked to pay a fair return for the services they received? The answer should be yes to the former and no to the latter. The reason is obvious. The major rationale for entitling citizens to health care, from a liberal egalitarian perspective, is to ensure that they can have the necessary physical and mental conditions to develop and exercise their moral personality. The point of health care provisions would be defeated if citizens are demanded to repay a substantial portion of the costs of the medical care they received. This is because citizens, due to the fear of potential financial burdens, would be deterred from seeking the medical services and treatments they need to maintain their essential physical and mental conditions (even if they only need to pay after having received the services).[22] A public health care system

[22] This can be illustrated by the situation in the U.S. There is no universal health care there and patients need to pay for the medical care they received only after they have been treated. Most people rely on private insurance schemes to pay their bills and there are government-funded schemes to help the elderly, young, and poor. However, those schemes usually do not cover everything and they seldom pay the full cost. As a result, the cost of health care is a major reason why people in the U.S. are more likely to avoid medical care and delay medical treatments. See Institute of Medicine (US) Committee on the Consequences of Uninsurance, *Care without Coverage: Too Little, Too Late* (Washington (DC): National Academies Press (US), 2002), Chapter 3; Jennifer M. Taber, Leyva Bryan, and Persoskie Alexander, "Why Do People Avoid Medical Care? A Qualitative Study Using National Data," *Journal of general internal medicine* 30, no. 3 (2015).

that demands patients to cover (part of) the costs is thus likely to fail the demand of justice. The example of healthcare provision demonstrates that welfare beneficiaries should not be required to make a fair return for the welfare good or service they receive if doing so would defeat the very purpose of providing that good or service. Therefore, to determine whether the beneficiary can justify imposing financial requirements on emigration, the question that needs to be first answered is whether demanding citizens to pay for the educational benefits they receive would betray the purpose of providing those benefits in the first place. The answer is yes.

From the liberal egalitarian perspective, one major reason for providing publicly funded education and training is to ensure that every citizen, regardless of gender, race, and socio-economic background, can have a fair and equal chance to obtain social advantaged positions.[23] This aim would not be realised in a society that demands college graduates to pay a 'fair return' for the programmes they attended. For underprivileged students may be deterred from pursuing higher education if they are aware that they need to repay a substantial portion of the costs of their programmes after graduation. A number of empirical studies find that the financial costs of degrees could be a key barrier that disincentivises students from disadvantaged social and economic backgrounds from enrolling in higher education programmes.[24] And the disincentive effect of financial costs

[23] For example, Rawls's principle of fair equality of opportunity demands a fair and equal educational opportunity. See Rawls, *A Theory of Justice (Revised Edition)*, xv, 87, 92.
[24] Claire Callender and Jonathan Jackson, "Does the Fear of Debt Deter Students from Higher Education?," *Journal of Social Policy* 34, no. 4 (2005); Pamela Burdman, *The Student Debt Dilemma: Debt Aversion as a Barrier to College Access* (Berkeley, CA: University of California, 2005); Laura Perna, "Understanding High School Students' Willingness to Borrow to Pay College Prices," *Research in Higher Education* 49 (2008); Angela Boatman, Brent J. Evans, and Adela Soliz, "Understanding Loan Aversion in Education: Evidence from High School Seniors, Community College Students, and Adults," *AERA Open* 3, no. 1 (2017); Melanie G. Long, "The Relationship between Debt Aversion and College Enrollment by Gender, Race, and Ethnicity: A Propensity Scoring Approach," *Studies in Higher Education* (2021). There are studies showing that the financial costs of degrees have similar disincentive effects across students from different backgrounds, see Filipa Sá, "The Effect of Tuition Fees on University Applications: Evidence from the Uk," in *IZA Discussion Papers* (Bonn: Institute for the Study of Labor (IZA), 2014).

would remain even if students do not need to pay their fees upfront and are only required to make payments after their graduation. This is because one major reason behind the lower incentive of disadvantaged students is that they tend to be more debt-averse than their counterparts from more advantaged backgrounds, meaning that they are less willing to enrol in universities in face of future financial burdens. Economically disadvantaged students and their families may worry that they would not be able to repay their debts after graduation. They may also be driven into taking up jobs that can immediately improve their financial situations since from their perspective the economic benefits of higher education would become much more uncertain and university enrolment hence would be less attractive. As a result, underprivileged students would be less likely to obtain the necessary qualifications and degrees for attaining social advantaged positions compared to students from well-off families. In this regard, education reinforces, rather than neutralises, the influence of social class on where a person would end up. Therefore, an education system that demands students to repay the costs of the programmes they attended would defeat the major aim of providing publicly-funded education and training, that is, to enable every citizen, regardless of her socio-economic position, can have a fair and equal chance for upward social mobility.

One possible response to what is argued above is to point out that the beneficiary interpretation of fair contribution does not necessarily require students to share the costs of the educational benefits they receive. Instead, they can be required to make a fair return for the contribution of those benefits to their life prospects.[25] One possible proposal is that students can be asked to make payments only when they have translated their education into actual advantages in earning capacity. For example, they may be asked to

[25] See Chapter 7.3

pay back what they have received only when they become high earners. It may be argued that if students from disadvantaged backgrounds know that they only need to pay when they could afford to pay, they may no longer be deterred from entering college. But this is not the case. To see why, take a look at the lower rates of planned higher education participation by working-class students in England. The current financing model of English higher education is deemed to follow the ideology of 'who benefits pays.'[26] Under this financing model, undergraduate students of English universities have to pay up to £9,250 per year for tuition (and more for graduate students). Student loans are available to all and graduates need to start repaying their loans plus interests only when their income reaches a certain level. It might be thought that the financing model of higher education in England may avoid the deterrent effect of financial burdens on disadvantaged students since they would not face immediate financial pressure after graduation. However, this claim is not supported by empirical evidence. A study from Claire Callender and Geoff Mason reveals that, all else being equal, the financing model of higher education in England actually resulted in students from working-class families being less likely to apply for university compared to students from better-off social classes.[27] They estimate that the probability of upper-class students planning to participate in higher education is 5.9% higher than for lower-class students because the latter are more prone to possess debt-averse attitudes than the former.[28] Therefore, even if students are asked to pay only when they have translated their education into actual

[26] Claire Callender and Peter Scott, *Browne and Beyond: Modernizing English Higher Education* (London: Institute of Education Press, 2013).
[27] Claire Callender and Geoff Mason, "Does Student Loan Debt Deter Higher Education Participation? New Evidence from England," *The ANNALS of the American Academy of Political and Social Science* 671, no. 1 (2017).
[28] Ibid., 36, 39.

economic benefits, the financial costs of studying may continue to deter students from low-income families to pursue a university education.

In short, the problem of the beneficiary theory from Brock and Stilz is that it is built upon a public finance principle (the beneficiary interpretation of fair contribution) that should not be applied to guide the distribution of the costs of education and training. There is good reason, as the above has shown, to argue that citizens' enjoyment of educational benefits should be *free* in the sense that they should not be asked to cover the costs of their education after graduation. This invalidates the central premise of the beneficiary theory that citizens owe a 'fair return' to the educational benefits they received. If this is the case, there is no unpaid due for high-skilled emigrants to settle before leaving the society for good. And it follows that they should not be subject to exit tax and other financial conditions due to the education and training they received before as citizens. The beneficiary theory, therefore, fails to challenge the unqualified right to exit.

8.2.2 The Distributive Justice Theory

This section discusses the distributive justice theory which argues that a society has the right to impose financial conditions on the exercise of the right to exit if emigration undermines a society's capacity for realising social justice. It is argued that there are two ways the outflow of emigrants, especially of those who are skilled and well-endowed, could threaten social justice. The first one is the so-called 'brain drain' effect that deprives developing countries of much-needed skilled workers.[29] Brain drain refers to the mass exodus of well-trained and educated workforces from one society to another. It is a

[29] Ypi, "Justice in Migration: A Closed Borders Utopia?," 409; Brock and Blake, *Debating Brain Drain: May Governments Restrict Emigration?*, 37-41; Stilz, "Is There an Unqualified Right to Leave?," 66.

phenomenon that is most visible in developing countries. A report from the United Nations and OECD estimates that one in every nine university-educated Africans was living in developed countries in 2013.[30] And according to World Bank, 27 per cent of high-skilled Romanian workers and more than one-third of the university-educated labour of Albania, Bosnia and Herzegovina, and the Republic of North Macedonia were living abroad in 2017.[31] As mentioned before, egalitarian distributive justice usually demands generous provisions of welfare, such as education and healthcare. Apart from that, it also requires an adequate level of economic development that generates enough wealth to maintain a redistributive scheme that benefits the disadvantaged. To maintain an adequate level of welfare provision and achieve economic growth, a society needs to have a sufficient supply of trained, skilled professionals. The exodus of those people would undermine a society's capacity for providing welfare to the disadvantaged as the lack of qualified labour may reduce the availability of public services and disrupt the government's plans and projections for service provision in the future.[32] It would also undermine economic growth as it deprives the society of its most educated and productive workforce.[33] These negative effects are seen to be especially problematic for less developed countries where public resources are already sketched.

The second potential negative effect of emigration is the loss of revenues available for a just distributive scheme. Apart from human capital, a just distributive

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30 United Nations - Department of Economic and Social Affairs, "World Migration in Figures," http://www.oecd.org/els/mig/World-Migration-in-Figures.
31 World Bank, "Migration and Brain Drain," http://documents.worldbank.org/curated/en/657051570692065211/pdf/World-Bank-ECA-Economic-Update-Fall-2019.pdf.
32 Brock and Blake, *Debating Brain Drain: May Governments Restrict Emigration?*, 63; Ypi, "Justice in Migration: A Closed Borders Utopia?," 409.
33 Devesh Kapur and John McHale, *Give Us Your Best and Brightest* (Washington D.C.: Center for Global Development, 2005), 97.

scheme also needs to be supported by a stable stream of public revenue. For instance, a welfare state is expensive to establish and maintain. A government needs to spend a lot on building infrastructure, such as hospitals and schools, funding programmes to train professionals, paying wages for those who provide services, etc. Besides that, redistributive policies, such as basic income and negative income tax, are only feasible when the government has a stable and sustainable tax base to support the payment. The exodus of rich people and skilled workers is seen to have a negative impact on government revenues. According to Brock and Ypi, given that skilled workers and rich people typically are the biggest contributors to a country's tax receipts, their exit can lead to a significant loss of tax revenues and put greater fiscal pressure on the worse off who are left behind.[34] This claim can be supported by a study that estimates the cost of brain drain for India as roughly 2.5 per cent of its fiscal revenues.[35] Besides that, Stilz argues that the existence of an 'exit option' for the skilled and the rich can force the government to lower its tax or offer those people favourable 'fiscal deals' in a bid to retain them.[36] She suggests that the unqualified right to leave may generate a 'race to the bottom' among countries which compete with each other to attract the best talents.[37]

The thrust of the distributive justice theory is that, if a society's capacity for realising justice would be undermined by emigration, it is justified to impose financial conditions on the right to exit. Those conditions can serve as compensation for the damage done by the exodus of skilled workers and the loss of tax revenue. They can also provide citizens with an incentive to stay and continue contributing to the society's

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[34] Brock and Blake, *Debating Brain Drain: May Governments Restrict Emigration?*, 38; Ypi, "Justice in Migration: A Closed Borders Utopia?," 409.
[35] Mihir Desai et al., "The Fiscal Impact of High-Skilled Emigration: Flows of Indians to the U.S.," *Journal of Development Economics* 88 (2009).
[36] Stilz, "Is There an Unqualified Right to Leave?," 68.
[37] Ibid.

distributive scheme by making emigration a more costly option. Stilz argues that emigrants can have no complaint of justice against the financial conditions imposed on the exercise of the right to exit, if the purpose of those conditions is to maintain a just distributive scheme. This is because they have a 'natural duty' of justice to uphold and comply with just institutions and policies.[38] In her view, seeking opportunities in another country is no excuse for emigrants to relinquish their duty of justice.

An obvious response to the distributive justice theory above is that the effects of emigration on the people who are left behind are more complex and dynamic than what theorists have depicted.[39] The negative picture drawn by the distributive justice theory may not have firm and conclusive support from empirical research. The literature on the effects of emigration shows that there are at least two ways diaspora could bring positive effects to their home country. The first one is poverty reduction. Emigrants from developing countries who settle in high-income countries are likely to remit money back to their home country to support those who are left behind. It is estimated that $529 billion worth of remittances were sent to low- and middle-income countries in 2018.[40] Remittances provide an important source of income for people living in developing countries to improve their standard of living. They also provide the money to support investments in child health, education, and local small businesses.[41] All these are

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[38] Ibid., 72. For Rawls's discussion of the duty, see *A Theory of Justice (Revised Edition)*, 99.
[39] Blake has made a detailed version of this argument in *Debating Brain Drain: May Governments Restrict Emigration?*, 160-67.
[40] World Bank, "Record High Remittances Sent Globally in 2018," https://www.worldbank.org/en/news/press-release/2019/04/08/record-high-remittances-sent-globally-in-2018.
[41] Nicole Hilderbrandt and David Mckenzie, "The Effects of Migration on Child Health in Mexico," *Canadian Journal of Economics* 31 (February) (2005); Alejandro Cox Edwards and Manuelita Ureata, "International Migration, Remittances, and Schooling: Evidence from El Salvador," *Journal of Development Economics* 72, no. 2 (2003); J. Edward Taylor and T. J. Wyatt, "The Shadow Value of Migrant Remittances, Income and Inequality in a Household-Farm Economy," *The Journal of Developmental Studies* 32, no. 6 (1996).

conducive to lifting people in low-income countries out of poverty. According to World Bank, remittances contribute significantly to lowering the poverty rates in a number of developing countries. For example, in Lesotho, remittances accounted for 44 per cent of its GDP in 1995 and helped reduce the poverty rate from 63 to 52 per cent.[42]

The second potential positive effect of emigration to the sending countries is economic growth. This can be explained in different ways. First, the remittances from emigrants mentioned in the previous paragraph can provide funding for developing countries to finance capital investments, in both physical capital and human capital, which are essential for long-term economic development.[43] The remittances can also be an important source of foreign currency inflows for those countries.[44] Second, migrants can play the role of what Kapur and McHale refer to as 'reputational intermediaries' who help facilitate trade and investments between their host and home countries.[45] The presence of diaspora, under the right circumstances, can improve the image and reputation of their country of origin. This can help the country attract foreign investments by instilling confidence in foreign investors over the quality of its labour and business environment. Besides that, improving the country's reputation can also increase trading opportunities for its firms by helping them overcome the reputational barriers to entry into foreign markets.[46] Third, diaspora communities can facilitate the transfer of skills and knowledge to their home country. High skilled migrants tend to retain strong

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[42] Bjorn Gustafsson and Negatu Makonnen, "Poverty and Remittances in Lesotho," *Journal of African Economics* 2, no. 2 (1993); World Bank, *Global Economic Prospects 2006: Economic Implications of Remittances and Migration* (Washington, D.C.: The World Bank, 2006), 120-21.
[43] Devesh Kapur, *Diaspora Development and Democracy: The Domestic Impact of International Migration from India* (Princeton, NJ: Princeton University Press, 2010), 113.
[44] Ibid., 108.
[45] Devesh Kapur and John McHale, "Should a Cosmopolitan Worry About the "Brain Drain"?," *Ethics & International Affairs* 20, no. 3 (2006): 311.
[46] Kapur, *Diaspora Development and Democracy: The Domestic Impact of International Migration from India*, 86.

ties with the business circles, professional associations, and educational institutions in their home country. Through those ties, migrants' home country can get access to the most updated knowledge and technological development in other countries which can be translated into economic advantages and help jump-start its industries.[47]

The above has shown that the effect of emigration on those left behind is not as straightforward as suggested by the distributive justice theory. Under the right circumstances, diaspora communities can contribute to poverty reduction and the economic growth of their home country. If the primary objective of distributive justice is to improve the situation of the disadvantaged groups in the society, then a more relaxed emigration policy may sometimes be preferable to the one that burdens emigrants with financial requirements. This, however, does not mean that the distributive justice theory is invalidated by empirical evidence; instead, the conflicting conclusions reached by different researchers on the effects of emigration show that the empirical argument behind the theory is rather inconclusive. It is fair to say that while the empirical evidence does not support the claim that emigration necessarily undermines a society's capacity for realising justice, it does not support the opposite claim, either. Analytical work on the effects of emigration, as Kapur and McHale notice, is still in its early stages.[48] Until there is conclusive evidence, the empirical researches that demonstrate the possible benefits brought by diaspora are unable to deal a knockout blow to the distributive justice theory. A better way to reject the theory is to show that it fails to justify the imposition of

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[47] See Ashish Arora and Alfonso Gambardella, *From Underdogs to Tigers: The Rise of Growth of the Software Industry in Brazil, China, India, Ireland, and Israel* (Oxford: Oxford University Press, 2005).
[48] Devesh Kapur and John McHale, "Economic Effects of Emigration on Sending Countries," in *Oxford Handbook of the Politics of International Migration*, ed. Marc R. Rosenblum and Daniel J. Tichenor (Oxford: Oxford University Press, 2012), 147.

financial conditions on emigrants *even if* a society's capacity for satisfying the demands of distributive justice would be undermined by emigration.

Before assessing the distributive justice theory, it needs to point out that the theory can be defended from a cosmopolitan or internationalist standpoint. Among the theorists who propose the distributive justice theory, Brock and Ypi both employ a cosmopolitan-leaning framework. Stilz's position is a bit ambiguous. For while she suggests that her theory is compatible with cosmopolitan justice and the duty of justice is 'unconditional…that is binding on us independently of any special relationships we may have,' she admits that the theory assumes citizens are 'morally connected' to their compatriots.[49] The remainder of this section is devoted to rejecting the cosmopolitan version of distributive justice theory. And the internationalist version is defended in the second part of the chapter that lays out the internationalist response to the justice of emigration. The aim is to show that the distributive justice theory only makes sense when it is argued within the internationalist framework that is defended in the first part of the thesis.

The core idea of cosmopolitan liberal egalitarianism is that the principles of distributive justice apply globally. This means that every individual person in the world is entitled to an equal claim to the rights and liberties promised by liberal egalitarian justice. The duty of every society is then to ensure that justice is not only realised within its border but also around the globe. Simon Caney makes a distinction between what he calls 'mild' and 'radical' cosmopolitanism: they both support the 'positive' claim that there are global principles of distributive justice, but only the radical version endorses the 'negative' claim that there is no special duty of justice within the state or national

[49] Stilz, "Is There an Unqualified Right to Leave?," 71, 77-78.

borders.[50] While the mild version does not deny the existence of special duties among citizens, according to the theories of Robert Goodin and Charles Jones, those duties must be supported by, or at least compatible with, the principles of justice that are valid globally. The arguments below apply to the distributive justice theory interpreted in both versions of cosmopolitanism. They point out that the demand of global justice causes problems for any society that intends to use distributive justice as a reason for regulating emigration. The first problem is that, given that priority must be given to the global poor, a society is not allowed to impose financial conditions on emigrants heading for another society with a lower level of development.

Imagine there are two societies—Affluentia and Meagerland. They are equally committed to justice, but the former has a much higher level of development than the latter. Due to the warm weather and more relaxed working culture in Meagerland, it receives a steady stream of highly educated and wealthy migrants from Affluentia. Assume that the departure of high-skilled emigrants actually brings negative impacts to the economic growth and tax revenues of Affluentia and hence undermines its capacity for providing welfare and improving the income level of the worse-off citizens. Is Affluentia then justified to seek remedy by imposing financial conditions on emigrants? From a cosmopolitan perspective, the answer is no. Although the emigrants from Affluentia disadvantage their home society, they can benefit their host country, Meagerland, by bringing in the human and financial capital that is instrumental to its development. As a result, the loss of Afluentia is translated into improving the situation

[50] Simon Caney, "International Distributive Justice," *Political Studies* 49 (2001): 975-76; "A Reply to Miller," *Political Studies* 50 (2002): 978. An example of the radical version is Beitz, *Political Theory and International Relations*, 182. Examples of the mild version are Goodin, "What Is So Special About Our Fellow Countrymen?."; Charles Jones, *Global Justice: Defending Cosmopolitanism* (Oxford: Oxford University Press, 1999), 130-31.

of the poor people in Meagerland. In this regard, despite the costs to Affluentia, emigration serves, rather than undermines, distributive justice when it is understood as *global* liberal egalitarianism. This is because, as argued in Chapter Two, a central tenet of liberal egalitarian justice is the *priority* of the disadvantaged. From a cosmopolitan perspective, this principle would demand that Affluentia prioritise the poor people in Meagerland over its own members when the former is in a worse-off position compared with the latter. This would hold true even if Affluentia can have special duties to its own citizens as 'mild' cosmopolitanism permits. For those duties presumably would be overridden by the duty of global justice. Therefore, if Affluentia decides to impose financial conditions on emigrants, it would upset its commitment to justice in two ways. First, the financial conditions may discourage future emigrants to Meagerland and hence slow the progress of improving the situation of the people there. Second, by imposing those conditions, Affluentia would punish the emigrants for contributing to improving the livelihood of the people in Meagerland.

From the example of Affluentia and Meagerland, it can be concluded that rich, developed countries cannot use distributive justice as a reason to justify imposing financial conditions on emigrants when their destinations are countries with a relatively lower level of development. Indeed, to realise global justice, wealthy countries may have a duty to provide financial incentives to encourage their high-skilled workers to migrate to poor countries. That said, theorists who argue for the distributive justice theory may point out that the above argument misses the point. For their target is the emigration from developing countries to the developed ones. It is true that, provided that the emigration of high-skilled workers indeed undermines their capacity to realise justice,

developing countries are entitled to demand compensation. However, it does not follow that emigrants are those who should be responsible to pay.

If emigration from poor to wealthy countries does benefit the latter at the former's expense, there are good reasons to assume that those wealthy countries, rather than the emigrants, should pay for the damage. First, wealthy societies are the main beneficiaries of emigration and they have a much greater capacity than emigrants to shoulder the responsibility. By benefiting from poor countries' losses, developed countries are remedially responsible for correcting the situation. Besides that, considering the fact that emigrants from poor countries are in a worse-off position, it is unfair to ask them to pay the price for the benefits enjoyed by the rich countries. Therefore, one objection against the distributive justice theory is that, while its premise—developing countries suffering from brain drain should be compensated—may be true, the conclusion it reaches—emigrants are liable to pay—is invalid.

The above objection is considered by Brock, but she does not agree that it can relieve emigrants from the remedial responsibility.[51] This is because emigrants themselves also benefit at the expense of the societies they leave behind. By moving to a wealthier country, emigrants are able to enjoy higher-income jobs and overall better life prospects, but at the same time, they are causing or contributing to the worsening of welfare and income level in their home country. Due to their causal responsibility, emigrants are remedially responsible. Brock's point is not to reject the claim that the developed countries which benefit from the high-skilled migrants have the duty to pay. Indeed, she suggests that it is appropriate to distribute a large share of responsibility to those countries due to their superior capacity to pay and their greater share of causal

[51] Brock and Blake, *Debating Brain Drain: May Governments Restrict Emigration?*, 69-73.

responsibility for the losses suffered by developing countries.[52] Her point is that the responsibility of developed countries does not eliminate the responsibility of emigrants to pay their fair share. In other words, to reject the distributive justice theory more conclusively, what needs to be done is not only to show that rich countries ought to pay but also to explain why emigrants should not be asked to pay. This is the task of the following argument.

The second reason to reject the distributive justice theory, as in its cosmopolitan form, is that a society would violate its commitment to global liberal egalitarianism by imposing financial conditions on emigration. This can be explained by how demanding emigrants from developing countries to pay is incompatible with a core tenet of liberal egalitarian justice—the principle of fair opportunity. This principle requires that individuals' life opportunities should not be disadvantaged by their race, religion, and socio-economic background. Specifically, it entitles every individual to the fair opportunity to pursue and realise her conception of the good and the fair equality of opportunity in attaining advantaged positions. These two opportunities should be enjoyed by every person in the world, regardless of her birthplace and nationality, when the principle of fair opportunity is in its cosmopolitan interpretation.

Imagine a hospital in Affluentia hired *Sarah*, a local medical student, and *Mary*, a student from Meagerland. These two students did equally well in medical school and they are equally motivated. The only significant difference between them is that *Sarah* was born in Affluentia and *Mary* in Meagerland. According to the distributive justice theory, for *Mary* to emigrate and take up the job at Affluentia, she is liable to compensate Meagerland before leaving. And such a liability is not faced by *Sarah* for taking up the

[52] Ibid., 71.

same job. This means that the distributive justice theory imposes costs on *Mary* for her to have the same opportunities enjoyed by her better-off counterpart. Those costs may make working at the hospital in Affluentia significantly less attractive to *Mary* and she may be discouraged from taking up the job. This serves the purpose of the distributive justice theory, that is, to help developing countries retain their high-skilled workers by providing a disincentive for them to leave the country. However, this is achieved to the detriment of *Mary*'s life opportunities. And the only reason why she is disadvantaged is that she happens to be born in Meagerland but not Affluentia.

The example of *Mary* and *Sarah* has demonstrated the tension between the distributive justice theory and a core demand of global egalitarianism. Individuals from developing countries already have worse life opportunities compared with those from wealthy, developed countries. The distributive justice theory permits their opportunities to be further worsened by allowing financial conditions to be imposed on emigrants leaving developing countries. If one of the global liberal egalitarian ideals is that every person, regardless of her birthplace and nationality, should have fair and equal life opportunities, what the distributive justice theory permits is an obvious violation of the ideal. Moreover, allowing a person's life chances to be disadvantaged by her birthplace also goes against a major motivation behind cosmopolitan justice which sees a person's birthplace as morally arbitrary and no person should be disadvantaged simply because she happens to be born in a poor country.[53] Therefore, a developing society that is committed to global liberal egalitarianism has a duty of justice to refrain from imposing financial conditions on emigrants. This does not mean that it cannot demand

[53] Barry and Valentini, "Egalitarian Challenges to Global Egalitarianism: A Critique," 485.

compensation for the losses caused by the exodus of high-skilled workers. But it should ask the countries which receive the workers rather than the emigrants to pay.

To conclude, the above delivered a partial rejection of the distributive justice theory. It first demonstrated that the empirical argument behind the theory is inconclusive. It then explained why the cosmopolitan interpretation of the theory is unsuccessful in justifying the imposition of financial conditions on emigration. This is because, on the one hand, the remedial responsibility should be shouldered by wealthy countries rather than the emigrants who move from developing to developed countries. On the other hand, demanding emigrants from poor countries to pay before they leave is incompatible with global liberal egalitarianism. The rejection of the distributive justice theory above is partial because it does not reject the internationalist version of the theory. The next section explains how the internationalist version can avoid the pitfalls of its cosmopolitan counterpart.

8.3 The Internationalist Perspective

The previous section has explained why the beneficiary theory and the cosmopolitan interpretation of the distributive justice theory fail to justify imposing financial conditions on emigration. In this section, the focus turns to how the two-tiered, internationalist conception of justice defended in this thesis responds to the justice of emigration. The following first present an original theory—the social membership theory—to justify a liberal democratic society's right to impose financial conditions on emigration. It consists of two arguments. The first one focuses on emigrants who retain their citizenship after having settled in another country and the second one focuses on emigrants who decide to renounce their citizenship. The first argument contends that a society has the right to

impose financial conditions on emigrants who retain their existing citizenship by demanding they continue paying their fair shares of taxes to support the just institutions of the society they have left behind. This argument draws on the natural-duty interpretation of the demand for fair contribution discussed in the previous chapter and argues that a person who resides overseas still has the duty to support the basic structure of which she is a member. The second argument contends that a society has the right to impose financial conditions on emigrants who decide to renounce their citizenship because they are no longer entitled to make claims to the rights and benefits associated with liberal egalitarian justice against the society they are leaving. This argument draws on the connection between a person's social membership and her claims to entitlement. After discussing the social membership theory, the final part of the section draws on the ideas in the social membership theory and defends the internationalist version of the distributive justice theory. It argues that a society is justified in demanding emigrants pay their fair share of compensation to cover the losses caused by emigration by explaining how the internationalist interpretation of the theory can avoid the problems encountered by the cosmopolitan version discussed in the previous section.

8.3.1 Social Membership Theory: The Case of Emigrant Citizens

Most emigrants in today's world seek long-term settlement and citizenship in another country without renouncing their existing citizenship. And many of them retain their old citizenship after having naturalised in another country. In other words, to many people, emigration means the change of residency but not citizenship. Emigrant citizens' retention of their old citizenship provides a straightforward justification for their country of origin to impose financial conditions on their exit by requiring them to continue paying

their fair shares of taxes after having left the country. This is because citizens have a duty of justice to support the just basic structure in the society of which she is a member. In the previous chapter, it is argued that according to the natural-duty interpretation of the demand for fair contribution, a just basic structure has the moral authority to demand financial contribution from its citizens because it meets the conditions of legitimacy expressed by their shared public political culture.[54] And this demand applies to citizens as long as the basic structure remains a just one. By retaining their old citizenship, emigrant citizens continue their engagement in a morally relevant relation defined by their shared subjection to a common basic structure and a shared public political culture. It follows that, on the one hand, they remain entitled to make claims to the rights and benefits that are exclusive to the citizens of their home country; on the other hand, they remain subject to the duty of justice to support their home country's basic structure. And this means that emigrants who retain their old citizenship can be legitimately demanded by their home country to pay their fair shares of taxes even though they no longer reside there. In this regard, the natural-duty interpretation of fair contribution discussed in the previous chapter justifies a reasonably just society to have a worldwide tax system under which it can demand overseas citizens continue paying their taxes based on their income and wealth level. This right to tax emigrant citizens then provides the ground for a society to impose financial conditions on emigrants who do not plan to renounce their existing citizenship. The society can demand emigrant citizens report the income they earn in their host country and levy taxes on them in a manner similar to what it levies on resident citizens. The rate an emigrant citizen should pay should be similar to a resident citizen who is similarly well off.

[54] See Chapter 7.4

It may be questioned in what sense emigrant citizens are still *subject* to the basic structure of their home country after having settled in another country. The short answer is that their continuous subjection to the basic structure is evident in their retention of citizenship. By keeping their citizenship, emigrant citizens express their commitment to continue participating in the social cooperation mediated by a shared basic structure with their fellow citizens in their home country. In this regard, emigrant citizens are subject to the basic structure of their home country in the sense that they continue enjoying the rights and assuming the duties specified by the institutions that mediate the social cooperation of their home country. The fact that emigrant citizens do not reside in their home country does not change their citizenship status. For this reason, the ideal of equality demands that emigrant citizens should not be treated asymmetrically to resident citizens. This means that emigrant citizens should not be turned into second-class citizens who are deprived of the rights and benefits enjoyed by resident citizens. For example, they should not be disenfranchised or stripped of their pension simply because they do not reside in their home country. By the same token, the overseas residency of emigrant citizens should not give them the privilege to exempt themselves from the duty of justice that applies to resident citizens. A society has the duty of justice to ensure that emigrant citizens would continue paying their fair share as resident citizens do after leaving the country.

One possible response to the above argument is that it seems unfair to demand emigrant citizens continue paying taxes in a manner similar to what resident citizens are demanded to pay. This is because the actual benefits and goods emigrant citizens can enjoy from the basic structure of their home country are likely to be less than resident citizens. For example, even if emigrant and resident citizens are in theory equally entitled

to the free medical care guaranteed by the basic structure of which they are members, the latter would obviously have better actual access to the services due to the fact that they reside in the territory where those services are provided. It may be argued that since emigrant citizens benefit less than resident citizens, the former should not be demanded to pay taxes as the latter should be. To respond to this counter-argument, it needs first to be pointed out that this counter-argument does not deny that emigrant citizens should pay taxes to their home country; rather, it only argues that they should be taxed *less* than resident citizens due to the fewer benefits they receive from the basic structure of their home country. In this regard, the counter-argument does not reject the above claim that a society can put financial conditions on emigrant citizens. Second, the counter-argument relies on a problematic public finance principle—the beneficiary interpretation of fair contribution. As argued above and in the previous chapter, the beneficiary interpretation is not an appropriate principle to guide the distribution of the financial burdens generated by social cooperation. An argument that relies on the beneficiary interpretation is objectionable because of its dubious normative basis.

If a society is justified to require emigrant citizens to continue paying their fair shares of taxes, the next question is whether this would provide the society justification to also restrict emigrant citizens from moving their personal property abroad with them. The answer is yes though the reason why may not be immediately clear. For it seems that what a society can legitimately do is demanding *future* tax payments from emigrant citizens. However, an obvious difficulty encountered by any societies that attempt to enforce such a demand is their lack of jurisdiction beyond their own borders. This may explain why the U.S. is currently the only country in the world that has citizenship-based taxation. While the U.S. can take advantage of its dominating position in the global financial system

to enforce its tax laws against non-resident citizens (it has long-arm jurisdiction over non-residents because most international financial transactions are processed by institutions that are located in the U.S.), other societies simply lack similar leverage. For countries that lack the capacity to exert long-arm jurisdiction, one possible means for them to enforce taxes against emigrant citizens is to demand they make financial guarantees before leaving the country. For example, emigrant citizens may be required to deposit a substantial amount of money in a local bank account when moving their residency to a foreign country; they may also be required to make a substantial upfront payment to the tax authorities before leaving the country. These measures may not fully address the problem of enforceability, but they would enable a society's government to have some degree of leverage over emigrant citizens who attempt to evade paying taxes. The government could impose sanctions on emigrant citizens' local bank accounts or even confiscate their deposited money if they are found involved in tax evasion practices. In other words, a society can legitimately restrict emigrant citizens' freedom to bring their personal property with them when leaving the country to secure their future compliance with the demand to pay their fair shares of taxes.

The duty to pay taxes to their home country would place significant financial burdens on emigrant citizens since they would be doubly taxed by both their home and host countries. As a consequence, emigrant citizens would have an incentive to renounce their citizenship in the home country to reduce their tax burden. In the real world, the tax burdens associated with citizenship are a major reason why some American expatriates, especially the ultra-wealthy, choose to renounce their U.S. citizenship.[55] For example, Eduardo Saverin, a billionaire and one of Facebook's co-founders, renounced

[55] Jennifer A. Kingson, "Wealthy People Are Renouncing American Citizenship," *Axios*, 5 August 2021.

his U.S. citizenship before the company's IPO in order to avoid a hefty tax bill.[56] If emigrants decide to renounce their citizenship, then the above argument would no longer apply because they are no longer subject to the duty of justice to support the basic structure of their home country. The question then is whether a society should also have the right to impose financial conditions on emigrants who decide to renounce their citizenship and whether those conditions can justify restricting emigrants' freedom to leave the country with their personal property. The next part of the section argues that the answers to both questions are affirmative. Rather than the connection between citizenship and its associated duty upon which the above argument is built, the argument presented below focuses on the connection between citizenship and its associated entitlements.

8.3.2 Social Membership Theory: The Case of Emigrant Non-Citizens

From the internationalist perspective, liberal egalitarian justice only applies to *domestic* societies to govern the relationship between *citizens*. Its purpose is to lay out the principles that can serve as the normative guidelines for specifying the fair terms of social cooperation between citizens as free and equal persons. The limited scope of justice entails that, for individuals to be eligible to make claims to the rights and liberties promised by liberal egalitarian justice against a society, they must be citizens of *that* society in the first place. In this regard, the internationalist conception of justice endorses a connection between social membership and entitlements. It rejects the idea that individuals, *by virtue of* being humans, are entitled to the full set of liberal egalitarian rights

[56] Danielle Kucera, "Facebook Co-Founder Saverin Gives up U.S. Citizenship before Ipo," *Bloomberg*, 12 May 2012.

and liberties. It also rejects the idea that those rights and liberties are *natural* and they are *inherent* in individuals *qua* individuals regardless of social, cultural, and historical contexts. As elaborated in the first half of the thesis, according to the two-tiered, internationalist conception of justice, the reason individuals are entitled to make claims to liberal egalitarian rights and liberties is that they are engaged in a relevant relationship characterised by the common membership under a shared basic structure and a shared public political culture from which the principles of liberal egalitarian justice could be constructed.

The connection between social membership and entitlements provides a reason for liberal democratic societies to treat citizens and non-citizens asymmetrically. Given the connection, a liberal democracy is only responsible for guaranteeing *its own* citizens the full package of liberal egalitarian rights and liberties. It has no obligation to ensure that non-citizens, such as foreign nationals, can enjoy the same set of entitlements. This allows the society to apply different sets of rules and standards to citizens and non-citizens respectively. For instance, if a society, as argued in the previous section, has the duty to guarantee free education and training, it owes that duty *only* to its citizens to ensure that they, regardless of their socio-economic backgrounds, can have fair and equal opportunities in attaining social advantaged positions. That is to say, a society only needs to promise its citizens that they are not required to repay the costs of the publicly funded education and training they received. It has no duty of justice to make the same commitment to non-citizens. This clears the way for a society to recoup from emigrants the money and resources spent on their education.

Emigrants, due to their renunciation of citizenship, are akin to foreign nationals to whom a liberal democratic society owes no duty of liberal egalitarian justice.

Emigration is not simply about leaving the country and settling elsewhere for good; it is also about removing oneself from the rules and obligations imposed by the basic structure of the country one is seeking to leave. By giving up their citizenship, emigrants effectively announce their refusal to continue taking part in supporting and contributing to a social cooperative scheme that entitles its participants to a fair share of social, political, and economic goods.[57] In other words, to renounce one's citizenship is to withdraw one's commitment to participating in fair social cooperation under a shared basic structure with the people being left behind. For this reason, emigrant non-citizens are no longer members of a morally relevant relationship within which claims to liberal egalitarian rights and liberties can be advanced. They cannot legitimately expect the society they are leaving behind to see them as equal to its citizens because they lack the relevant membership which those citizens have.

Emigrant non-citizens' lack of a relevant membership means that a society can impose on their exit financial conditions which would be unjustified had they been entitled to make claims according to liberal egalitarian justice. The reason is that under international justice a self-determining society has the right to impose burdens on non-citizens who stay within its territory as long as those burdens do not violate their basic human rights. According to the principles of international justice spelt out in Chapter Four, societies that are no threat of aggression and human rights violation should have the right to conduct their own affairs in light of their public political culture without external intervention. This right does not only entitles good-standing societies to decide their own political status and their domestic policies according to their own political

[57] Stilz has a similar observation as she equals emigration to the renouncement of civic obligations, although the conclusion she draws is different from the one presented here. See "Is There an Unqualified Right to Leave?," 72-74.

values and principles. It also entitles them to unilaterally decide the terms that specify the rights and burdens applied to foreign nationals and agents, be they individual persons, organisations, or corporations, which stay within the society's own territory. Call this 'the right to set terms.' The right to decide the terms of relations with non-citizens within its territory is essential for a society to pursue its own public conception of justice without undue intervention. To say that a society has no such right is to say that it has no right to restrict the activities of foreign government agents inside its border that may pose a threat to the society's political independence, and that it has no right to regulate foreign investors and corporations whose wealth and influence may hinder the society's realisation of social justice. By having the right to set terms, a society can determine the rights and duties that apply to non-citizens in ways that would benefit the social cooperation among citizens and the realisation of its public conception of justice. And a society can impose on non-citizens burdens that would be unjustified on citizens because the former lacks the relevant membership that enables them to make claims to the rights and benefits available to the latter. For example, while a liberal egalitarian society is in general unjustified to demand citizens pay for the education they receive, it can legitimately make such a demand against foreign students and use their tuition fees to subsidise the costs of providing free education to the locals, which is a demand of liberal egalitarian justice.

The right to set terms justifies a liberal egalitarian society to impose financial conditions on the exit of emigrant non-citizens who are essentially akin to foreign nationals due to their lack of a relevant membership. As pointed out above, the exodus of high-skilled workers may significantly hinder a society's prospects of realising social justice because they provide the skills and tax base that are important for a just

distributive scheme. By having the right to set terms, a society can legitimately impose financial conditions on emigrant non-citizens whose exit may undermine its capacity to deliver social justice to its citizens. It may demand emigrant non-citizens pay a hefty exit tax before they leave the country or give up their ownership of firms and property inside the country. These financial conditions serve two purposes. First, they may discourage high-skilled workers and rich people from leaving the country or giving up their citizenship so that they would continue to contribute to the society's social cooperation. Second, they may mitigate the problems of brain drain and public revenue loss that are brought by the exodus of skilled workers and rich people. The money raised from the financial conditions imposed on emigrant non-citizens can be used to invest in welfare programmes and education to reduce the negative impact of emigration on a just distributive scheme. If a liberal egalitarian society is justified to impose financial conditions on emigrant non-citizens to reduce their impact on its pursuit of social justice, this means that emigrant non-citizens' freedom to move with their personal property can be legitimately restricted.

Emigrant non-citizens' lack of a relevant membership means that they could have little normative ground to complain about the financial conditions imposed on them. Unlike emigrant citizens who retain the right to make claims to liberal egalitarian justice against their home country, emigrant non-citizens have forfeited such a right against the country they plan to leave. For example, while emigrant citizens may legitimately complain against similar financial conditions to be imposed on them by arguing that they should not be treated unequally to resident citizens, emigrant non-citizens are not entitled to make such a complaint. Like foreign nationals who reside or stay in the society, emigrant non-citizens' only ground for complaint is the principle of basic human rights

which demands a good-standing society to respect the human rights of individual persons irrespective of their membership status. It might be argued that among the basic human rights of individuals is the right to return to their country of citizenship and imposing financial conditions on the exit of emigrant non-citizens is a violation of their right of return. This is because those conditions subject emigrant non-citizens to undue costs and burdens that would hinder and deter them from exiting the country of where they are no longer citizens and travelling to their new country of citizenship.

To respond to this argument, it should be pointed out that, while the right of return is a basic human right, it does not follow that the exercise of it must be cost-free. Even if there is no financial condition attached to the right to return or exit, the decision to emigrate to another country is already a costly one for many people. Emigrants need to give up their current job and pay for the paperwork, flight tickets, shipment, and new housing. They may also be asked by their country of destination to pay an upfront fee to cover the costs of healthcare and social insurance. Apart from these financial costs, there can be significant intangible costs, such as losing connection to a familiar social environment and leaving one's family and friends. It is most people's intuition that these costs for emigration do not constitute any violation of the right to return or exit (and no one would consider a carrier as a human right abuser by requiring emigrants to pay for their tickets). This is because those costs only make emigration expensive but do not make it impossible. By the same token, as long as the financial conditions imposed on the exit of emigrant non-citizens are not set too harshly to the point that would leave them in destitution and effectively deny them from leaving the country, those conditions should not be regarded as a violation of emigrant non-citizens' right to exit and travel to their new country of citizenship.

The above has argued that a liberal egalitarian society has the right to impose financial conditions on emigrant non-citizens whose exit may have negative impacts on its capacity to deliver social justice. The reason behind this is twofold. First, in a liberal egalitarian society, emigrants who renounce their citizenship are essentially akin to foreign nationals who stay inside the society. Their lack of a relevant membership means that they are no longer entitled to make claims according to liberal egalitarian justice. Second, a good-standing society has the right to unilaterally decide the rights and burdens applied to non-citizens who reside or stay within the border in ways that benefit the social cooperation among citizens and the realisation of the public conception of justice. This enables the society to impose on emigrant non-citizens burdens that would be unjustified on citizens. The argument above is similar to the distributive justice theory discussed in the previous section. However, instead of relying on a global cosmopolitan framework, the distributive justice theory presented in this section is built upon an internationalist framework. It is argued that the cosmopolitan version of distributive justice theory is unsuccessful due to a couple of problems. The next part of the section discusses how those problems can be successfully avoided by the internationalist version.

8.3.3 Distributive Justice Theory Redux

It is argued above that the cosmopolitan version of the theory faces two problems due to the demand of global liberal egalitarian justice. The first problem is that global justice does not permit a society to impose financial conditions on emigrants if their destinations are countries with a lower level of development. The second problem is that a society is not allowed to impose financial conditions on emigrants who seek better life prospects in more developed countries. These two problems can be avoided by the internationalist

version of the theory due to its rejection of global liberal egalitarianism. As argued in Chapter Four, international justice rejects extending the scope of liberal egalitarian justice to the international arena. It argues that the principles of international justice are fundamentally different from those of liberal egalitarian justice. According to the principles of international justice, the members of international society are not required to realise an egalitarian scheme of global redistribution. And their duty is limited to 1) respecting other good-standing peoples as equals and independent agents capable of self-determination, and 2) respecting the basic human rights of individual persons irrespective of their nationality. The limited duty a liberal democratic society owes to other international agents and non-citizens under the internationalist conception of justice means that the two problems faced by the cosmopolitan interpretation of the distributive justice theory are avoided by the internationalist version.

The first problem is avoided because a society has no duty of justice to help other societies realise their conception of justice from the internationalist perspective. International justice only demands a society to not intervene in the domestic affairs of good-standing peoples and refrain from seeking domination. A society is under an obligation to assist only when others are unable to secure the essential internal and external conditions for self-determination by themselves. To use the imaginary societies used in the previous section—Affluentia and Meagerland—as an example again here. Assume that these two societies are both committed to liberal egalitarian justice. It is argued that, from the cosmopolitan perspective, Affluentia is not allowed to tax high-skilled emigrants heading to Meagerland as emigration serves global justice by improving Meagerland's capacity for improving the welfare and income level of its citizens. But from the internationalist perspective, Affluentia is under no duty of justice to realise

egalitarian justice at the global level or provide Meagerland assistance in its pursuit and realisation of its conception. Therefore, Affluentia is permitted to impose financial conditions on emigrants who leave for Meagerland, even though doing that may discourage emigration to Meagerland and thus deprive it of the potential human and financial capital that can contribute to the realisation of social justice in Meagerland and narrow the inequalities between the two societies.

Now move to see how the internationalist interpretation of the distributive justice theory can avoid the second problem faced by the cosmopolitan version. To recall, the problem is that even if a society is entitled to demand compensation for the losses caused by the exodus of skilled workers, from the cosmopolitan perspective, it should not ask the emigrants to shoulder the costs; instead, it should demand the wealthy countries that are benefited from the workers to pay. The question here is why under the internationalist conception of justice emigrant non-citizens in developing countries can be asked to pay even though the wealthy countries are joint beneficiaries and have a greater capacity to pay. This question can be answered by borrowing the argument used in the social membership theory above. The reason why from a cosmopolitan perspective emigrants from developing countries cannot be asked to pay exit tax is that doing that would worsen their life opportunities compared with their counterparts in wealthy countries and hence violate the globalised version of the principle of fair opportunity. But as the social membership theory has shown, under international justice, a society's duty owed to emigrant non-citizens, who are akin to foreign nationals due to their renunciation of citizenship, is limited to honouring their basic human rights. It is pointed out in Chapter Four that the list of basic human rights is sufficientarian rather than liberal egalitarian in nature. It only covers the rights and liberties that are essential for securing the conditions

under which individuals can develop and maintain their moral personality. The list of basic human rights therefore does not include the right to the fair equality of opportunity since the purpose of this right is to enable individuals to obtain the social and economic goods that contribute to the pursuit of their conceptions of the good. By rejecting the principle of fair opportunity from being extended globally, the internationalist version of the distributive justice theory permits developing countries to impose financial conditions on the exit of emigrant non-citizens even though doing so would hinder their life opportunities. Emigrant non-citizens' lack of a relevant membership means that the society they plan to leave behind is no longer under the duty to treat them according to liberal egalitarian justice.

The above has shown how the internationalist version of the distributive justice theory is able to justify liberal democratic societies demanding emigrant non-citizens compensate for the negative effects resulting from their departure on the pursuit of social justice by avoiding the problems faced by the cosmopolitan version. On the one hand, it showed that a society's limited duty to other societies means that it does not need to worry that taxing emigrant non-citizens may violate the demands of global egalitarianism as it would under the cosmopolitan version. On the other hand, it explained that a society's limited duty to emigrants means that developing societies would not violate the demand of justice generated by the principle of fair opportunity by imposing financial conditions on emigrant citizens. Together, they demonstrate that the distributive justice theory can only make sense if it is argued from an internationalist framework.

8.4 Conclusion

This chapter examined the popular theories for regulating emigration through the imposition of financial conditions. The first part of the chapter rejected the beneficiary theory by arguing that it applies a problematic principle of public finance to the distribution of costs of welfare provision. It also rejected the cosmopolitan interpretation of the distributive justice theory because global liberal egalitarianism would not permit emigrants to be burdened by financial conditions. The second part of the chapter explained why imposing financial conditions on emigration is justified under a two-tiered, internationalist framework. It offered an original theory—the social membership theory—and argued that a liberal egalitarian society can legitimately restrict the freedom of both emigrant citizens and emigrant non-citizens to leave the country with their personal property. Due to the duty of justice associated with their citizenship, emigrant citizens can be required to make financial guarantees before leaving the country. And due to the renunciation of their citizenship, emigrant non-citizens can be required to pay a hefty exit tax before leaving the country for good. Based on the ideas of the social membership theory, the chapter also explained how the internationalist version of the distributive justice theory can successfully avoid of pitfalls of the cosmopolitan version.

Chapter 9

Conclusion

9.1 A Recapitulation

This thesis developed an account of the constraints a liberal egalitarian society can legitimately impose on the outflow of financial assets. It did so by answering three questions. First, what are the liberal egalitarian justifications for restricting the claim and exercise of private property rights? Second, how those constraints should be interpreted in light of the debate between cosmopolitanism and internationalism? Third, how should the liberal egalitarian constraints on the claim and exercise of private property rights be applied to three common types of financial asset outflow, namely, capital relocation, profit shifting, and personal asset emigration?

This thesis answered the first question by proposing three liberal egalitarian justifications for constraining the rights to private property in Chapter Two. They are the priority of the disadvantaged, the demand for fair contribution, and the requirement of membership. These three justifications are derived from an account of justice that should have broad appeal among liberal egalitarians. According to that account of liberal egalitarian justice, a just society should be the one that arranges its basic structure in a manner that recognises and respects the individuals governed by it as free and equal persons who have the capacity for a conception of the good and the capacity for cooperating with others under fair terms. And a just basic structure should, on the one hand, guarantee individuals a wide range of rights and liberties to pursue their own life

plans and participate in collective self-governance, and on the other hand, ensure that their individual and collective pursuits would not undermine their moral equality.

This thesis's answer to the second question is that the three justifications for constraining the exercise and claim of private property rights should be interpreted in light of the internationalist conception of justice according to which the scope of liberal egalitarian justice is confined to domestic societies. This means that the disadvantaged whose interests and well-being a society has the duty to prioritise should refer to the society's disadvantaged *citizens* rather than the global poor; individuals are required to make a fair financial contribution to the just distributive scheme of their own society; the relevant membership that entitles individuals to make claim to the rights and benefits guaranteed by liberal egalitarian justice against a society should be their citizenship rather than their membership in humanity. To justify confining the scope of liberal egalitarian justice to the domestic, Chapter Four proposed a culturalist theory of justice which argues that liberal egalitarian justice only applies to regulate the political relation of citizens inside a modern constitutional democracy. This is because such a relation is mediated by a relevant public political culture upon which liberal egalitarian principles can be formulated and justified. The same chapter also proposed that the international arena should be regulated by a set of principles of justice that are distinct from those applied to democratic societies due to the unique political culture that mediates the relation among the members of the international society.

To defend the culturalist argument for internationalist justice, Chapters Three and Five dealt with different possible challenges to the argument. Chapter Three rejected two institutionalist arguments that attempt to justify internationalist justice. It argued that the unique-nature argument actually fails to identify the uniqueness of the domestic basic

structure and is therefore unable to confine the scope of liberal egalitarian justice to the domestic. It also argued that the interpretive argument by Sangiovanni fails because its subject of interpretation—the existing institutional practices of a political society's basic structure—is unable to condition the justification of the principles of justice due to the practices' non-normative nature. Chapter Five dealt with three possible critiques of the culturalist arguments. It rejected the pluralism challenge by arguing that, on the one hand, the domestic pluralism within constitutional democratic societies can be resolved by appealing to the international principles of justice, and that on the other hand, countries that share a similar public political culture to regulate their respective domestic affairs may not accept their intersociety relation to be guided by the same set of norms and values. It also rejected the status-quo critique by pointing out that it is not inherently objectionable for any theory of justice to be constrained by certain facts of the status quo and facts that are regarded as arbitrary from a moral point of view. Finally, the chapter argued that Aaron James's interpretive argument for global egalitarianism is unsuccessful because its characterisation of the point and purpose of the international norms is implausible.

The thesis answered the third question by arguing that the three liberal egalitarian justifications for constraining private property rights provide a society with good reasons of justice to put constraints on three common types of financial asset outflow. Chapter Six argued that a society should constrain the freedom of investors and corporations to move their capital overseas to prevent the interests of disadvantaged citizens, such as workers, from being sacrificed for the gains of the already well-off members of society. The same chapter also argued that the principle of basic human rights from international justice provides a society with another reason of justice to restrict investments in

countries that engage in serious human rights violations. Chapter Seven argued that a society should ban the rich and multinationals from transferring their taxable income and assets to tax havens because they have a duty to make a fair financial contribution to support the social cooperation in which they are members. Chapter Eight argued that a society, on the one hand, can demand emigrant citizens to make financial guarantees before leaving the country to ensure that they would continue paying their fair shares of tax to support the just institutions of their home country, and on the other hand, it can impose a hefty exit tax on emigrant non-citizens to ensure that their exit would not damage the society's capacity to deliver social justice because emigrant non-citizens' lack of a relevant membership means that they would have limited normative ground to complain against the financial conditions attached to their exit.

9.2 The Contributions

This thesis contributes to the literature in multiple ways. First, it contributed to the discussions on the justice of international trade by pointing out the injustices of a fundamental pillar that supports the global economic system as it is known today—the freedom of international financial movement. Specifically, it discusses the injustices caused by three common forms of financial asset outflow which include capital relocation, profit shifting, and personal asset movement. It pointed out that the problem of financial asset outflow is not only that it would significantly undermine the economic well-being of the disadvantaged, such as low-skilled workers, but also that it would create a privileged class of people who are able to exert domination over other social classes and be exempted from the duty of justice that applies to everyone else in the society. By doing so, this thesis directly challenged the justifiability of a fundamental institution of today's

global economy. If the liberalisation of international financial asset movement is plagued by injustices in the first place, then the system that is built upon or relies on it should also be considered morally dubious. Apart from that, the thesis also pointed out that there are many things domestic societies can do *by themselves* to address the injustices created by financial asset outflow. This means that it is possible for domestic societies to deliver social justice in the absence of international cooperation. The point is not that international cooperation is pointless; rather, it is that the existing debates on international trade justice may have focused too much on international cooperation while overlooking the capacity of domestic societies to meet the demands of justice on their own.

The second contribution made by this thesis is that it defended the culturalist theory of justice—an approach of justice that has been largely denounced and marginalised in the recent literature on liberal egalitarianism. It argued that a society's public political culture plays a fundamental role in conditioning the formulation and justification of the principles of justice that apply to the society's basic structure. The norms and considered judgments held by citizens reveal the issues of justice they are concerned about and the values and ideals they expect the society's institutions to adhere to. And the disagreements among the members of a shared public political culture are the origin of the questions of justice in a political society. Most importantly, citizens' actual beliefs and thinking play an essential role in the Rawlsian methodology widely accepted by contemporary liberal egalitarians to justify their theories of justice. According to that methodology, the justification of the principles of justice depends on the rational acceptance of those governed by the principles. And without knowing what people actually believe and accept, it would be simply impossible to figure out what principles

might be reasonably justified to them. For this reason, it is strange that many liberal egalitarians denounce the importance and relevancy of a society's existing political culture in the theorisation of justice. Rather than people's actual belief-value system, the moral personality of individuals and the unique nature of institutions are the preferred normative foundations of contemporary liberal egalitarian theories. However, those theories' approach to justice, as the first half of the thesis has argued, is problematic because it is unclear why the agency of individuals and the nature of institutions are morally salient in the first place. In other words, many mainstream liberal egalitarian theories are actually built upon dubious normative foundations.

The third contribution of the thesis is that it challenged a central tenet of many contemporary liberal egalitarian theories which argues that the theorisation of justice should not be influenced by factors that are arbitrary from a moral point of view. The thesis pointed out that any theorisation of justice inevitably must be based on certain morally arbitrary facts in human societies as given since the point of any theory of justice is to respond to the questions of justice that exist under certain given historical and social circumstances. It argued that theorists who criticise the culturalist theory of justice for its reliance on contingent facts actually have their theories built upon facts that are morally arbitrary. For example, the moral personality upon which many liberal egalitarian theories are built is no less contingent and arbitrary than birthplace and citizenship because no species can have any control over the capabilities and properties they were born with. Theorists who argue that the relevant moral properties of individual persons can offer a 'non-arbitrary' basis for a theory of justice have confused universality with non-arbitrariness. In short, this thesis contended that there is nothing inherently wrong with a theory of justice to determine the rights and liberties individuals are entitled to based

on contingent facts of the human world that are beyond human control. It is just impossible to conceive how any theory of justice can be developed independently of any morally arbitrary facts. Therefore, the right question to be asked is not whether or not a theory of justice should be influenced by contingent facts; rather, it is which morally arbitrary facts should be used as the normative foundation for a theory of justice. The thesis argued that the public political culture shared by the members of a political society is the only plausible candidate if principles of justice are ultimately justified by appealing to the reason of individuals.

9.3 A Plea to the Left

I want to end this thesis with a brief discussion of its relevance to real-world politics. One of the motivations behind this thesis is to offer a critique of the recent trajectory of left-wing politics. For a long period of time, among the default positions taken by left-wing politics was its scepticism and opposition to the global economic integration driven by the liberalisation of international financial movement. People on the left were worried about the negative impacts brought by the economic integration on workers' wages and jobs. They also had concerns over the threats posed by the global economic regime to democracy and the welfare state. That has changed in the 1990s when mainstream political parties on the left, most notably the Labour Party in the U.K. and the Democratic Party in the U.S., moved into fully embracing economic globalisation. Their change of heart was driven by the optimism that the economic growth generated by the integration into the global market could lift the living standard of ordinary people and that the negative effects could be offset by compensating those who lost out. They are

also convinced that global economic interconnectedness would expand democracy across the globe and bring perpetual peace to the world.

The optimism of the left has never been materialised, however. Global economic integration did not lift the living standard of ordinary people or help advance egalitarian agendas. Instead, it widened the economic inequalities in societies across the globe and disproportionally benefited those who are already in advantaged positions. As pointed out in the second half of the thesis, the global financial integration has enabled the already advantaged to reap massive benefits at the expense of the worse off while exempting themselves from the duty that applies to everyone else. Apart from that, Chapter Six pointed out that the left's strategy to offset the negative impacts of global economic integration is self-contradictory. Peculiarly, in face of these misjudgments, the past decade saw the left insisting or even doubling down on their support for global economic integration. Left-leaning parties in most democracies are now the major backers of the globalised economy. Some on the left even claimed that they are the final hope for the survival of economic globalisation.[1] The clinging onto the global economic integration despite the harm it has done to the ordinary people, especially the working class, has significantly undermined the credibility of left-wing politics among the people it is supposed to represent. As a result, the traditional working-class support for left-wing parties and their brand of politics has collapsed in many western democracies in the past decade. And this has left behind a political space that has been captured by populists and, worse, far-right nationalist groups.

[1] Eric Levitz, "Only the Left Can Save Globalization Now," New York Magazine, https://nymag.com/intelligencer/2021/02/only-the-left-can-save-globalization-now.html.

The arguments in this thesis can be seen as a critique of the trajectory of left-wing politics in the past two decades. They pointed out that the mistake of the left is not simply political but also moral. This thesis pointed out that the free international movement of financial assets that supports the global economy threatens to undermine the egalitarian ideals to which left-wing politics is supposed to commit. If the ultimate goal of left-wing politics is a society of equals and if the promise of left-wing politics is about standing up for the disadvantaged and vulnerable, people on the left should be far more critical of the global economic integration than they are now. Instead of blaming those who lost out in the process of global economic integration for being nostalgic, reactionary, or worse, the left should take their complaints seriously. This thesis showed that ordinary people, especially the working class, have legitimate complaints against an essential institution behind today's global economy. To take their complaints seriously, the left can no longer stick to their tried and failed strategy that seeks to capitalise on the economic growth delivered by economic globalisation and redistribute the gains to improve the standard of living of the worse off. As pointed out in the thesis, the liberalisation of international financial movement would actually undermine, rather than enhance, a society's capacity to pursue redistributive policies. What the left should do instead is support policies that scale back a society's integration into the global economy, such as the policies that restrict the freedom of cross-border financial movement advocated in this thesis. The point here is not to advocate for autarky and self-reliance; rather, it is that integration into the global economy should be pursued in a more selective and managed manner. A society should pursue integration only when doing so would contribute to, or at least be compatible with, its realisation of the public conception of justice. And it has a duty of justice to retreat from the global economic system when its

participation in the system becomes a threat to its pursuit of social justice. People on the left should not see global economic integration as irrevocable. The nearly full economic decoupling between western countries and Russia after the latter's invasion of Ukraine demonstrates that scaling back global economic integration is not impossible in practice. That said, scaling back global economic integration would not be achieved easily since those who have vested interests in the system would not easily give up their privileges. But standing up to the vested interests and challenging the existing power structure has been the hallmark of left-wing politics. The future of left-wing politics hinges on whether it can rediscover its spiritual root and once again become a political force that stands firmly behind the society's working class.

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