According to a currently influential philosophical conception, human rights are best understood as a set of urgently important rights that all individual persons may validly claim and that all governments are obligated to respect, because no government can plausibly claim legitimate authority unless its legal and political system ascribes such rights, and no society can plausibly claim to be just unless it has a legitimate government. This conception is endorsed (explicitly or tacitly) by a number of contemporary philosophers, but few have developed systematic justifications of it other than John Rawls. He presents his own version of this conception in *The Law of Peoples* (1999). According to some of his critics, it relies on a false view of the state. I will argue to the contrary.

Over the past half century, since the Universal Declaration of Human Rights (UDHR) was issued, the capacities and functions of state governments have changed as international organizations (both governmental and non-governmental) have proliferated and become increasingly powerful. Over the past dozen years, accelerating globalization has generated much scholarly and public discussion, and many have argued that the international institutions created after the Second World War must be reformed or reinvented in order to take account of new political realities. These include, according to Anne-Marie Slaughter, “two major shifts: from national to global and from government to governance.” Furthermore, a third important shift is now occurring, she argues: states are becoming “disaggregated” as transnational government networks become increasingly important for world order in the twenty-first century. More than
ever before, officials of domestic governments are engaging in activities beyond the boundaries of their states, due to increased capacities as well as increased needs for doing so. As a consequence, the long-dominant concept of the unitary state is giving way to the concept of the disaggregated state as the structures of domestic government become more international.

In the new order Slaughter sees emerging, and advocates, it will not be “up to ‘the state’ to uphold human rights.” Instead it will be up to transgovernmental networks consisting of officials of particular branches of different state governments, as well as “broader policy networks, including international organizations, NGOs, corporations, and other interested actors.” The members of these networks would be the bearers of the obligations created by treaties and other international agreements.

How, if at all, does the emergence of such a world order bear on the above-described philosophical conception of human rights? Is it rendering it obsolete, either entirely or partially? Or should we instead conclude that what requires modification is not this conception of human rights but this new world order? In what follows I will argue that the emergence of this new world order does not render this conception of human rights obsolete but instead requires that it be further developed.

Among the reasons for the transformation of state sovereignty in this era of globalization is the increasing power of large transnational corporations. Thus the question arises: If states are losing power to corporations, are states also losing some of their responsibilities and rights, and are corporations acquiring some or all of these, including responsibilities to respect, uphold, and secure human rights? Can corporations acquire and fulfill such responsibilities? If so, does justice require that they do so?
Neither Rawls nor Slaughter addresses the questions that I have raised in the preceding two paragraphs. One prominent contemporary philosopher who does is Onora O’Neill. She argues that corporations and other non-governmental organizations can help secure human rights and promote justice, and should be encouraged, expected, and better enabled to do so when and where states are unable. She also criticizes Rawls’s conception of global justice on the ground that it is “statist”, by which she means that it assumes falsely that states alone are the “primary agents of justice” carrying responsibility for either fulfilling or delegating to others all obligations of justice.

O’Neill has developed a new conception of an ideally just global order in which states have fewer, and corporations more, powers and obligations to secure human rights, in contrast to Rawls’s conception. Her conception is consistent with Slaughter’s account of the transformation of state sovereignty. But contrary to initial appearances, it is not the case that O’Neill’s and Slaughter’s views taken together require significant modification of Rawls’s conception of human rights; so I will argue.

I will begin with an account of Rawls’s conception of human rights and global justice, after which I will briefly consider how Slaughter’s account of the transformation of state sovereignty bears on it. Next I will take up O’Neill’s views on these topics. As I hope to show, her rejection of Rawls’s view on the ground that it is statist is unwarranted. Moreover, there appears to be no fundamental conflict between Rawls’s conception of human rights and Slaughter’s account of state transformation. Insofar as Slaughter’s account is representative of a “liberal” political theory (which sees states as complex entities undergoing retreat or transformation), as contrasted to a “realist” theory of international relations (which sees states as unitary, coherent actors which remain powerful), the arguments I offer will, if cogent, provide
some support for the broader conclusion that globalization is not rendering obsolete conceptions of human rights such as that developed by Rawls.

1. Rawls

*The Law of Peoples* (LP) outlines a conception of the moral basis of a just system of international law. It proposes a set of principles to be included in the foundation charter of a Society of Peoples (the nucleus of a law-governed international community that can develop into a fully just global order), as well as a list of basic human rights by reference to which these principles are to be interpreted. Moreover it presents arguments justifying this list and those principles, as well as several theses about human rights.

Rawls views basic human rights as urgently important rights of all individual persons, which are grounded in principles of justice that apply to all governments and legal systems. These principles set constraints on the use of political power in making and implementing foreign as well as domestic policy. In order to determine the set of these basic human rights, one would have to determine which principles of justice apply to all governments. In LP Rawls undertakes this task.

Taking a bottom-up or “at-least” approach, Rawls starts from the idea that a just society has at least a legitimate government, which must be understood as at least a system of law such that the people governed are not merely forced but instead obligated to obey it. In this way, as I will further explain below, Rawls develops an argument aiming to show that at least a proper subset of the basic rights of the citizens of a fully just liberal-democratic society are universal and internationally enforceable basic human rights: that all individuals are entitled to claim them, that all governments are obligated to respect and secure them, and that the international community may and should enforce them worldwide (via appropriate procedures and measures),
for moral reasons that are independent of facts about whether states have explicitly committed
themselves to respect and secure these rights. Rawls aims to show this by means of arguments
that no government would have good moral reason to reject: arguments that they cannot reject
while reasonably claiming legitimacy.

In developing his conception of a fully just liberal democratic society, which he calls
Justice as Fairness (JF), Rawls analyzes the idea of fair social cooperation among individual
human beings who are members of the same society, all free citizens of equal political status. He
argues for two fully general, fundamental principles of societal justice, which are to guide and
constrain the citizens of a democratic society (i.e., one characterized by popular sovereignty) in
using the coercive powers of their government domestically. These two principles are to
constitute its foundation charter.

Analogously, in LP Rawls argues for certain fully general, fundamental principles of fair
social cooperation among legitimately governed states, which are to guide and constrain the
international uses of their coercive powers. These principles spell out some of the logical
implications of an abstract idea of social cooperation among states aiming to establish a just and
stable system of global public law. The principles are to be included in the foundation charter of
such a legal order.

In order to determine whether the set of internationally enforceable basic human rights
contains the same elements as the set of the basic rights of the citizens of a fully just liberal
democratic society, Rawls takes a top-down approach. He starts from JF and asks whether all of
the basic rights of such a society’s citizens, i.e., the rights specified by JF’s two principles of
justice, should count as basic human rights. His answer is no, not all of them: internationally
enforceable basic human rights are at most a proper subset of those citizens’ rights.
In the next three sections I will further explain, first, the rationale behind Rawls’s list of basic human rights; second, the idea of public reason and its role in the top-down argument; and third, the criteria of decency and their role in the bottom-up argument. Then I will explain Rawls’s idea of the basic structure, its role in LP, and its implications regarding corporations.

1.1. Human rights and The Law of Peoples

In LP Rawls argues that certain long-standing principles of international conduct (i.e., that states are to observe a duty of non-intervention, and that states have the right of self-defense but no right to instigate war for reasons other than self-defense) have rightly been revised in recent years to allow for intervention in cases of “grave violations of human rights.” He further modifies these principles by substituting the term “peoples” for the term “states”; thus, he puts the normative idea of a well-ordered society under a legitimate government (a type of moral ideal to which he refers using “peoples” as a technical term) in place of the idea standardly used in political science (particularly in realist international-relations theory) according to which a state is a rational, self-interested collective agent that mainly aims to acquire and retain military, economic, and diplomatic power over other states. He imagines the governments of peoples setting up a system of global public law, and argues that only peoples, which satisfy criteria of decency including honoring certain basic human rights, are entitled to the rights traditionally ascribed to all states.

Rawls presents his proposed list of internationally enforceable basic human rights as merely an incomplete, abstract sketch. Its function is mainly to indicate that the list of basic human rights appropriate for a Law of Peoples would largely agree with classic bills of rights, but that not all of the rights listed in the UDHR should be classified as permissibly enforced internationally on moral grounds independent of official commitments to secure them.
In LP Rawls argues that if the concept of basic human rights is supposed to get employed by political leaders and policymakers in their practical reasoning about using coercive force internationally, then the philosopher must keep that in mind when developing an interpretation of the concept. The interpretation must specify which rights are to count as belonging to the category of internationally enforceable basic human rights. Therefore, Rawls argues, it should meet the requirements of public reason. The idea of public reason, which I explain in the next section, shapes LP’s conception of basic human rights. For in LP Rawls argues that a global legal order must recognize the basic moral equality of every individual human person by securing for everyone all of the basic human rights that can be adequately justified as such rights by public reason.

1.2. Public reason, political liberalism, reciprocity and reasonableness

According to Rawls, a conception of justice should establish a shared basis for public justifications, which are attempts to convince others by using public reason, i.e., by reasoning in ways appropriate to fundamental political questions, relying only on beliefs and political values which it is reasonable for others also to acknowledge. In a well-ordered society effectively regulated by a publicly recognized and generally accepted political conception of justice, each citizen “cooperates, politically and socially, with the rest on terms all can endorse as just.” When citizens disagree about the justice of policies, institutions, rules and principles, they must offer each other justifications of their political judgments. A public justification offers valid argument proceeding from premises that all of the disagreeing parties (assumed to be free, equal, and fully capable of the relevant kinds of reasoning) “may reasonably be expected to share and freely endorse.”
Rawls first presented his idea of public reason by describing JF as a form of political liberalism which “tries to articulate a family of highly significant (moral) values that characteristically apply to the political and social institutions of the basic structure” and which “gives an account of these values in the light of certain special features of the political relationship as distinct from other relationships, associational, familial, and personal.”21 One distinctive feature of the political relationship is the fact that whenever political power is used by a government, it is always coercive. In a constitutional democratic regime, political power “is regarded as the power of free and equal citizens as a collective body.” Moreover, constitutional democratic societies are always characterized by “the fact of reasonable pluralism,” i.e., the fact that diverse reasonable comprehensive doctrines arise in conditions of freedom. Taking note of these facts, Rawls considers what kind of conception of justice, supported by what reasons and values, should guide citizens in exercising political power over each other. He concludes that the conception must be a “political conception of justice,”22 one based on and expressing values that each citizen can endorse.23

Political liberalism uses the idea of public justification in order to bracket intractable religious and philosophical controversies, that is, to set them aside so that it may be possible to reduce the divisiveness of political conflicts. It avoids either rejecting or presupposing as true any particular comprehensive doctrine,24 aiming thereby to “preserve the conditions of effective and democratic social cooperation on a footing of mutual respect between citizens regarded as free and equal.” In order to achieve this aim, it uses ideas implicit in the political culture to develop a public basis of justification that all citizens can endorse from within their own comprehensive doctrines. If this attempt succeeds, it yields a political conception of justice that can form the core of an “overlapping consensus of reasonable doctrines,” and citizens holding
them will be able to affirm it after reasoned reflection upon their considered convictions about justice. 25

A conception of justice applicable to the basic structure of a system of social cooperation is reasonable if and only if its principles satisfy an appropriate criterion of reciprocity. Terms of cooperation may be regarded as fair if and only if those proposing them have good reason to regard them as acceptable to all of the participants, who are thought of as equals acting freely and not subject to domination, manipulation, or the pressures generated by an inferior social, economic, or political position. If the system of social cooperation to which a conception of justice is to apply is a single society, then a reasonable conception of justice for it is one that meets the criterion of reciprocity for equal citizens acting freely. If the system of social cooperation is a Society of Peoples, then a reasonable conception of justice is one that meets the criterion of reciprocity for equal peoples acting freely.

Some of the differing moral doctrines, and their associated conceptions of justice and governmental legitimacy, that may arise over time in conditions of freedom can coexist within a single constitutional democracy (whether as part of the overlapping consensus supporting a political liberal conception of justice, or as among views that do not threaten it). Others cannot. Among the latter are non-liberal doctrines. Some of these cannot, but others can, govern societies that can be members in good standing of a Society of Peoples. Non-liberal societies of this latter kind are reasonable as regards relations between peoples, although less than reasonable as regards their domestic structure of political and economic institutions.

A well-ordered liberal society 26 is a fully reasonable society: its basic structure is ordered in accordance with a conception of justice that meets the liberal criterion of reciprocity. A non-liberal society is not a fully reasonable society in this technical sense. A non-liberal society may
be a well-ordered society, i.e., its basic structure may be ordered according to the requirements of a conception of justice; however, this conception does not meet the liberal criterion of reciprocity. Therefore every non-liberal society, whether well-ordered or not, is to some degree unjust, according to Rawls.

There is, however, a significant moral difference between those non-liberal societies that are well-ordered in accordance with some conception of justice, and those that are not. There is also a significant moral difference between those non-liberal societies that are well-ordered in accordance with a conception of justice that requires that the society’s basic structure of political and legal institutions provide for the good of all members by recognizing and securing their basic human rights, and those that are well-ordered in accord with a conception of justice that does not require this. And liberal political philosophers need to take due account of these moral differences when developing the principles to guide states in using force internationally.

These considerations constitute the basis of Rawls’s “top-down” argument. I will now sketch his “bottom-up” argument. Then I will consider whether the transformation of state sovereignty and the increasing power of corporations require any modification of Rawls’s conception of human rights.

1.3. The criteria of decency

The moral ideas that play the principal roles in the bottom-up argument are the idea of justice (understood in abstraction from any particular substantive conception of distributive justice, including JF) and a version of the idea of a well-ordered society more abstract than the one that figures in JF. Rawls conceives a Society of Peoples as a system of social cooperation among well-ordered societies following a Law of Peoples. An implication of this idea is that each participating society must be both capable of acting as an agent and capable of constraining
its own actions and aims according to moral requirements. Among the factors determining whether a society has these capacities and will reliably so act is its governing ideology or set of values, whether religious or secular, including its conception of its own fundamental interests as a society.

Rawls argues that participating societies must satisfy his first criterion of decency, which states a requirement of non-agressiveness vis-a-vis other societies, as well as his second criterion, which comprises three conditions of governmental legitimacy. One of these conditions requires respect for the basic human rights that he lists. Rawls’s justification of his second criterion of decency may be summarized as follows. A system of laws must meet certain conditions if it is to be viable. However, if those to whom the laws are applied are to have bona fide moral duties and obligations to obey them, the legal system must meet not only the conditions of viability but also a further condition: the officials of the government must be trying in good faith to govern justly and to ensure that the laws accord with their conception of justice and its idea of the common good of the society.

Furthermore, argues Rawls, a society’s political and legal system can be regarded as morally defensible, and the society as well-ordered, only if it is ordered in accordance with a conception of justice that understands the common good of the society as requiring that the fundamental interests (as it understands them) of everyone in the society be secured. Thus Rawls regards a society as well-ordered only if the political and legal system is structured so as to ensure that everyone’s fundamental interests (as it understands them) are secured. In addition, the governing conception of justice must understand the fundamental interests of those to whom the laws are applied in a way that is consistent with recognizing them not only as human beings but also as moral persons, for their being moral persons is entailed by the very idea of a political
and legal system ordered in accordance with a conception of justice that imposes *bona fide* moral duties and obligations upon them.

Rawls holds that any society meeting the criteria of decency would have a moral character entitling it to respectful treatment by other states. He hypothesizes that at least some decent yet non-liberal-democratic societies might be both able and willing to participate in establishing and maintaining a just and stable system of global public law. If the hypothesis is true, then the principles of LP and its list of basic human rights must meet the condition of endorsability by such societies, i.e., the criterion of reciprocity applicable to a Society of Peoples. Therefore the list of basic human rights will be shorter than the list of the basic rights of the citizens of a fully just liberal democratic society.

### 1.4. The basic structure and corporations

In the preceding three sections I have provided an overview of Rawls’s conception of human rights. I will soon consider its implications with regard to the increasing power of corporations and the transformation of state sovereignty. In order to do so, I must first explain the idea of the basic structure of a well-ordered society. This idea plays a central role both in JF and in LP.

In JF Rawls assumes that the main political and social institutions of a society fit together into one system of social cooperation, assign basic rights and duties, and regulate the division of advantages that arises from social cooperation over time. These institutions include the constitution, the legally recognized forms of property, and the structure of the economy. Collectively, they form “the background social framework within which the activities of associations and individuals take place.”
JF takes the basic structure of a well-ordered society as the primary subject of political justice. Among the main reasons for doing so is that “the effects of the basic structure on citizens’ aims, aspirations, and character, as well as on their opportunities and their ability to take advantage of them, are pervasive and present from the beginning of life.” JF’s two principles each apply to one of the two principal aspects of the basic structure: (1) the constitutional regime, and (2) the background economic and social institutions. The first principle of justice, which applies to the constitution, specifies and secures citizens’ equal basic liberties; the second limits economic and social inequalities. Rawls assigns lexical priority to the first principle: the second is always to be applied within a setting of background institutions that satisfy the requirements of the first.

It is important to note that the principles of JF constrain or limit, without uniquely determining, the principles suitable for local justice, i.e., the principles to be followed directly by associations and institutions within the basic structure: “Firms and labor unions, churches, universities, and the family are bound by constraints arising from the principles of justice.” These constraints “arise indirectly from just background institutions within which associations and groups exist, and by which the conduct of their members is restricted.”

Analogously to JF, LP takes the basic structure of a Society of Peoples as its primary subject. The number of LP’s principles and the fact that Rawls does not specify priority relations among them may seem to ruin the parallelism. However, the principles together are analogous to JF’s first principle of justice, in that they “define the basic equality of all peoples” which honor human rights. Together they have priority over the further guidelines and standards to be formulated: guidelines for “setting up cooperative organizations” and “standards of fairness for trade.” Thus, according to Rawls’s version of political liberalism, principles of
justice structuring governmental institutions are to set constraints applying to all non-
governmental organizations, including corporations, in both their domestic and their transnational activities. The basic structure of a system of social cooperation, whether among individuals or among societies, must secure the basic human rights

2. Slaughter

I have argued that Rawls’s conception of human rights requires all systems of social cooperation to secure the basic human rights. Now I will consider the relation between this conception of human rights and Slaughter’s account of state disaggregation. The process Slaughter describes is, she says, not the disappearance of state governments but their transformation as new international forms of governance emerge. I will argue that the emergence of new forms of governance does not undermine Rawls’s conception of human rights, although it requires further development of his conception of global justice.

Slaughter explains that governmental officials ranging from judges, cabinet ministers, and legislators to regulators and police have been creating cross-border networks with their counterparts in other countries in order to cope with globalization-generated problems relating to travel, markets, terrorism, and looming environmental disasters. She argues that these networks are an increasingly important and valuable form of global governance. It is clear, she thinks, that “we need more government on a global and regional scale,” yet a world government with centralized decision-making authority and coercive power is undesirable. She notes that government networks can perform many of the functions of a world government without that form. Therefore, she contends, we should wake up to their strengths, take fuller advantage of such networks, and provide them with the necessary support, in part by recognizing them formally in international law. In the world she envisions, states would remain “crucial actors,”
though relating to each other in more diverse ways: the officials in the different branches and
institutions of government “would participate in many different types of networks, creating links
across national borders and between national and supranational institutions.”41 These
government networks would work alongside, within, and in some cases in place of traditional
international organizations.42

The “structural core” of such a world order would be “a set of horizontal networks among
national government officials in their respective issue areas, ranging from central banking
through anti-trust regulation and environmental protection to law enforcement and human rights
protection.”43 Vertical networks are created when states delegate some particular aspect of their
governing authority to a supranational organization.44 Although “it is impossible to grant
supranational officials genuine coercive power” in the absence of a world government, domestic
government officials may exercise their coercive powers to implement supranational rules and
decisions.45 But “a core principle” of the world order Slaughter favors is “the importance of
keeping global governance functions primarily in the hands of domestic government officials.”46

Slaughter offers descriptions of current government networks, an analysis of our current
world order, and predictions about the future of its ongoing processes of transformation. She
does not discuss Rawls’s conception of human rights. However, it seems clear that insofar as her
account is descriptive or empirical, it does not conflict with LP, for two reasons: (1) LP is not a
descriptive account but a normative conception, and (2) LP does not require governmental
institutions to have any particular form (e.g., that of a state), but only to satisfy the appropriate
requirements of justice. Appropriate requirements include at least those which apply to states.
Changes in the forms of government do not reduce the requirements of justice; instead, the latter
set constraints upon the permissible forms.
Whether governmental institutions of the form(s) Slaughter describes can satisfy the requirements of justice is an open question. Slaughter contends that an order of disaggregated states could better secure justice and human rights, especially once informal government networks become recognized and formalized in international law. But whether this is true is partly an empirical question: its answer depends both on what exactly she means by “human rights” and “justice” and on how the formalized government networks would actually function.

Slaughter also proposes a set of global norms to constrain the operation of government networks, and suggests that they be part of a “global transgovernmental constitution.” The principles she proposes appear consistent with, although not entailed by, Rawls’s principles. However, she does not develop their contents or justifications to any great extent; indeed, she says that “the content of these specific principles is less important in many ways than the simple fact that there be principles—benchmarks against which accountability can be measured.” What is most important is that government networks should be understood as a form of government, and held “to the same standards and subject to the same strictures that we hold all government.” A Rawlsian can agree, with the caveat that these standards and strictures be based on and constrained by LP, in particular its list of human rights, suitably interpreted.

3. O’Neill and Rawls

I have argued that there is no fundamental conflict between Rawls’s conception of human rights and Slaughter’s account of state disaggregation. But O’Neill’s conception of an ideally just global order does conflict with Rawls’s. I will now examine this conflict.

O’Neill objects to “modern liberalism” on the grounds that it focuses solely on rights, downplays the importance of imperfect duties, and “marginalizes the entire tradition of the virtues.” Moreover, she classifies Rawls as a “welfare liberal” and objects to welfare
liberalism, as she characterizes it, because she regards it as based on the view that there are no obligations other than those of justice. Furthermore, she objects to Rawls’s conception of global justice and human rights on the ground that it is statist.

O’Neill’s characterizations of modern liberalism and welfare liberalism, however, do not correctly apply to Rawls’s version of liberalism. And as I will now argue, O’Neill misinterprets LP. I will focus on her contention that LP is statist, since one of my main aims presently is to determine whether O’Neill has developed a conception of an ideally just global order that conflicts with Rawls’s regarding states’ and corporations’ obligations and powers to secure human rights. O’Neill presents her contention that LP is statist in two recent articles which focus mainly on the urgency of finding new ways to secure rights and promote justice for the members of societies in which political and legal institutions are dysfunctional.

O’Neill argues against regarding transnational companies or corporations (TNCs) as without obligations to undertake actively to promote justice where state institutions are failing to do so. She rebuts the contention that TNCs’ obligations of justice extend only as far as compliance with laws, as well as the contention that TNCs are not capable of actively promoting justice by going beyond compliance with laws, even in dysfunctional states where the laws are not properly enforced. Furthermore, she suggests that since many “obligations of justice require exemptions from certain standard ethical requirements,” we “could accept” such exemptions for TNCs or other non-governmental organizations that take on justice-promoting tasks within weak or failing states, if these exemptions are not status-related but task-related.

O’Neill does not deny that state institutions are important, indeed crucial, for securing justice. She notes that “even in cases where certain nonstate agents have acquired selected state-like capabilities,... they do not enjoy the range of capabilities held by states that succeed in being
primary agents of justice.” But she argues that although TNCs may be “ill constructed to substitute for the full range of contributions that states can (but often fail to) make to justice,” still “there are many contributions that they can make, especially when states are weak.”

Corporations can and should use their power “to support and strengthen reasonably just states.” For what “those in weak states need is a process of institution building by which justiciable rights are increasingly secured”: if state institutions can be strengthened and greater political justice be secured, this “in turn may deliver economic justice.” Her concern is that reform may take a very long time, and that in the meantime lives are being lost or lived in miserable conditions.

Many, if not all, of O’Neill’s views on these topics are compatible with Rawls’s. However, apparently she does not see this: she dismissively labels his view “statist.” Given that she herself evidently sees reasons to regard states as essential components of a just global order, and expresses some skepticism about global governance through powerful global institutions, it is somewhat surprising that she denounces statism—until we understand precisely what she means by it. But once we understand this, we see that she has misinterpreted Rawls’s view.

O’Neill asserts that Rawls’s theory of justice links principles of justice of universal scope “to a substantially statist view of agents of justice.” And a statist view, according to her, assumes that states alone have “the will and the capabilities to discharge, delegate, or assign all obligations of justice;” that is, statist views assume that states alone are what O’Neill terms “primary agents of justice.” But Rawls nowhere says, and indeed his view is incompatible with the idea that, actual states have such authority over all obligations of justice. Yet O’Neill evidently takes him to hold this view. This seems clear from the specific arguments she makes, which I will now examine.
“Up to a point,” O’Neill says, “statist approaches to anchoring the obligations of justice may, it seems, be on the right track.” The problem with them, she says, is that they allocate these obligations “in ways that may not work.” Specifically, there are three reasons why it is a mistake to regard states as “the sole agents of justice,” or as “always appropriate primary agents of justice”: (1) many states are unjust; (2) many states are incapable of securing justice for their citizens or members; and (3) “even states with some capacities to secure rights... often find that processes of globalization require them to make their borders more porous, thereby weakening state power and allowing powerful agents and agencies of other sorts to become more active within their borders. For example, weak states often cannot do much to control the activities of transnational corporations or of international crime within their borders, and may not succeed in regulating legitimate business either.”

Rawls, too, pays particular attention to weak and rogue states, or in his terms “burdened societies” and “outlaw states.” Far from regarding their governments as the proper agents to determine and assign as well as discharge or delegate all obligations of justice, Rawls undertakes to establish the contents of the principles of justice that should guide well-ordered societies in identifying such states and dealing with them (whether by using force in self-defense, undertaking humanitarian intervention, or providing various forms of assistance). In doing so he is guided by the conviction that justice is the first virtue of social institutions, and that whenever we employ political power, whether as citizens or as officials of government, whether domestically or internationally, morality requires us to guide our conduct by appropriate principles of justice.

Nor does Rawls deny that we also have duties of justice in our various non-political roles in life, and simply as human beings. He simply restricts the focus of his inquiry to questions
about political power and the principles of justice pertaining to its uses. His subject matter is political and legal institutions. This restricted focus should not be taken to show that Rawls denies that principles of justice apply to non-political institutions, associations, or practices. Indeed he says explicitly: “While the principles of justice as fairness impose limits on these social arrangements within the basic structure, the basic structure and the associations and social forms within it are each governed by distinct principles in view of their different aims and purposes and their peculiar nature and special requirements.”

O’Neill is of course right that actual states should not be assumed to be adequately securing justice when they lack either the capabilities or the will to do so. But Rawls is not guilty of this error. She is also right that states should not be thought of as having monopolies on obligations to secure justice. But Rawls is not guilty of this error either. He does think of governments as complex political and legal institutions with the distinctive role of employing power for the public good in accord with appropriate principles of justice, but apparently so does O’Neill. So where, if at all, does her view clash with his? She does discuss a topic he does not address, namely whether corporations can and should undertake actively promote justice in failed states, but merely taking up a further question does not by itself amount to contradicting the answers to questions previously addressed. Nor does her view about corporations as agents of justice necessarily conflict with his views. However, she has merely sketched, not developed in detail, her suggestion to exempt corporations from certain standard ethical requirements so that they may carry out certain justice-promoting tasks in failed states. If this could be done without placing impediments in the way of reforming and rebuilding the institutions of government to meet the standards of Rawls’s criteria of decency, then Rawls might have no
objection. However, he might well prefer Slaughter’s quite different approach to such problems. I shall conclude by discussing this approach.

4. Slaughter and Rawls

Slaughter argues in favor of government networks partly on the ground that they “could provide multilateral support for domestic government institutions in failed, weak, or transitional states.”65 If the full range of influential political agents, scholars, and commentators sought actively to create and use government networks as instruments of global governance, and if their participants more fully embraced the international and global aspects of their roles, these networks could “improve the governing performance of both actual and potential members” as well as improve compliance with international rules.66 If membership in government networks had clear value in the form of status as well as services, then the networks could develop a disciplinary system involving suspension of membership for “severe and demonstrable infractions.” This would permit targeting specific government institutions for either reform or reinforcement. Such targeting, applying pressure to some of a state’s institutions while bolstering others, “holds the possibility of helping transitional states stabilize and democratize.”67 Further, in post-conflict situations these networks could help states rebuild their institutions, not only by providing technical assistance and training, but also through ongoing interactions among official counterparts in different state governments upholding professional standards.68 More generally, government networks could “strengthen compliance with international rules and norms, both through vertical enforcement and information networks and by building governance capacity in countries that have the will but not the means to comply.”69

Slaughter sees corporate and civic actors playing roles in this new order of disaggregated states, since there are “multitudes of nongovernmental actors, who must be engaged in global
governance as they are in domestic governance.”70 She proposes that government networks be “designated interlocutors” for them, as well as that international organizations, NGOs, corporations, and other interested actors be included in broad policy networks.71 However, she criticizes the “amorphous ‘global policy networks’ championed by UN Secretary General Kofi Annan, in which it is never clear who is exercising power on behalf of whom.”72 Noting that “corporate and civic actors...may be driven by profits and passions, respectively,” she emphasizes that government networks would form “the spine” of the broad policy networks she proposes, i.e., that these policy networks would have “an accountable core of government officials.”73 Here Slaughter’s position apparently diverges from O’Neill’s regarding corporations.

Slaughter imagines in detail future possibilities within constraints set by our actual global order, while Rawls leaves up to our imaginations all of the possibilities for further development of institutions and cooperative practices that would be left open (as permitted by justice) to well-ordered states after they had endorsed the Law of Peoples and established the charter of their common legal system. His project is to develop a political conception of the moral basis of a just system of international law, including a justification of human rights meeting the requirements of public reason. Slaughter’s project differs from his, but there appears to be no fundamental conflict between them. Her empirical account of state-disaggregation does not undermine any premises on which Rawls’s moral-philosophical arguments rely, and she does not argue against LP. O’Neill does argue against LP, but her arguments fail. If LP is sound and compatible with Slaughter’s account of the transformation of states, then we have some reason to doubt that globalization is rendering obsolete conceptions of human rights such as Rawls’s, and we have some reason to hope that a just world order is a realistic possibility.
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The Law of Peoples (Cambridge, Massachusetts: Harvard University Press, 1999), henceforth 'LP.'

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I do not interpret Rawls as holding that states may legitimately act to enforce rights merely because the rights are justifiable via sound moral and philosophical arguments, even though they are not recognized in positive law.


"(a) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and (b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle)." (JF, 42-43).

The principles of LP are the following:

(1) Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
(2) Peoples are to observe treaties and undertakings.
(3) Peoples are equal and are parties to the agreements that bind them.
(4) Peoples are to observe a duty of non-intervention.
(5) Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense.
(6) Peoples are to honor human rights.
(7) Peoples are to observe certain specified restrictions in the conduct of war.
(8) Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime. (LP, 37).


To say this is not to say that they have been revised for the right reasons or in precisely the right ways.

LP, p. 37.

Among the human rights are the right to life (to the means of subsistence and security); to liberty (to freedom from slavery, servitude and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality as expressed by the rules of natural justice (that is, that similar cases be treated similarly)." LP, 65, footnotes suppressed.

Rawls uses the term "conception" to refer to a particular interpretation of a concept. (TJ, 5, 8-9).

JF, 27.

JF, 40.
A conception of domestic societal justice is "political," as Rawls specifies the meaning of this term, if it has the following three features:

(a) It is a moral conception worked out for a specific subject, namely, the basic structure of a democratic society.
(b) Accepting this conception does not presuppose accepting any particular comprehensive doctrine.
(c) A political conception of justice is formulated so far as possible solely in terms of fundamental ideas familiar from, or implicit in, the public political culture of a democratic society. (JF, 26-27).

"A conception is fully comprehensive if it covers all recognized values and virtues within one rather precisely articulated system"; by contrast, "a political conception tries to elaborate a reasonable conception for the basic structure alone and involves, so far as possible, no wider commitment to any other doctrine." (PL, p. 13).

Such a society has a constitutional democratic government that answers to and protects the people's fundamental interests as specified in the constitution. (LP, 23-29).

"First, the society does not have aggressive aims, and it recognizes that it must gain its legitimate ends through diplomacy and trade and other ways of peace...." (LP, 64).

The second criterion has three parts.

(a) The first part is that a decent hierarchical people's system of law, in accordance with its common good idea of justice, secures for all members of the people what have come to be called human rights. ...
(b) The second part is that a decent people's system of law must be such as to impose bona fide moral duties and obligations (distinct from human rights) on all persons within the people's territory. ...
(c) Finally, the third part of the second criterion is that there must be a sincere and not unreasonable belief on the part of judges and other officials who administer the legal system that the law is indeed guided by a common good idea of justice..." (LP, 65-66).

This justification can be reconstructed from several elliptical passages of LP and PL in which Rawls refers to works by other authors, including H.L.A. Hart and Philip Soper. I develop this argument in "Justifying Universal Human Rights via Rawlsian Public Reason", forthcoming in ARSP (Archiv für Rechts und Sozialphilosophie).

Sufficient transformation arguably constitutes elimination. However, Slaughter asserts that no such degree of transformation is occurring. Not being an expert in her field(s) I defer to her authority here.

One example is the European Union's judicial system, which "devolves primary responsibility for enforcing [European Court of Justice] judgments not onto EU 'member-states,' per se, but onto the national judges of those states. Another example is the EU's emerging "vertical administrative network between the antitrust authority of the European Commission and national antitrust regulators that will allow the commission to charge national authorities with implementing EU rules in accordance with their particular national traditions." (NWO, 21)

This distinction is unclear, and may not be sustainable in practice, since allowing the exemption changes to some extent the status of the organization, especially if the task continues over a long period of time and the government remains weak. Here arise questions about who is to grant and monitor the exemptions, as well as about how it may be possible to prevent abuse of these powers or privileges.

“Agents of Justice," in *Metaphilosophy* 32 (January 2001), 190, henceforth 'AJ.'

AJ, 193.

AJ, 194.


"I am at least partly sceptical about those attempts to realise cosmopolitan principles through cosmopolitan or global institutions that do not show what is to prevent global governance from degenerating into global tyranny and global injustice. Big may not always be beautiful, and institutional cosmopolitanism may not always be the best route to universal justice.” AJ, 181.