Beyond Rawls’s Law of Peoples: Freedom, Capabilities, and Human Security

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This article considers whether the better-off have a duty of assistance toward impoverished individuals or, from another angle, whether the poorest are entitled to better conditions. The article looks through normative and theoretical lenses to provide practical replies to “why?”, “how (by what means)?”, and “how much?” international assistance should be provided to individuals living in the least developed countries. The article compares the requirements of global justice from Rawls’s The Law of Peoples to those of the capabilities approach developed by Nussbaum and Sen. It argues that Rawls’s duty of assistance and human rights requirements are too limited given the needs of the bottom billion, that shifting focus to capabilities centred on the freedom of the individual helps to bridge the gap, and that ultimately, concurrent advancement of human development, human rights, and human security—what is referred to as a “capabilities-plus” approach—is required to raise the capabilities of individuals within least developed countries and of these countries. Guided by this approach, the article offers policy recommendations, including the provision of international aid based on the criteria of aid effectiveness, optimal aid allocation, and practicality.

Introduction

While the gap in the United Nations Development Programme’s (UNDP) Human Development Index (HDI) between developed and developing countries narrowed by about a fifth between 1990 and 2010 and all but three (the Democratic Republic of the Congo [DRC], Zambia, and Zimbabwe) of the 135 countries with available data had higher levels of human development in 2010 than in 1970, the “bottom movers” remain aplenty (UNDP 2010, 29–30). This article focuses on the countries with low levels of human development, or the “bottom billion” of humanity—70 per cent of whom live in Africa, a smaller portion in Central Asia, and a scattering elsewhere (Collier 2007, 11). It has three objectives. First it will assess whether the better-off have a duty of assistance toward impoverished individuals or, from another angle, whether the poorest are entitled to better conditions. Secondly, it will develop an approach to guide policy-making in international assistance efforts. Finally, it will recommend policies informed by this approach. This article looks through
normative and theoretical lenses and seeks to reconcile ethical, political, and economic dimensions in replying to “why?”, “how (by what means)?”, and “how much?” international assistance should be provided to individuals, institutions, or governing bodies within the least developed countries (LDCs). From an ethical dimension, it compares the requirements of global justice from the Rawlsian and capability approaches. From the political and economic dimensions, it seeks to match philosophical theory to the limits of practicable possibility (Rawls 1999, 11) and to efficient outcomes, respectively. The article begins by examining the duty of assistance and human rights requirements from John Rawls’s *The Law of Peoples*. It then compares these to arguments from Martha Nussbaum’s *Frontiers of Justice: Disability, Nationality, Species Membership* and Amartya Sen’s *Development as Freedom* and *The Idea of Justice*. It argues that although *The Law of Peoples* presents important insights, Rawls’s duty of assistance and human rights requirements are too limited to address the needs of the bottom billion and, moreover, his international social contract contains irreconcilable procedural problems. Focus should be shifted to capabilities centred on the freedom of the individual. Ultimately, concurrent advancement of human development, human rights, and human security—what is here referred to as a “capabilities-plus” approach—is required to raise the capabilities of individuals within LDCs and of LDCs. The article recommends a robust duty of assistance as part of the solution for LDCs, including the provision of international aid based on the criteria of aid effectiveness, optimal aid allocation, and practicality.

**Rawls’s Law of Peoples**

Building on his landmark works on justice for a liberal democratic society, Rawls provides principles that he believes well-ordered, reasonable, and rational peoples (a type of idealized, enlightened nation-state) would choose to underpin international justice in his 1993 essay “The Law of Peoples,” which are further developed in his 1999 book *The Law of Peoples*. He (1993, 32) defines a “well-ordered” people as one that (1) is peaceful and not expansionist, (2) retains a system of law that is legitimate in the eyes of its own citizens, and (3) honours basic human rights. To arrive at these principles, he uses a two-stage hypothetical social contract in his “ideal” theory. In the first stage, representatives of well-ordered, liberal peoples are placed in an original position behind a “veil of ignorance” that limits their information base, thus providing fair conditions and an impartial starting point. These liberal peoples consider familiar and traditional principles from the history and practice of international law (Rawls 1999, 41). In the second stage, well-ordered, non-liberal, decent peoples engage in their own social contract by considering the principles to which well-ordered, liberal peoples have already agreed. He (ibid., 69) concludes that liberal and non-liberal (but decent) peoples would accept the same principles. According to Rawls (ibid., 37), the final agreement, or the “Law of Peoples,” would be similar to the principles currently underlying public international law: there would be a central focus
on state (or a people’s) rights, including the right to independence and non-intervention, prohibitions on war, and agreement to observe international treaties and to honour basic human rights.

Rawls then considers two cases of “non-ideal” theory: non-compliance and unfavourable conditions. In the case of non-compliance with the agreed-upon global principles, he (ibid., 81) writes that “an outlaw state that violates these rights is to be condemned and in grave cases may be subjected to forceful sanctions and even to intervention.” In the case of unfavourable conditions faced by developing countries (or what he calls “burdened societies”), he proposes a duty of assistance. Non-ideal theory and the duty of assistance are the primary concerns of this article. In the world as is, a country may be an outlaw state (e.g., an aggressor state), a burdened society (e.g., a well-governed LDC), or both (e.g., some failed or fragile states). For Rawls (ibid., 3), the long-term objective is to bring outlaw states and burdened societies into the “Society of Peoples,” envisioned as a global community of well-ordered, cooperative peoples that follows the ideals and principles of the Law of Peoples. The breadth and depth of his theory, its relevance to the world as is, and its attempt to establish a fair process for selecting principles of global justice make this work of scholarship an excellent starting point to analyze and inform development policies.

Rawls’s Duty of Assistance

The duty of assistance and the needs of LDCs

Rawls’s duty of assistance obligates peoples “to assist other peoples living under unfavourable conditions that prevent their having a just or decent political and social regime” (ibid., 37). The form of the duty of assistance is vague, underdeveloped, and limited. He (ibid., 108–10) only notes his skepticism of the ability of funds to rectify political and social injustices and expresses his preference for offering “certain kinds of advice” to influence change within ineffective regimes and to promote human rights, such as equal justice for women to relieve population pressures. The limited scope and form of the duty of assistance is explained by Rawls’s views on the aim of international assistance, the causes of deprivation, and the need to define limits to international distributive justice. He (ibid., 107) writes that the aim of international assistance is “to realize and preserve just (or decent) institutions, and not simply to increase, much less maximize indefinitely, the average level of wealth.” But why is he satisfied with ensuring that each people is “well-ordered”?

Rawls’s answer is that a people in the international original position has fundamental interests that rest on its ability to freely realize its own reasonable conception of political justice; each society is only able to do this once it is well-ordered (ibid., 34–35). And once well-ordered, a people is accepted into the Society of Peoples. On the main cause of deprivation, Rawls (ibid., 108) writes that “the causes of the wealth of a people . . . lie in their political
culture and in the religious, philosophical, and moral traditions that support the basic structure of their political and social institutions, as well as in the industriousness and cooperative talents of its members, all supported by their political virtues . . . [T]here is no society anywhere in the world—except for marginal cases—with resources so scarce that it could not, were it reasonably and rationally organized and governed, become well-ordered.” For Rawls, every people is endowed with sufficient human capacities and resources to become well-ordered and for it to realize just or decent institutions. His view is that being well-ordered does not require great resources, but rather a political culture that advances citizens’ interests. Rawls views the largely self-sufficient basic structure of a people as the most important arena for regulating citizens’ life prospects over time. Hence, he rejects calls for more egalitarian international distributive justice. There is no target in The Law of Peoples to raise the standard of living of individuals in other countries beyond what is necessary to sustain good institutions (ibid., 119). Once a people is well-ordered, Rawls believes that it should be free to pursue its own conception of the good, with whatever standard of living or quality of life this might entail. It is important to reiterate that the focus here is on LDCs. In Rawls’s ideal theory, well-ordered liberal and non-liberal peoples have sufficient resources and sufficiently functional institutions to remedy social injustices. Therefore, he is justified in rejecting a global distributive principle that raises the least well-off individual of a well-ordered people which is more pastoral or less hard-working relative to others, or embodies religious and social values that lead to a higher rate of population growth (ibid., 117–18). However, this article will show that in non-ideal theory Rawls’s duty of assistance is insufficient.

The first shortcoming of Rawls’s duty of assistance is its inadequacy to address the needs of the bottom billion. To assess whether or not Rawls’s duty of assistance is sufficient and to determine areas to focus policy, the causes of deprivation in LDCs can be assessed. As a first principle, the primary goal for LDCs and the core challenge of development should be economic growth, the sine qua non for poverty reduction (Collier 2007, 11). It is necessary to supplement this goal with additional goals such as growth with equity, social progress, and sustainable development. On this point, development economics features a debate on the “poverty trap” and “bad government” as alternative causal explanations for the persistence of low, stagnant, or negative economic growth in LDCs. On the one hand, Jeffrey Sachs (2005) argues that a large number of the extreme poor are unable to escape from material deprivation because they are “trapped” by disease, climate stress, environmental degradation, and extreme poverty itself. The poverty trap, he contends, is the result of low domestic savings—self-sustained economic growth cannot be spurred without investment to fund the accumulation of physical and human capital. He understands that the “financing gap” can be addressed with international aid. In the “big push” aid theory, which assumes that aid will lead to investment and subsequently to growth, sufficient levels of aid will break the poverty trap.

It is clear that LDCs lack the capital required for economic development,
yet the empirical validity of the existence of a poverty trap and the utility of the financing gap model have recently come under scrutiny. William Easterly (2006b) finds that there are problems with the poverty trap explanation because there is no compelling evidence that countries are stuck at low-income levels. He notes that the poorest countries have not had stationary income streams, regardless of the presence of international aid. Moreover, poor countries’ economic performance has fluctuated, which implies that they are not in poverty traps (ibid., 19–21). Regarding the financing gap model, it is not clear that there is a link between aid and investment, that aid goes toward investment one for one, or that there is a statistically significant link between investment and growth (Easterly 1999, 430–33). Easterly argues that it is not a useful model because if aid is seen as permanent income, recipients have incentives to consume rather than invest and to maintain or increase the financing gap, which promotes moral hazard. Given the challenge of inferring causality in the poverty trap explanation and the difficulties with the financing gap model, an alternative explanatory theory is needed.

Easterly (2006b) finds that bad government is a significant factor in explaining low growth rates in low-income countries—the result holds only when corruption is taken into consideration. He (ibid., 23–30) defines bad government as reflective of scoring poorly on corruption (using data from the International Country Risk Guide) and democracy (using data from Polity IV) measures. Hence, he and Dambisa Moyo, among others, are skeptical of the provision of aid to poorly governed countries. They suggest bottom-up, micro-level solutions (Easterly 2006a) and alternative ways of financing investment for development (Moyo 2009). Given the many dimensions of bad government, it is necessary to broaden and deepen Easterly’s definition to discern the quality of overall governance. To do this, the six dimensions of governance in the World Bank’s Worldwide Governance Indicators project could be considered: political stability and absence of violence, voice and accountability, government effectiveness, rule of law, control of corruption, and regulatory quality. For economists in the governance camp, reasonably good scores on these dimensions are a prerequisite for growth. The views of Easterly and Moyo align with those of Rawls in suggesting that growth is made possible if there is good governance (here it can be assumed that a “decent social and political culture” includes good governance). These are important insights in development economics; however, they only provide a partial account of the causes of poverty. More is needed to inform solutions for LDCs.

Just or decent institutions and good governance are important considerations, but there are additional factors that lead to the deprivation of LDCs. Even some of Rawls’s supporters agree that his duty of assistance and arguments in The Law of Peoples require either reworking or elaboration. Huw Lloyd Williams (2011) extends the capability approach that Rawls later adopts in his domestic non-ideal theory to enable individuals to meet the social minimum. He (ibid., 156) argues that there are additional obstacles to freedom that affect “state capability,” defined as the substantive freedom of peoples
and extent of their actions. Such obstacles include resources, civil society, and the global economy (ibid., 128). Williams sees Rawls’s position as open to incorporating a multi-level analysis that conceptualizes a more robust duty of assistance to build state capability (ibid., 154). Such incorporation would help elaborate Rawls’s duty of assistance, though it is questionable whether he would accept such proposals. His overwhelming emphasis on political culture and domestic institutions, rejection of the application of capabilities to peoples (Rawls 1999, 13), and skepticism regarding international aid all suggest that he would not. Williams recognizes this, noting: “[T]he extent to which we can attribute this view to Rawls . . . is a question of interpretation. . . . I would submit that this approach to burdened societies is in the spirit of his work” (ibid., 156). Rawls and Williams, however, both focus too narrowly on states, a point that will be later revisited.

Paul Collier presents (2007, 5) another explanatory theory: LDCs are stuck in poverty because they face one or a combination of four traps—the natural resources trap, the conflict trap, the trap of being landlocked with bad neighbours, and the trap of being a small country with bad governance. This theory is the most likely explanation for the persistence of low, stagnant, or negative growth in LDCs. Crucially, it goes beyond simplistic mono-causal explanations and recognizes that contextual differences, the role of external state and non-state actors, and the international economic structure may affect the quality of governance, policies, and institutions. Collier’s (2007, 201) broad policy prescriptions are to promote good governance, harness natural resources for equitable benefit, reform internal and external economic and trade policies, provide effective development aid, and implement international laws and charters that promote transparency and accountability. These policies tackle the realities facing LDCs.

It is also necessary to consider aid effectiveness to determine whether or not Rawls is justified in minimizing the role of international aid. While macro studies of the impact of aid on growth are fiercely debated, evaluations of micro aid projects have yielded more positive results. Paul Mosley (1986, 22) coined the term “micro-macro paradox” to highlight the observation that micro or project evaluations tend to show that aid has a positive impact, which is not or cannot be confirmed by macro studies. Accordingly, some policymakers only support aid that funds, for instance, vaccination campaigns, cash transfers for school attendance, and investments in infrastructure. However, the problem of aggregation—positive results from micro aid projects often do not add up to macroeconomic growth and may not be replicable in other contexts—indicates that micro projects cannot be the sole focus. Scholars are split on whether aid boosts growth and it is evident that “every aid effort is a calculated risk or . . . experiment” (Roodman 2007, 3), but there is a general (not universal) consensus in the development community that policies matter for aid effectiveness (see, for example, Burnside and Dollar 2000; Collier and Dollar 2004). Aid may lead to growth in recipient countries with good fiscal, monetary, and trade policies, including sound budget management, low debt levels, low levels of inflation, a relatively open economy, and secure property
rights and enforceable contracts (ibid.). Recognizing this, Collier (1997, 64) advises donors to adopt a policy of selectivity or ex-post conditionality in the allocation of aid to recipient countries, whereby governments are rewarded with aid if they pursue good policies.

Rawls’s duty of assistance sees little to no role for international aid, not even on a selective basis. Although it may be argued, in the spirit of Rawls, that conditionality erodes sovereignty and therefore undermines burdened societies, this can only be accepted to a certain extent. Donors are accountable to their citizens for how and where they provide aid and it is reasonable to expect that aid is facilitating growth and consequently alleviating poverty. While the intrusion on sovereignty should be minimized, certain conditions for aid—especially those related to a select group of indisputably sound economic policies—may be necessary. In cases where there is progress in a recipient country though macroeconomic “slippage” on some conditions, perhaps due to a shock to the economy, the aid framework should be flexible enough so that donors refrain from cutting off aid, an action which might jeopardize reforms that have already been implemented (Leandro, Schafer, and Frontini 1999, 289). Furthermore, donor conditionality, if used, should align with the recipient-led long-term poverty reduction plan. Taken together, sound political and economic policies, just or decent institutions, and good governance should provide fertile conditions for sustained economic growth. To address the additional goals of growth with equity, social progress, and sustainable development and challenges such as multidimensional poverty and the four traps into which an LDC may fall, international aid needs to go beyond Rawls’s duty of assistance and Williams’s elaboration. To address these goals and challenges, this article examines Rawls’s human rights requirements before turning to capability ethics.

The duty of assistance and human rights

In The Law of Peoples, well-ordered peoples agree to honour basic human rights, which include the right to life (i.e., to the means of subsistence and security), to liberty (i.e., to freedom from slavery, serfdom, and forced occupation, and to a sufficient—not necessarily equal—measure of liberty of conscience to ensure freedom of religion and thought), and to personal property (Rawls 1999, 65). Rawls’s “special class of urgent rights” ensures the security of ethnic groups from mass murder and genocide (ibid., 78–79). These rights are preconditions for becoming well-ordered and subsequently joining the Society of Peoples. His duty of assistance aims to secure human rights in burdened societies, including subsistence needs such as health care, food, clothing, shelter, and minimum economic security (ibid., 65). Importantly, Rawls (ibid., 80) refers to the Universal Declaration of Human Rights (UDHR), stating that his group of rights includes Articles 3 to 18 (although it cannot fully include Article 7, which covers equality before the law); all other rights in the UDHR are discounted as “liberal aspirations” or rights that presuppose certain institutions. Notably, he omits certain civil and political rights such
as the right to democracy in the institutional and deliberative sense, the right to full equality under the law (since unequal liberty is permitted), freedom of speech and expression, and freedom of assembly. All societies that ensure at minimum associationist or hierarchical forms of governmental consultations, he judges, are to be tolerated and accepted as members in the Society of Peoples. In addition, Rawls excludes many economic and social rights such as the right to social security (UDHR Article 22), the free choice of employment and the right to equal pay for equal work (Article 23), and the right to education (Article 26). He concedes that his list of rights is relatively limited. In a footnote, Rawls (ibid., 75) acknowledges the argument that “full democratic and liberal rights are necessary to prevent violations of human rights . . . , an empirical fact supported by historical experience,” but since he views decent peoples in a conceptual way, he narrows his concern to whether or not liberal peoples should tolerate these non-liberal peoples politically and accept them in the Society of Peoples.

Rawls’s commitment to a limited selection of human rights is related to his notion of a “realistic utopia”—he understands that a Law of Peoples must “depict an achievable social world” (ibid., 6). His realistic utopia is characterized by reasonable pluralism and self-determination for each people, both requiring a liberal toleration and an absence of paternalism, hence Rawls concludes that the protection of “urgent rights” makes his Law of Peoples sufficiently liberal (ibid., 79). To this end, the principles underlying international relations must achieve an overlapping consensus of liberal and non-liberal peoples. In addition, Rawls (ibid., 68) asserts that the agreement to honour human rights derives not from any particular comprehensive moral, religious, or philosophical doctrine, but rather from peoples’ recognition that the fulfillment of these rights is a necessary condition of any domestic system of social co-operation. He (ibid.) makes this important distinction in an attempt to safeguard against viewing human rights as liberal or democratic, or a Western political tradition biased against other cultures. If decent peoples saw human rights in that light, Rawls believes that his principles of justice would not achieve an overlapping consensus. Furthermore, the limited list of human rights is a result of these rights’ specific role in the Law of Peoples: they serve to narrow and restrict justifications for war and to specify limits to a regime’s internal autonomy (ibid., 79). Thus, these rights hold political (and moral) force for all peoples; if an outlaw state violates them, condemnation and, in grave cases, forceful sanctions and intervention are justified (ibid., 81).

To his credit, Rawls recognizes the need for the international community to take moral responsibility for ensuring the fulfillment of human rights in all societies. Erin Kelly (2004, 177) argues further that human rights must be conceived narrowly if they are to play their required role in the Law of Peoples. She extends Rawls’s theory by committing countries to a broader set of foreign policy imperatives, including prohibitions on engagement (e.g., profiting in relations with regimes that violate human rights), support of international efforts and provision of reparations in cases where countries are directly implicated in human rights violations, and duties for wealthier states
to offer aid in a variety of forms to poor states, if doing so will further the cause of human rights (ibid., 177–80). Kelly elaborates Rawls’s duty of assistance in a helpful way, yet she adheres to a limited list of human rights because of the “normative requirement of joint acceptability” (ibid., 179). In effect, this echoes Rawls’s valuable insights on the need for reasonable pluralism and on the importance of self-determination. However, it is not necessary to proceed so timidly with a limited list of rights.

Rawls’s and Kelly’s starting point needs to be recast: a liberal foreign policy should not be encumbered by what non-liberal, decent peoples would accept in a social contract. Policy-makers may go beyond such a limited selection of human rights. There is sufficient space to safeguard reasonable pluralism and respect self-determination while striving to make all human rights universal, indivisible, and interdependent. For instance, liberal and non-liberal peoples may disagree on whether full democratic, economic, and social rights are universal; however, liberal peoples can still tolerate non-liberal peoples’ principles (but not those of outlaw states) and actively encourage all human rights, without intervention or resorting to sanctions. Rawls (1999, 82–83) views this as amounting to a foreign policy that aims to impose on all societies the liberal rights of citizens in liberal constitutional democracies in order to gradually liberalize non-liberal peoples. Granted, but why would this be wrong if the rights are grounded in basic shared interests such as human dignity (Buchanan 2006, 159)? For Rawls, this kind of moral conception of human nature is incompatible with his political conception of justice because, as noted, human rights in the Law of Peoples are grounded in social co-operation, not in comprehensive doctrines, which are precluded in the social contract. But this is an inadequate approach toward international justice, and an alternative grounding for human rights—in individuals’ capabilities to do what they value—will be discussed. When rights are agreed upon as inherent to basic human needs and aspirations, the debate moves beyond whether human rights are “liberal aspirations” or just “rights talk.” Agreement on various human rights declarations and covenants has been achieved—of course with some reservations—proving that peoples may strive toward a more ambitious “realistic utopia.”

Whether or not all human rights can be enshrined in law is not the most important issue. They should be used as normative claims that give rise to state obligations. Human rights should serve as strong moral claims for spearheading legislation and increasing public attention toward individuals subject to violations of their rights (Sen 2009, 364–65). If states do not protect and enforce these rights, they should be persuaded—and in the worst cases coerced—by the international community to live up to their obligations. On this point, Nussbaum (2006) makes an important distinction between the justification and the implementation of norms. The Law of Peoples treats the question of whether or not a people is worthy of toleration in the Society of Peoples (based on whether it implements relevant norms and human rights standards) as equivalent to whether or not the international community should intervene, either militarily or with economic or political sanctions.
However, the international community may simultaneously promote a wider set of aspirational human rights, make justified criticisms of peoples who are not adhering to their obligations, and refrain from intervening militarily or imposing sanctions. In such instances, the international community could use other means to seek compliance such as persuasion through public campaigns, diplomatic exchanges, international covenants, and targeted aid (ibid., 256–59). For example, Nussbaum (ibid., 256) highlights international campaigns against the use of the death penalty in the United States. Furthermore, intervention is not always the best option and there may be prudential arguments against it in even the gravest cases (ibid., 259). For instance, in consideration of the genocide and mass rapes in Gujarat, India, in March 2002, Nussbaum (ibid., 259) judges that intervention would have likely created more problems than it would have solved and that there were adequate domestic democratic accountability processes in place, hence the international community was right not to intervene. States can evidently justify a wider set of human rights as applicable to each people and implement that set in a variety of ways, without resorting to intervention in a people’s affairs.

In addition to the shortcomings of Rawls’s duty of assistance and human rights requirements, the Rawlsian social contract approach contains irreconcilable procedural problems. Nussbaum (2006, 250) indicates that Rawls’s international social contract excludes burdened societies, which therefore have no say in setting the political and economic rules of the game and take existing rules as given. This cannot be considered a just state of global affairs because it undermines the Rawlsian notions of “equal peoples” and “justice as fairness,” or the notion that if the process is fair, the outcome will be just. The Law of Peoples cannot answer a crucial question about Rawls’s process: how can justice for LDCs be derived if they are excluded from the process? It is unfair to exclude burdened societies from the social contract, but a dilemma exists: since those societies may not be symmetrically situated or able to represent themselves fairly, they may not have the political power and capacity to enter into a binding agreement. For that reason, a contract for mutual advantage cannot include them as equal participants (ibid.). What is needed is a complete redesign of the system of global justice to fairly and fully include LDCs. This would require a significant departure from Rawls’s Society of Peoples and a different account of the purposes of social co-operation, mutual advantage, and reciprocity and of a realistic utopia (ibid.). The international community thus stands at a frontier of justice that the Rawlsian approach cannot cross.

Rawls’s exclusion of burdened societies from the social contract is similar to the reality of decision making within the current global political and economic architecture. The International Monetary Fund, World Bank, World Trade Organization (WTO), Group of Eight, and United Nations Security Council have traditionally been dominated by developed countries, though recently there have been certain moderate reforms. As Thomas Pogge (2004, 278–79) argues, considering that developed countries set the rules to their advantage,
their dominance of the international order gives them a moral (negative) duty to reduce the harm caused to developing countries and not to take advantage of injustice at the expense of the poor. He suggests that developed countries reform the inequitable international structure to better favour developing countries. The Rawlsian insight on burden sharing is important to keep in mind, however, if not for purely practical reasons. Wealthier countries that make larger contributions to international organizations and confederations can reasonably expect to receive greater returns and have more input into operations and resource allocation (Rawls 1999, 115). In the world as is, there is room to preserve this situation while giving poorer countries a greater say in matters that affect their development. From another angle, the Rawlsian approach focuses too narrowly on states and, to a lesser extent, multilateral organizations. Onora O’Neill (2005, 246) argues that policy-makers need to recognize and engage non-state actors that also play an important role in providing economic justice. A more equitable global order would see both Pogge’s and O’Neill’s suggestions implemented. Firstly, developed countries would include developing countries in global economic governance forums (e.g., the Group of Twenty and the Bretton Woods institutions) and offer them preferential terms in the WTO and in regional and bilateral trade negotiations. Secondly, the full range of state and non-state actors—including civil society, non-governmental organizations (NGOs), entrepreneurs, multinational corporations, religious and charitable groups, academia, research centres, and the media—in developed and developing countries would help the bottom billion overcome multidimensional poverty and the four traps.

Capabilities without Borders

Given the shortcomings of Rawls’s duty of assistance, human rights requirements, and social contract approach, policy-makers require an alternative ethical approach. The capabilities approach, as developed on different tracks by Nussbaum and Sen, provides an ethical basis for achieving global justice. Before moving on, it is important to make clear two first principles that underpin the arguments that follow. One is the Kantian notion that all moral agents are equally free to determine their own ends and all moral agents are ends in themselves. The other is that, assuming fundamental human nature involves motivations of gratitude and reciprocity and consideration of loved ones and those in closer proximity first, a reasoned approach to global justice values impartial notions of need, rather than familiarity or moral desert (Singer 2005). The location of the needy is irrelevant—if one can help, one ought to do so (even if one does not) (ibid., 28). These principles are sufficient in scope and can replace Rawls’s starting point, the original position. In contrast to the Rawlsian framework, it seems reasonable to draw upon these principles if they are grounded in basic human interests and if doing so achieves just outcomes.
Capabilities are a better metric of international justice than primary goods

The capabilities approach better addresses the needs of LDCs than Rawls’s duty of assistance and his use of primary goods. The capabilities approach aims to expand the freedoms of each individual and has human development as its primary objective. “Capability” is a power to do or to have something, rather than the actual “doing” or “having,” Sen is concerned with those capabilities that individuals would have reason to value while Nussbaum considers those necessary to achieve a life worthy of human dignity. An important distinction between Rawlsian and capability theorists relates to the metric of justice and the distinction between means and ends for inequality. According to Sen (1980), the appropriate metric of justice can be determined by asking: “Equality of what?” In *The Idea of Justice*, he distinguishes “utility-based” or “resource-based” approaches focused on inequalities of primary goods from the “freedom-based” approach focused on inequalities of capabilities. Rawls (2001, 58–59) remedies inequalities within a society through the use of primary goods, chief among which are the “all-purpose means” of wealth and income. Aside from his limited duty of assistance, Rawls does not endorse a redistribution principle in his international theory. While she also does not endorse a specific redistribution principle, Nussbaum (2006, 74, 316) argues that prosperous countries have a responsibility to provide a substantial portion of their gross domestic product to poorer countries in order to realize capabilities that are necessary for a life worthy of human dignity. She (ibid., 17) suggests a figure of 2 per cent of gross domestic product, acknowledging that it is arbitrary and debatable but maintaining that the principle is not. Space constraints preclude an analysis of Nussbaum’s open-ended list of capabilities, but they are generally accepted in this article because they capture the core elements of human development. Rawls’s narrow list of human rights and preference for primary goods, on the other hand, do not.

The most effective way for policy-makers to measure progress toward goals for LDCs, such as growth with equity, social progress, and sustainable development, is to utilize the capabilities lens. As recognized by the UNDP in its human development concept, income alone is an incomplete and crude measure of an individual’s well-being. Moreover, primary goods have difficulty addressing the problem of interpersonal variation, the fact that conversion of primary goods into freedom differs from individual to individual. For example, a disabled person with the same level of income as a non-disabled person may not possess a similar level of freedom. The UNDP uses income, health, and educational indicators. However, to fully represent an individual’s well-being in terms of freedom, policy-makers should look at the capabilities available to various individuals. A final reason why capabilities are a more useful metric than primary goods is the distinction between means and ends highlighted by Sen in *The Idea of Justice* and *Development as Freedom*. Primary goods are an indirect means toward other things, perhaps increasing an individual’s freedom, while capabilities directly impact an individual’s
freedom, his or her actual opportunities for living well. For these reasons, policy-makers should focus on capabilities rather than primary goods.

This new focus can result in more effective policies. In contrast to Rawls’s focus on states (or peoples), individuals deserve greater attention, and the maximization of capabilities, or “substantive freedoms,” should be seen as both the means and ends of development (Sen 2000, 3). By focusing on individuals’ capabilities, policy-makers can better recognize that poverty is multi-faceted and that the poor face overlapping deprivations. They can, in turn, better address multidimensional poverty. In the short term, the bottom billion care most about securing basic necessities such as food, clean water and sanitation, primary and secondary education, treatment for illnesses, and jobs. In the medium to long term, capabilities such as political control over one’s environment may become a priority in order to ensure the preservation of self-determination. The UNDP’s HDI is a useful tool to measure the various aspects of multidimensional poverty and compare countries’ conditions. Policy-makers may use HDI data to identify similarly situated countries (in geographic, climatic, and historical terms), single out those with higher levels of human development, and then learn from those countries’ policies. In 2010, the UNDP introduced the Multidimensional Poverty Index, which considers multiple deprivations and their overlap. Additional instruments introduced by the UNDP that year include the inequality-adjusted HDI, a measure of the level of human development that accounts for inequality, and the Gender Inequality Index, which measures disadvantages facing women and girls. These new indices go further in measuring the effects of policies on human development and are equally useful for the formation of country-specific policies.

The nexus between development, freedom, and human rights

If the focus of development should be maximizing capabilities and the main objective should be achieving equitable, sustainable economic growth alongside social progress, then what is the link between development, freedom, and human rights? Human rights are derived from normative notions of the freedom of the individual. In other words, human rights can be derived from capabilities since different capabilities allow an individual to strive toward different freedoms. For instance, from Nussbaum’s capability of control over one’s environment, the human rights of freedom of speech and freedom of assembly can be derived. From her capability of senses, imagination, and thought, the right to education can be derived. It is important to recognize, however, that although all human rights can be derived from capabilities, capabilities cannot always be translated into rights, nor would this be desirable. Considering Nussbaum’s capability of affiliation, for example, it is not reasonable to obligate each individual to show concern for and engage with every other individual, but it is reasonable to protect the rights to freedom of assembly and freedom of expression.

The advancement of civil, political, economic, social, and cultural rights
in the second half of the 20th century has been fundamental in increasing
the freedom of all individuals. The legal and normative underpinnings of
individuals’ different freedoms are found in the international human rights
architecture, which includes the Charter of the United Nations, the UDHR,
the International Covenant on Civil and Political Rights and its two optional
protocols, and the International Covenant on Economic, Social and Cultural
Rights and its optional protocol. Within these and other instruments there
are various normative proclamations that the international community can
use to increase individuals’ freedom. For example, Article 25 of the UDHR
states that “Everyone has the right to a standard of living adequate for health
and well-being of himself and of his family, including food, clothing, housing
and medical care and necessary social services, and the right to security in
the event of unemployment, sickness, disability, widowhood, old age or
lack of livelihood in circumstances beyond his control” (UN 2012). Likewise,
Article 26 affirms the right to free and compulsory elementary education and
indicates that higher education should be made equally accessible to all on the
basis of merit (ibid.). The crucial point is that human rights which improve
individuals’ capabilities should be promoted, though one must remain realistic
about which rights official state actors may reasonably be expected to promote
publicly. Moreover, for human rights to be enforceable, instruments like those
mentioned above should be made binding through ratification. Liberal rights
need not necessarily be forced by peoples upon other peoples. Peoples can
promote a wider set of human rights and aim to have protections legislated
and then enforced through monitoring bodies and courts. Such actions are a
necessary check on state power and impunity and should ultimately improve
individuals’ capabilities. A liberal foreign policy should be confident and have
purpose—the promotion of fundamental human rights and the advancement
of human development are causes that are worthy of effort. In this conception,
Rawls’s “urgent” human rights are supplemented with the promotion of a
wider set of rights that create opportunities—and hence improve capabilities—
and the freely determined development of all individuals.

How far should governments and other actors go in improving the
capabilities of the bottom billion? Nussbaum (2006, 293–94) argues that to
construct a minimally just world the international community should secure
her 10 central capabilities up to an appropriate threshold level for all of the
world’s peoples. Thresholds, she says, are different for different capabilities.
First of all, political, religious, and civil liberties should be secured equally for
all individuals. For capabilities related to property and instrumental goods,
“What seems appropriate is enough.” For capabilities linked to the idea of
equal human dignity such as primary and secondary education and access to
basic health care, the international community should “aggressively pursue
equality between nations.” These threshold targets are practicable. Policy-
makers can use them as a starting point and then consider the maximization
of all capabilities as the end goal (Sen 2009, 232–33). Furthermore, what
should be the role of international aid? Aid can kick-start development and
help to provide the conditions for sustained economic growth, but it is not a
panacea, as evidenced by the Sachs/Easterly/Collier debate. Aid is one part of a poverty reduction strategy and it is critical to find ways to make aid more effective. Aid effectiveness can be increased by providing aid through various channels depending on whether a people is well-ordered or not (Radelet 2004) and whether aid modalities match a country’s needs. Rawls’s duty of assistance, with little to no role for aid, removes an important financing option for LDCs, especially in cases where peoples are well-ordered but stuck in one of the four aforementioned traps. The construction of a global ethics based on the capabilities approach and the promotion of a wide set of human rights is the best way to increase the freedom of the bottom billion and facilitate development. A holistic human development approach should be complemented by moral and legal justification found in human rights treaties and instruments. To achieve global justice for the bottom billion, policies should be informed by a novel “capabilities-plus” approach.

Toward a “Capabilities-Plus” Approach: Human Development, Human Rights, and Human Security

A “capabilities-plus” approach supports the concurrent advancement of human development, human rights, and human security and encourages policy-makers to conduct policy with the maximization of Nussbaum’s central capabilities and the promotion of freedoms as end goals. It is morally justifiable and strongly protects and empowers individuals in LDCs, in turn facilitating equitable, sustainable economic growth alongside social progress. The approach’s human security component is critical because it proposes a paradigm shift from a focus on state security to a focus on individual security; it complements, not replaces, traditional notions of state security. In its 2003 report Human Security Now, the independent Commission on Human Security (CHS), on which Sen was a co-chair, defines human security as the protection of “the vital core of all human lives in ways that enhance human freedoms and human fulfillment” (CHS 2003, 4). Like capability ethics, the human security paradigm aims to protect fundamental freedoms by promoting human rights and ensuring good governance and access to basic services (ibid.). Its added value is its enlarged focus on protecting individuals from all severe and pervasive threats and situations including “downside risks” such as external shocks (ibid.). Examples of shocks include natural disasters, regional and global financial crises, commodity price changes, political and civil unrest, and assassinations. The CHS report explores several conflict-related aspects of human security, including violence, refugees and internally displaced persons, and post-conflict situations, and several poverty-related aspects such as economic insecurity, ill health, and lack of education. It is important to recognize that these aspects are often two sides of the same coin: conflict perpetuates poverty and poverty sows the seeds of conflict. Outlaw states and burdened societies may be one and the same, and suffer from both conflict and poverty. Examples include failing or failed states such as Afghanistan, Côte d’Ivoire, the DRC, Myanmar, North Korea, Sudan, and
Yemen. It is the bottom billion who feel the greatest impact of downside risks and are most prone to external shocks because of weak state capacity, relatively high internal and external risk factors for instability, and relatively weak external stabilizing factors.25

Policy-makers should complement human development and human rights policies that expand individuals’ freedoms with a focus on human security. The CHS (ibid., 130–43) proposes a framework to take action on the protection and empowerment of all individuals. To protect individuals, policy-makers must focus on the development or reform of norms, processes, and institutions needed to build state capacity and increase resilience. Based on the preceding arguments, this could roughly be categorized as a moral negative duty for developed countries to reform the international economic architecture so as not to harm the poorest living in LDCs and a moral positive duty for all countries to assist the bottom billion and help LDCs develop just institutions, adopt good policies, and practice good governance. To empower individuals, the CHS says, policy-makers should enhance human capabilities and enable individuals to make their own informed choices. Based on prior arguments, this may roughly be categorized as a moral positive duty for developed countries and relevant non-state actors to address the challenges related to the four traps facing LDCs, and for LDCs to develop just institutions, adopt good policies, and practice good governance.

In practice, the protection and empowerment of individuals has yielded notable results. For instance, the United Nations Trust Fund for Human Security plays an important role in coordinating and channelling financial resources to field-based human security projects. An example is its support for a community empowerment and peace-building project in the Ituri region of the DRC that combines the efforts of various United Nations agencies (the UNDP, Food and Agriculture Organization, United Nations Children’s Fund, United Nations Population Fund, United Nations High Commissioner for Refugees, and World Food Programme), the United Nations Organization Mission in the Democratic Republic of the Congo, and the World Health Organization. Their efforts are alongside those of the provincial government and local, national, and international NGOs. The project places communities at the centre of post-conflict recovery and addresses the full range of insecurities faced by individuals (UNGA 2010, 16). The project has an integrated and holistic approach to meeting basic human needs in the region. Specifically, it is strengthening public safety, improving health and education, supporting economic recovery, and promoting a culture of peaceful coexistence between diverse groups (ibid.). As to its impact on individuals’ lives, “efforts provide opportunities to decrease inequalities, strengthen social networks and improve State-society relations, all of which are required to produce the peace dividend needed to bolster confidence in consolidating peace and transitioning to sustainable development” (ibid.). International participation in such projects must ensure equal respect for internal processes and indigenous-led development in order to preserve self-determination.

Achieving global justice requires the protection and empowerment of
all individuals offered by a “capabilities-plus” approach, which recognizes that every individual matters equally. Rawls’s Law of Peoples cannot support such an approach because his duty of assistance calls for the termination of international assistance for burdened societies once peoples become well-ordered. Although he supports the humanitarian protection of individuals from downside risks such as famine, Rawls does not advocate striving toward a wide range of civil, political, economic, social, and cultural rights. This is inadequate in attempts to address multidimensional poverty and the four traps that LDCs may fall into. The bottom billion—the poorest and most vulnerable—require remedies prescribed by a “capabilities-plus approach” that has a focus on human security at its core. Crucially, the approach retains the Rawlsian emphasis on the development of institutions and state capacity building, which are necessary to protect individuals to an extent, but prioritizes the protection of individuals from shocks, conflict, and poverty and the empowerment of individuals through human development and promotion of a wide set of human rights.

Policy Recommendations

1. The goal of the duty of assistance should be to maximize the capabilities of the bottom billion

- Utilize the ethical lens of a “capabilities-plus” approach—the concurrent advancement of human development, human rights, and human security
- Channel a greater share of resources to human security projects that align with LDCs’ domestically-led poverty reduction plans and include, where appropriate, United Nations agencies, multiple donors, NGOs, and local governments, communities, and entrepreneurs in LDCs; consider using the United Nations Trust Fund for Human Security as a central coordinator
- Allocate the majority of international assistance to LDCs
- Provide aid to governments that adopt good economic policies and practice good governance
- Provide aid in the form of general and sector budget support and/or technical co-operation to LDCs with just institutions
- Focus on specific projects and interventions in badly governed LDCs and channel aid through NGOs
- Use discretion in cases where peoples are not well-ordered
- Ensure that aid effectiveness is a key consideration in choosing modality
- Provide advice on sound monetary, fiscal, trade, and macroeconomic policies to ensure aid effectiveness
- Assist LDCs in trade capacity building and trade facilitation
- Encourage regional and global economic integration if it is for LDCs’ benefit
2. *The international economic architecture should reflect an equality of peoples*

- Include LDCs in decision-making processes that affect their development
- Provide trade preferences for LDCs through the World Trade Organization
- Initiate or encourage preferential bilateral and regional trade negotiations in areas that LDCs have existing or potential comparative advantage
Notes

1. An alternative to gross domestic product, the HDI captures progress in three basic capabilities: to live a long and healthy life, to be educated and knowledgeable, and to enjoy a decent standard of living (see UNDP 2012b).


3. In *The Law of Peoples*, Rawls uses the term “peoples” and not states or nations because he recognizes their political and cultural nature and assigns to them a certain moral character. He understands that peoples are reasonable, rational, and decent. They are not, as per the traditional conceptualization of states, solely guided by rational self-interest (in the pursuit of war and economic dealings, for example) and they respect limitations to sovereignty (for instance, in cases of human rights violations and crimes against humanity). Each “people” consists of representatives of a single society in the Society of Peoples. For more on the difference between peoples and states, see Rawls (1999, 23–30).

4. Rawls aims to develop a reasonably just foreign policy for a liberal society, though the principles are also intended to govern relations between peoples in the Society of Peoples.

5. For instance, they know that they are liberal or not liberal and that they have a resource base sufficient for them to be well-ordered, but they do not know the size of their territory or population, or their strength and level of economic development relative to other well-ordered societies (Rawls 1999, 32–33).

6. Rawls (1999, 59–60) defines a decent people as one whose “basic institutions meet certain specified conditions of political right and justice and lead its people to honor a reasonable and just law for the Society of Peoples.” Liberal peoples are to tolerate and accept non-liberal, decent peoples in the Society of Peoples.

7. Burdened societies are those that, while “not expansive or aggressive, lack the political and cultural conditions, the human capital and know-how, and, often, the material and technological resources needed to be well-ordered” (Rawls 1999, 106).

8. Rawls (1999, 109–10) mentions reducing gender inequalities and reforming a people’s population policies through domestic action, but this is not a requirement of the human rights principle of the Law of Peoples.

9. Rawls’s demand for international distributive justice is less egalitarian than his difference principle in the domestic case. In *Justice as Fairness: A Restatement*, Rawls’s second principle of justice, the difference principle, reads: “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” (Rawls 2001, 42–43).
10. The limitations have inspired cosmopolitan theorists to attempt to improve Rawls’s duty of assistance. Other scholars view justice as first being owed to a national community. Rawls (1999, 115–20) replies to Charles Beitz and Thomas Pogge in The Law of Peoples. Given the need for a “realistic utopia,” it is reasonable to accept Rawls’s argument that there is reason to question the practicality and necessity of such far-reaching schemes without targets such as global difference and resource distribution principles (Beitz 1975; 1979) or a global resource dividend (Pogge 1994; 2008).
11. For more information on these goals, see UNDP (2012a).
12. The “financing gap” is the difference between (low) domestic savings and (even lower) domestic investment in a developing country. Foreign aid can help in the accumulation of physical and human capital, which can spur economic growth.
13. Variations of the financing gap model are used by international financial institutions, regional development banks, and most aid agencies to calculate the investment necessary to achieve a desired growth rate.
14. Moyo (2009, 48–49) argues that aid itself is the cause of poverty and corruption because it has instilled a culture of dependency in LDCs and leads to “unlimited opportunities for personal wealth accumulation and self-aggrandizement.” Aid itself is almost surely not the cause. Rather, the cause of poverty and corruption is most likely aid that is provided either to already corrupt governments or to governments lacking just institutions and adequate accountability mechanisms needed to prevent corruption.
15. Moyo (2009) seeks alternative ways to finance investment in LDCs, such as placing emphasis on the private sector, foreign direct investment, government bonds, trade liberalization, and banking solutions (microfinance and remittances). However, whether or not the first three options would be viable depends heavily on the trust in LDC governments to honour and enforce contracts and property rights and to provide stable regulatory environments and policies conducive to high returns. LDCs secure such trust in rare cases.
16. In the narrow institutional sense, democracy is tantamount to elections and public balloting. In the broader deliberative sense, democracy is seen as “government by discussion” and an exercise of public reason; that is, it is inclusive of political participation, dialogue, and public interaction. See Sen (2009, 324–27, 345–48) for more on this distinction and the relationship between democracy and development.
17. The universality of human rights acknowledges that human rights apply to all human beings independent of specific cultural, historical, or other backgrounds.
18. The indivisibility of human rights refers to the claim that human rights from different classes (and even within classes) cannot be separated because all human rights are of equal importance.
19. The interdependency of human rights affirms that the realization (or the violation) of one human right is affected by the realization or violation of others.
20. Recent reforms include the emergence of the Group of Twenty in 2008 and efforts to make the international financial institutions more inclusive and
thereby more legitimate.
22. Nussbaum’s 10 central capabilities are: life; bodily health; bodily integrity; senses, imagination, and thought; emotions; practical reason; affiliation; other species; play; and control over one’s environment (political and material). See Nussbaum (2006) for elaboration.
23. See UNDP (2012a) for more information.
24. The CHS (2003) recognizes that human security differs from state security in four ways: its concern is the individual and the community rather than the state, it includes “menaces” (threats or conditions) to people’s security that have not always been classified as threats to state security, its range of actors is expanded beyond the state, and it prioritizes both protecting people and empowering them to fend for themselves.
25. For more information, see Prime Minister’s Strategy Unit (2005).

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