Freedom beyond the threshold: self-determination, sovereignty, and global justice

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Abstract
In current debates about global justice, statist and nationalist theories appeal to the right to self-determination in argument against egalitarianism beyond borders, and in general as a reason for caution about substantive international duties of justice, lest the exercise of self-determination would be too tightly constrained. Has self-determination—an important heritage of decolonization—no longer a role to play in the argument against international inequality and disempowerment? In this article, I examine a dominant interpretation of self-determination in the global justice debate, as defended prominently by John Rawls and David Miller and find it wanting. Specifically, two challenges are raised: at the conceptual level this interpretation leaves unclarified the distinction and relationship between sovereignty and self-determination; at the normative level, this interpretation adopts a sufficiency view of international distributive justice that neglects that problem of relative extents and measures of self-determination, beyond the threshold. While the article’s argument is mainly of a critical scope, it is suggested that a more robust theoretical account is required of the content of the right of self-determination, and in particular of the freedoms that the right confers to the right-holders in the socioeconomic domains and their extents.

Keywords: sovereignty; self-determination; global justice; John Rawls; David Miller; international investment law

... no contemporary norm of international law has been so vigorously promoted or widely accepted—at least in theory—as the right of all peoples to self-determination. Yet the meaning of that right remains as vague and imprecise as when it was enunciated by President Woodrow Wilson and others at Versailles.¹

In current debates about global justice, the right of self-determination occupies a puzzling position. Self-determination is nominally proclaimed as a human right. Common Article 1, §1 of the International Covenant on Civil and Political Rights

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and the International Covenant on Economic, Social and Cultural Rights stipulates: ‘All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development’. Despite its formal acclaim as a universal human right, cosmopolitan theorists and proponents of egalitarian global justice today—typically advocates of human rights and their realization—are reluctant about self-determination if not opposed to it altogether. Statists and nationalists, on the other hand, emphasize the value of self-determination in their theories of global justice. They appeal to it as an argument against egalitarianism beyond borders, and generally as a reason for caution about substantive international duties of justice—lest the exercise of self-determination will be too tightly constrained. This picture is puzzling. After all, the right of self-determination is an important heritage of decolonization processes of the mid-20th century. Only short decades ago this right served as a juridical rallying cry for those rising against a major wrong in the international system. Has it indeed no longer a positive role to play in argument against extreme international socioeconomic inequality and disempowerment?

In this article, I examine a dominant interpretation of self-determination in the global justice scholarship and find it wanting. Self-determination, on that view, entitles its holders to sovereign rights and to minimal material and institutional threshold conditions, necessary for its exercise. Versions of this view are prominently defended by John Rawls and by David Miller, and their work is, therefore, a central point of reference for the discussion below. It is argued that this interpretation, call it the ‘sovereign rights plus view’ (henceforth SRPV) is problematic on two counts. First, at the conceptual level, it leaves unclarified the distinction and relationship between self-determination and sovereignty. Second, at the normative level, SRPV endorses a sufficientarian threshold principle of international distributive justice. This conception of global distributive justice is incomplete in that it overlooks the question of relative extents and realms of self-determination beyond the sufficiency threshold. No alternative principle is defended in this article. The aim is to illustrate a pertinent gap in the SRPV, which renders this view problematic and calls for a theoretical revision.

Hence, the main task of this article is critical: to point at two pertinent weaknesses in a dominant theory of the relationship between self-determination and global justice. The two objections are independent from one another; the validity of the one does not affect that of the other. Taken together they enable us to look beyond the critical scope of the current argument. They suggest that to develop a more robust theory of the relationship between the right of self-determination and global justice, it is key to explore and address the question of relative extents and measures of self-determination. To use the language of the Covenants: if self-determination confers to the right-holders an entitlement to free pursuit of economic and social development, the question arises of what it means to be free in this regard; to how much of this freedom each right-holder is entitled and what is an appropriate principle of distribution thereof.
The discussion proceeds in four steps. First, I sketch the SRPV drawing and the work of John Rawls and David Miller; second, other critiques of the sufficientarian conception of international distributive justice are discussed to clarify the added contribution of the argument here; third, a distinction is proposed between sovereignty and self-determination, bringing into view the neglected problem of extents and measures of self-determination; finally, two ‘real-world’ cases are presented, illustrating the empirical need for a theory of global justice to address the issue of how much self-determination—how much freedom to pursue economic and social development—for each polity.

**SELF-DETERMINATION: THE SUFFICIENTARIAN INTERPRETATION**

John Rawls and David Miller defend two prominent theories of international justice with self-determination as a central value. For Rawls, peoples’ self-determination belongs in the basic structure of international society. International principles of justice are stipulated and proclaimed among peoples; their representatives are the parties to the constructivist procedure, designed to identify appropriate principles of justice among the peoples that consider one another free and equal. In Miller’s theory, national self-determination and the associated national responsibility are at the core of the principles of global justice, designed to help realize a world ‘in which nation-states are self-determining, but respect the self-determination of others through obligations of non-interference and in some cases of aid’. These theories of international justice and the scholarship about them are elaborate, and I cannot do justice to them here. The aim of this section is to provide a brief statement of each theory’s main propositions regarding the international rights and obligations connected to self-determination, in what I hope is a familiar and little-controversial reading of the theories.

Rawls’s *Law of Peoples* famously stipulates eight principles of international justice designed to safeguard the international freedom and equality of peoples. The main rights attached to self-determination are: rights of domestic self-government including, non-interference and self-defense against aggression, an international legal personality including the right to sign treaties and engage in undertakings as equal parties. The main obligations connected to self-determination according to the *Law of Peoples* are: respect the aforementioned domestic self-government rights of other peoples; ‘observe treaties and undertakings’; and ‘honor human rights’. Finally, there is the duty of assistance to help ‘burdened societies’ to achieve a just or decent political and social regime. Famously, the cut-off point of the duty of assistance is the achievement of ‘just liberal or decent basic institutions’. Where appropriate, this duty may involve transfer of resources, wealth and know-how from well-ordered and better-off societies to burdened ones. However, beyond the cut-off point, international disparities in wealth are not seen as an international injustice.

Rawls rightly describes the eight principles as ‘familiar and traditional principles of justice among ... peoples’. In post-1945 international law and in the
United Nations system, the rights and obligations included in the Law of Peoples are indeed familiar as the rights and obligations of states associated with their equal sovereignty, and commitment to friendly relations. Accordingly, the conception of self-determination in the Law of Peoples is labelled here the ‘SRPV’. Namely, self-determination on this view entitles the right holders to the aforementioned rights and obligation typical of contemporary international legal notions of sovereignty, plus an entitlement to specified institutional and material threshold conditions deemed necessary for liberal and just or decent basic institutions to function.

In Miller’s theory of global justice, too, we find the SRPV as a conception of self-determination. Here too nations are entitled, in virtue of their national self-determination, to rights of self-government and non-interference, including territorial integrity and control over national borders (subject to considerations of human rights). To the extent that nations govern themselves autonomously they are responsible, for better and worse, to the outcomes of their decisions—entitled to enjoy the fruits and are liable for harms. Miller’s theory goes beyond Rawls’s duty of assistance to propose more extensive duties of aid and non-exploitation, including the ‘the duty to abstain from materially harming another state’; and the duty ‘not to exploit states that are one-sidedly vulnerable to your actions’. Furthermore, there are duties connected to the rights of others to exercise their national self-determination. For example, resources should be distributed in a way that enables all nations to ‘provide for the basic needs of their members’, so that the exercise of collective autonomy is at all possible. In interaction among poor and wealthy nations there are obligations of non-exploitation in international trade and by international institutions, and sometimes of material assistance—if those at the bottom of an unequal international order do not have an opportunity to attain minimal levels of self-determination.

Both theories endorse a sufficiency, threshold principle of international distributive justice. Self-determination requires that all peoples or nations are given the material conditions necessary for the minimal exercise of self-government. Beyond this threshold, relative levels of poverty and wealth are not as such a matter of injustice. Rawls’ duty of assistance consists in a requirement to help bring peoples confronted with unfavorable conditions to the threshold of being ‘able to manage their own affair reasonably and rationally ... After this is achieved, further assistance is not required even though the now well-ordered society may still be relatively poor’. In Miller’s theory the threshold required by global justice consists in ‘an obligation to provide political communities with the opportunity to achieve justice internally, where this means ensuring that they have an adequate resource base, and a tolerable economic environment, against which to make their decisions’.

Realizing either threshold would constitute a considerable improvement to the current state of affairs. Nevertheless, the sufficiency standards neglect that political autonomy and the quality of economic environment in which to make collective decisions also vary in degrees and extents. Even when all are above the sufficiency threshold, considerable disparities may well remain in relative degrees of collective
autonomy and in how favorable the economic environment is—tolerable for some, decent for others and highly favorable to others still. Subsequently, the SRPV conceptions of self-determination that endorse the threshold standard of global justice fall short of tackling associated questions of international fairness and justice. An opportunity to how much collective autonomy, beyond the threshold, is due to each self-determining polity? Is there a case to equalize, or limit the inequality, of such opportunity? Does justice require limits on the relative favorability of the international playing field? This lacuna becomes particularly problematic when we look at the proclamations of self-determination in international legal documents. Here the right explicitly confers entitlements in the socioeconomic domain, i.e. the free pursuit of economic and social development.\textsuperscript{21}

Subsequently, to defend their position, proponents of the SRPV and the sufficiency principle face a twofold burden. First, internally it is not clear, at least not without further argument, why the question of measures and extents of the collective political autonomy and self-government, in which self-determination consists, is excluded from the considerations of justice. Second, looking from the ‘public reason’ of international society, as expressed for instance in the international covenants on human rights, the question is reinforced: why exclude the entitlements in the economic and social domains explicitly conferred to the right-holders in virtue of self-determination—namely the entitlement to free pursuit of economic and social development. What this freedom should be taken to mean and to which degrees and extents of it each polity is entitled are pertinent questions for a self-determination-centered theory of international justice that the SRPV neither addresses nor provides a justification for their neglect.

Below, I discuss two cases from international investment law that illustrate that these questions are not just a matter of normative concern rooted in the language of the theories and the covenant, but that they arise \textit{de facto} in international interaction. Before proceeding to discuss the investment cases, two issues are addressed. First, this article is not the first to criticize the sufficiency principle of international distributive justice from a broadly statist perspective. The added contribution of the self-determination-based critique is clarified. Second, I propose a distinction between self-determination and sovereignty that accounts for the differences and relationship between the two, and which contributes to developing an alternative conception of global distributive justice, beyond sufficiency.

**INTERNATIONAL DISTRIBUTIVE JUSTICE BEYOND SUFFICIENCY**

In the global justice debate much attention has been given to the question of whether peoples, nations or states are arbitrary in respect to principles of distributive justice beyond them. While cosmopolitans by and large deny the moral standing of states and peoples in a theory of international distributive justice, statists and nationalists defend the normative relevance of such political collectives. This voluminous and complex debate is not addressed here.\textsuperscript{22} The current argument rather begins with the assumption or hypothesis that these political collectives are normatively relevant for
a theory of global justice, in the sense that domestic and international principles of distributive justice differ, not just as a matter of contingency, but because there is a normatively relevant difference between the domestic and international sites of justice. Call it the statist view of global justice. The SRPV is a statist conception of global justice, according to which self-determination constitutes a normatively relevant difference between the domestic and the global: it is primarily in the domestic context that self-determination is exercised and applies. Subsequently, certain domestic conceptions of egalitarian distributive justice are ruled out as international principles of justice, insofar as they are not compatible with the domestic exercise of self-determination. To be sure, this statist claim is controversial, but it is not the purpose of this article to reiterate a lengthy and familiar debate. Instead, the statist view as such is not challenged here, rather the question is raised of whether from a statist perspective a sufficiency threshold is an appropriate principle of international distributive justice.

This question is not raised here for the first time: elaborate and persuasive critiques have been developed of the sufficiency principle from broadly or partly statist perspectives. Notable examples are rooted in methodological critiques. Mathias Risse develops the ‘grounds of justice’ perspective as a pluralist theory of global justice. From this perspective, the state is a special kind of association in which demanding principles of justice apply. At the same time, the theory recognizes various other grounds of justice that exist in other contexts of human interaction—e.g. subjection to international trade rules, or common ownership of the Earth’s finite resources—to which accordingly principles of justice apply. Proponents of practice-dependent methodologies, use an attractive interpretation of Rawls’s methodology to argue against the sufficiency conception of international justice and in favor of more elaborate principles of justice beyond states—including notably principles of fairness in international trade and principles of background international justice. Finally, it has been pointed out that confusion between ideal and non-ideal theory informs statist arguments for international sufficientarianism. Once ideal and non-ideal arguments are assigned their proper place in the theory, it can be seen that sufficiency is an implausible principle for international distributive justice, because of the positional nature of goods that are being distributed at the international level and the nature of economic and power competition dominant in this context.

Thanks to the growing scholarship, we gain a nuanced and sophisticated understanding of the statist perspectives on global justice, to which this article contributes a self-determination-based critique. This critique agrees not only with the statist view broadly, but also accepts two further specific assumptions that initially informed the sufficientarian conception of international distributive justice. First, in agreement with the theories developed by Rawls and Miller, self-determination is taken here to be a central value or principle of the theory of international justice. The question and challenge raised here is whether for a self-determination-centered theory of global justice, the sufficientarian principle of international distribution is appropriate. Second, this article’s critique of sufficiency does not draw on a methodological objection and elaboration but on a conceptual challenge, raising the question of
how the content of the right of self-determination should be construed, especially in the socioeconomic domains? Clearly, this is an important question for a self-determination-centered theory of global justice, but the SRPV and associated sufficiency principle fall short of providing an adequately complete answer. Raising this conceptual challenge regarding the content of the right of self-determination is therefore a new contribution to statist perspectives on global distributive justice.

SOVEREIGNTY AND SELF-DETERMINATION: A DISTINCTION

As we have seen above, the sufficiency theories developed by Rawls and Miller endorse the language of peoples or nations and their self-determination and arrive at a bundle of rights familiar in contemporary international law as sovereign rights of states. Are self-determination and sovereignty interchangeable? This question is of pertinence not only in the interest of conceptual clarity in general, but also in this debate in particular; one of the proposed alternatives to the SRPV is to develop a more robust conception of sovereignty, whereby positive sovereignty rights (the capacity of states to actually run and manage their domestic affairs), as well as popular sovereignty gain weight. For a self-determination-centered theory, the question then arises of whether and when advancement of sovereignty also safeguards self-determination and its exercise. In light of the distinction proposed here it emerges that while the two often go hand in hand, there are also relevant differences with potential implications for a theory of global justice.

Whereas self-determination is often mentioned in contemporary theories of international justice, a systematic definition thereof is lacking. To be sure, the scholarship on self-determination in contemporary theory is extensive but it focuses on the problem of the subjects of the right. Namely, who should have the right a people, a nation, fellow-citizens, a national minority an indigenous group, why should they have it, and how to identify and define them? But apart from the question of subjects—who the right holders are—is the problem of content: what are right-holders entitled to in virtue of the right? This latter question has received very little attention in political theory—and in particular whether self-determination is an entitlement to things other than sovereign rights. As a contribution to addressing this question, this section proposes a conceptual distinction between sovereignty and self-determination that speaks in particular to the overlaps and differences between them.

Let us begin with two observations. First, sovereignty has been an important political concept for centuries. We find the classical discussions of sovereignty in modern political thought in Jean Bodin’s *Six Books of the Commonwealth* (1576) and Thomas Hobbes’s *Leviathan* (1651). Self-determination, on the other hand, did not appear as a relevant political concept until the beginning of the 20th century. Sovereignty had existed in theory and practice very long before self-determination was conceived of. Second, self-determination since its appearance has sometimes clashed with sovereignty, when self-determination based claims to government and territory are made against competing sovereignty based claims. This contextual or circumstantial
evidence suggests that sovereignty does not depend on self-determination; that sovereignty is possible conceptually and practically without self-determination. To disprove this proposition we would need to argue that authors like Hobbes and Bodin were fundamentally wrong in their definitions of sovereignty; that the form of rule they discussed was not sovereignty—because self-determination was not on the horizon, let alone included in the definition. We would furthermore need to argue that until the appearance and realization of self-determination, there were no sovereign states. Both arguments are implausible and ahistorical. To be sure, we can observe conceptual changes in the idea of sovereignty over time, whereby the way we think about sovereignty today is not identical with the classical theories of the 16th and 17th centuries. Still to dismiss in retrospect more than four centuries of the history of the idea of sovereignty as wrong-headed remains implausible. The upshot is that self-determination is not a precondition of sovereignty—that the latter is conceptually and practically possible in the absence of the former. The validity of the proposition ‘state x is sovereign’ does not as such indicate that self-determination too is exercised in the case of x.

A third observation is now in order. Throughout the 20th century, since the appearance of self-determination on the international stage, struggles under the banner of self-determination involved claims to sovereignty. Secessionist, national liberation, and anti-colonial movements have struggled for independent statehood and the sovereign rights that come with it, or for regional territorial autonomy that comes with a subset of these rights. This suggests that self-determination and sovereignty, at least for a century now, are closely related. To disprove this proposition we would need to argue that the many struggles and the millions they mobilized were wrong to seek sovereignty in the cause of self-determination. Despite the bloody and murky history of many such movements, the argument that their quest for sovereignty, or regional autonomy, was essentially misguided is implausible. It is safe to suggest then, that while self-determination and sovereignty are conceptually distinct they are also related in important ways.

Daniel Philpott’s general definition of sovereignty enables us to make sense of both the differences and relationship between self-determination and sovereignty. Sovereignty, in this definition, is the supreme authority or right to rule within a territory. It is supreme in the sense that it is not subjected to a higher legal-political body; it is an authority or a right in the sense that it is not merely the fact of exercising control and coercion, but also having (at least claiming) the legitimacy to do so. Within this general concept of sovereignty reside various conceptions thereof that differ in regard to: who holds this authority—e.g. the monarch, the state or the populace; and what makes their authority legitimate—e.g. the divine right of kings, the capacity to uphold civil peace and a system of justice, or natural law. Adding to this core definition the perspective of positive sovereignty, the concept describes not only the authority and international juridical legitimacy, but also a capacity to rule and govern or a measure of empirical statehood. Sovereignty is a concept or a theory of the coercive powers and authorities of the state. It describes and defines a type of coercive state power that is not merely exercise of force but that also claims or holds
legitimacy, and that is typically exercised through law; in the sovereign power vested
the ultimate authority to make the laws and to adjudicate and enforce them. In these
two senses (legitimacy and exercise through law) sovereign coercive power is distinct
from the capricious exercise of arbitrary will. Moreover, even for absolutists (Bodin
and Hobbes), sovereign legitimacy indicates that the sovereign can be normatively
evaluated, e.g. in light of natural right.

Self-determination is a far more recent and somewhat less coherent concept. From
the outset it was conceived with two meanings—both related to the right or power of
peoples to govern themselves. First, known as external self-determination, is the idea
that peoples should not be subject to Imperial or colonial rule; that no external power
to their polity should dictate or determine their affairs. Clearly self-government is not
a license to harm others at will, but a presumption of freedom, limited by freedoms
and rights of individuals and other polities. Second, the internal dimension of
peoples’ self-rule connotes the domestic inclusiveness of political power, and in par-
ticular of law and binding decisions making. Self-determination is in this sense
essentially about legislative power: about making the laws, rules and policies of the
polity by its people(s). Laws dictated by a small, rigidly-exclusive elite do not comply
with this principle. In international legal documents and proclamations of the prin-
ciple of self-determination, we find repeatedly the notion that self-determination is
about the freedom of each people to determine their political, economic, social and
cultural affairs. These formulations draw our attention to the processes of will-
formation in regard to social, economic and cultural issues, to the conditions and pro-
cedures of participation in law and binding decision making, and to the possibilities,
opportunities and alternatives open to the peoples when forming collective wills, laws
and policies.

In view of these definitions of sovereignty and self-determination, the relationships
between the two are easy to detect. Seen from the perspective of sovereignty, the
popular sovereignty variety is familiar today. On this conception of sovereignty, the
‘people’ are ultimately the source of authority and legitimacy for the coercive power
of the state. This typically includes the legislative authority, which clearly overlaps
with the legislative power of the people found at the core of the idea of self-
determination. Seen from the perspective of self-determination, for a legislative power
to be meaningful in practice, it requires, as a rule, an executive, coercive power to
implement its decisions. To be sure, in some cases a legislative power exercised
without an adequate executive is meaningful in practice. For instance, in a case of an
exile government that mobilizes international and domestic support or in processes
of transition to democracy, when elected parliaments and governments only take
power but the processes of adjustment of the executive, e.g. the administration or
military elites, only begins. Note that in theory we can conceive of cases when self-
determination is exercised without sovereignty: an Anarchist society is the evident
case, where people may well come together to freely determine their collective affairs,
but no state power and apparatus exists for enforcement. As a rule in reality, for self-
determination to be meaningfully exercised, the legislative power requires a matching
executive.
Alongside the overlaps, the conceptual distinctions between (popular) sovereignty and self-determination remain visible too. First in popular sovereignty, legislative authority constitutes a derivative aspect of the concept, while the emphasis lies with the authority and legitimacy to govern. Second, that legal authority ultimately lies with the ‘people’ does not as such tell us much about the ‘people’s’ actual role in making the laws, or in electing representatives for this task. Appeal by rulers to the ‘will of the people’ for legitimation is familiar in practice and conceptually possible, even when in fact there is little popular voice and influence in government and politics. In regimes ‘in the name of the people’ of this kind, the appeal to popular sovereignty is not false, even if today we find theoretical and legal attempts to connect popular sovereignty more closely to democratic rights.

It does not follow from my conceptual proposition that positive-popular sovereignty based perspectives on global justice are wrong-headed. Popular sovereignty and positive sovereignty are rightfully belonging in the range of conceptions of sovereignty today, and they provide a fruitful perspective for a more robust statist theory of global distributive justice, beyond the SRPV threshold. Rather, it follows that popular-positive sovereignty based perspectives on global distributive justice do not exhaust the normative concerns and insight arising from the principle of self-determination. To understand the implications of self-determination to global distributive justice, a systematic study of the content of the right to self-determination in the social and economic domains is needed. I suggested above that the notion of ‘free pursuit’ of social and economic development is a promising starting point for this investigation. Given the overlaps between popular positive sovereignty and self-determination it is likely that in many cases the international norms supported by the two shall converge. Given the differences between them, it is similarly likely that in other cases distinct international norms shall be supported by each.

Consider, for example, the case of gold mining planned in Rosia Montana, Romania. A large protest sparked against a decision by the Romanian government to grant concession to a Canadian mining company to extract gold. Opponents of the project maintain that it is expected to cause severe and irreversible damage to a region of important cultural and historical heritage and bring only a modest return in jobs and profits to the public coffers. It is also claimed against the decision that the government ‘sold’ the public interest for pittance of the profit that the mining company can expect. The gold mines in Rosia Montana help illustrate when norms of sovereignty and self-determination may diverge. The government’s decision complies with the norms of sovereignty—including popular and positive sovereignty. In view of available indicators of statehood, democracy, and socioeconomic capacities, Romania is plausibly classified as a sovereign country, where popular sovereignty exists and a measure of positive sovereignty is held by the government. To be sure, this is not a particularly wealthy and powerful country, but it did meet demanding requirements of accession to the European Union and became a member of one of the largest and strongest economic powers in the world. An observer would be hard pressed to argue that positive and popular sovereignty are not exercised in Romania. In distinction, the norms of self-determination may lead to a more critical view on
the government’s decision. Here we look at how the international enterprise affects the freedom of the citizens, ‘the people’, to determine their collective economic affairs. Possibly, this freedom is undermined when interaction between a government and international actors results repeatedly in gains for a small privileged group, while depriving the larger public from economic opportunity or weakening other public interests.

The norm of self-determination in the economic domain draws attention to two issues beyond sovereignty: the equitable distribution of benefits and burdens of international interaction domestically; and the equitable distribution of benefit and burdens of interaction between a state (as a representative of the ‘people’) and international actors. It is not suggested at this point that the norms of economic self-determination should always receive priority in a theory of global distributive justice when they compete with norms of positive and popular sovereignty. Rather, I argued in this section that—in view of the conceptual distinction between self-determination and sovereignty—economic self-determination constitutes a domain of international norms of justice that is not subsumed under popular and positive sovereignty and merits a systematic study on its own. Only then can we begin to think how to balance the international norms of self-determination against other norms, values and principles.

TWO CASES: PHILIP MORRIS INTERNATIONAL VS. URUGUAY AND PACIFIC RIM VS. EL SALVADOR

The remaining of the article discusses two cases from current international investment law that serve to illustrate the theoretical argument in more concrete terms. Namely, they illustrate how even when the SRPV threshold conditions are met, it is doubtful that self-determination in the economic domain is attained. Bilateral trade and investment treaties are a rapidly growing trend in international politics and economy. A 2007 report estimates 2,573 bilateral trade and investment treaties in force in the world at the end of 2006. These treaties are signed between two states to encourage mutual private investment, and are designed to facilitate investment by providing access and protections for investors and their interests. An arbitration body for disputes arising from the treaties is the International Center for Settlement of Investment Disputes (affiliated to the World Bank). An important feature of the treaties is that they permit private business and corporations to bring cases against foreign governments directly (without needing their own country’s government to take action). Nevertheless, this ability of private actors depends on an agreement between states. In the absence of a bilateral treaty a private business cannot bring a case against a government before the arbitration body. On the whole the treaties are of merit: if a private business enterprise, large or small, is to invest abroad, it legitimately expects some guaranty that governments will not use their power arbitrarily against it. At the same time, the treaties ‘confiscate’ from the regular processes of (democratic) policy making a realm of economic activity—which pertains to the interests of foreign investors and their protection.
From the perspective of a theory of self-determination, the question then arises to what extent may the free economic and social development be legitimately constrained to guarantee investors’ interests? The assumption is not that any restriction is wrongful. Many such restrictions are acceptable and legitimate in different contexts—from constitutional guarantees of individual rights to long-term international obligations that states take upon themselves—for instance to mitigate harms related to climate change. The question in regard to investors’ protection clauses is one of extent. Therefore, they serve to illustrate where SRPV and its sufficiency principle fall short. In both cases discussed here—two pending arbitration claims by Philip Morris International against Uruguay and by Pacific Rim Corp. against El Salvador—we find a claim by private business against a government’s policy decision. Even if successful, the claims brought by the corporations do not threat to push the countries in question below the sufficiency threshold designated as the standard of international justice by the SRPV. Yet the conclusion that, therefore, no issue of justice arises—pertaining to the question of extent and realm of autonomy and freedom of the public actors in economic and social policy making—is premature. SRPV provides us neither with a normative guideline and framework to address this question of relative realms and extents of freedom, nor an argument for why the issue is of no concern for a theory international justice that values self-determination.43

Under former president, oncologist Tabaré Vázquez, the government of Uruguay launched a public health campaign to reduce smoking among its population. The campaign includes increase of tax on tobacco products and strict regulation of labeling, marketing and display of cigarettes. An ordinance of the Uruguayan Ministry of Public Health prevents tobacco companies from labeling and marketing cigarettes as ‘light’ or ‘mild’ and requires ‘single presentation’, which allows only ‘one pack variation per cigarette brand’.44 It is also required that a health warning will cover 80% of the surface of a cigarette package. In response, Philip Morris International (PMI) filed a request in 2010 for arbitration against Uruguay before the ICSID. It is claimed that because the new measures in the anti-smoking policies harmed the company’s investment in the country, they violate the provisions of a bilateral investment treaty between Uruguay and Switzerland, which applies to PMI’s investment in Uruguay. If the claimant proves successful in this pending arbitration, the government of Uruguay would be required to change its anti-smoking policies and pay compensations.

In another pending arbitration case, Pacific Rim Corp., a Canadian mining company, filed a claim against El Salvador, after the company’s application for an environmental permit and exploitation concession in the country was refused in 2003. The company had received exploration permits in 1996. However, the law regulating mining in El Salvador was amended in 2001 to include more robust environmental protection standards. The environmental protection policies were responsive to public mobilization of local communities affected by metal mining operations. The authorized ministry in El Salvador reportedly reached the conclusion that a risk to clean water supply was involved in the gold mining project for which permission was sought and subsequently denied the permits. Pacific Rim, through one of its
subsidiaries, filed in 2008 an arbitration claim before the ICSID, under Central American Free Trade Agreement (CAFTA) and El Salvador’s own foreign investment law. It is alleged that the refusal to grant the permits violates the treaty and law’s investor rights clauses and renders the Republic of El Salvador liable to pay damages.45 Following a ruling of the arbitration tribunal in June 2012 that accepted jurisdiction and denied the preliminary relief claimed by El Salvador, the country faces a $315-million claim currently pending before the tribunal.46

In the arbitration cases, a public policy was designed, through legitimate procedural means by the citizens of a given country and their government, regarding environmental protection and public health respectively. Plausibly, the policies fall within the realm of legitimate free pursuit of economic and social development, yet they are being challenged by an international business enterprise. The cases involve not only the relationship between a private business and a state, but also the terms of inter-state interaction: the challenge is made possible due to treaty obligations that the governments of Uruguay and El Salvador respectively have towards another government. In both cases, the conditions of self-determination and sufficiency standard of international justice endorsed by the SRPV are not threatened, which I now turn to illustrate. Nevertheless, it remains doubtful that the issue of justice in exercising self-determination is adequately addressed.

It is in the nature of theorizing that neither Rawls nor Miller provide very detailed specifications of when the sufficiency threshold that they propose is obtained. To the best of my understanding, the following is a fair application of the theories to the cases at hand. Uruguay is evidently above the sufficiency thresholds. With an exception of 12 years of military dictatorship that ended in 1985, the country has been ruled by basically functional democratic institutions. It ranks 51 (of 186) in the UNDPs Human Development Index. It is an upper-middle income country with 13% of the population under national poverty line (in 2011), and with GDP per capita of ca. $15,000, it ranks 62 in the world according to World Bank data. There is no indication that Switzerland unilaterally dominates Uruguay or its economy. We would be hard pressed to find indications that the relevant kind of unilateral vulnerability—recognized by the SRPV as an instance of falling beneath the threshold or of being unfairly exploited—is present in the Swiss-Uruguayan relationship.

The application of the SRPV to the case of El Salvador yields less unequivocal results than in the case of Uruguay. Nevertheless, it is fair to suggest that El Salvador is at or slightly above the threshold and would remain there even in the event that the arbitration claim against it will prove successful. El Salvador is, according to the World Bank a lower middle-income country. It ranks 153 among the world’s countries in GDP per capita, with $7,700. At the same time poverty rates are high with 40% of the population under domestic poverty line and 18% under international poverty line. The poverty rates, especially the absolute poverty of those living under the international line, raise the question of whether aid is called for on SRPV, in order to fulfill the threshold conditions of minimal wellbeing. I think that the answer is negative, other things being equal, for the following reason. On the SRPV, aid is required for societies that as a whole lack to the resources—natural and institutional—to provide

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for the minimal needs of their members. However, in El Salvador, with high levels of domestic inequality, the wealth is present within the society and could be distributed differently. On this view, the poor and very poor in El Salvador hold a claim for poverty alleviation against the better off in their own society, not (other things being equal) against outsiders. Beyond poverty rates as such, the over a decade long civil war in El Salvador that ended in 1992 is another pertinent consideration for whether, on the threshold view, there are international obligations of aid towards El Salvador. The civil war devastated the country economically and politically and it was fought also with external involvement, notably, but not exclusively by the United States. At the end of the civil war El Salvador is plausibly seen as being below the threshold—also as a result of unfavorable international conditions—and, thus, deserving aid according to the SRPV. Furthermore, not a decade after the peace agreement, the country was hit severely by a hurricane in 1998 and by earthquakes in 2001.

On the threshold view, there is a case to make that El Salvador’s foreign investment law was also an outcome of a desperate situation (it came into effect in 1999)—designed when the country was below the threshold and deserved aid without committing itself to the obligations and burdens that it took upon itself through the law. Even so, it is less clear that more than 10 years on, it is still plausible—on the SRPV—to argue that the pending arbitration claim against El Salvador is wrongful because it relies on the foreign investment law of 1999. First, El Salvador has indeed received international aid for postwar reconstruction and for re-building after the hurricane and the earthquakes. Second, even if the initial legislation can be described as an act of below the threshold desperation, the continuous non-amendment of the law since is more difficult to describe this way.

**FREEDOM BEYOND THE THRESHOLD**

If the above application of SRPV to the cases at hand is correct, then in both cases the conditions of self-determination and the standard of international justice on SRPV are complied with. The arbitration claims against Uruguay and El Salvador do not violate the sovereign rights included in the SRPV, nor do they risk pushing either country below the threshold. Nevertheless, in a theory of global justice that values self-determination the problem of allocation of extents and measures beyond the threshold, of the freedoms contained in self-determination—to determine social and economic development—remains pertinent and unaddressed. How much of its freedom to design public health policy can Uruguay be justly expected to give up on? It may well lie beyond the task of a theory to provide a clear answer to such a specific question. But it is well within the task of a theory of global justice that values self-determination to develop guidelines for just or fair allocation, beyond the threshold, of those freedoms contained in the right of self-determination—e.g. to economic and social development; or alternatively, to establish that the socioeconomic components do not rightfully belong in the content of self-determination; or alternatively, to explain why in the context of self-determination, extents of freedom become irrelevant for our conception of justice.
It is worth recalling that, in general, extents and measures of freedom tend to matter in liberal theories of freedom. For example, John Rawls famously defends a first principle of justice that consists in equal basic liberties and for John Stuart Mill the liberty of each must not deprive others of theirs.\textsuperscript{49} In Ian Carter's analysis, freedom is one of the \textit{distribuenda} of an important class of liberal theories of distributive justice.\textsuperscript{50} From here the way is still open for various principles of distribution to prove valid in the context of the freedoms contained in the right of self-determination.\textsuperscript{51} The aim of the current argument is not to defend any such specific principle of distribution, but to point out that the SRPV neglects to address the question. Proponents of the threshold view in theories of international justice have argued carefully against the claim that egalitarian principles of distribution of wealth, income or opportunity should apply globally. However, the question of whether and how a theory of global justice should regulate extents of freedom—specifically in the context of the right of self-determination—has not been addressed. Minimal freedom for each polity will be one contending principle for the theory. But without further argument in its favor and assessment of the alternatives, there is no \textit{a-priori} reason to endorse it. As the theory currently stands, the issue of the content of self-determination and the international duties of justice that follow from it is not subsumed under the SRPV.

Before concluding let me address two objections regarding the cases above and their capacity to illustrate the argument. First, the skeptic might argue that the cases illustrate not a problem in the theory of self-determination, but how international interaction undermines domestic justice. The two countries have designed just policies—protecting public health and the environment—and a corporation presses to suspend these policies for their own profit (1). Second is the consent objection. Seen that each country signed the investment treaty under which it is being sued, accepting the ICSID as arbitrator, any decision reached by the authorized arbitrator would be legitimate and there is therefore no space to raise further questions of justice. The countries forfeited their prerogative to design the specific policies by willingly entering the investment treaties. It may be further objected that the freedom of a state to bind itself in treaties and agreements is valuable as a component of self-determination (2).

(1) One of the considerations in the choice of cases is that there is no unequivocally just policy on the matter. In the case of PMI against Uruguay it is by no means clear that in and of themselves the policies designed by the government of Uruguay are more just than the alternative claimed by the tobacco company. The Uruguayan regulations that are now being challenged are, in international comparison, on the stricter end of the spectrum of anti-smoking regulation and there is no indication that less strict regulations would be in and of themselves less just. Indeed, the challenge is to self-determination: to the freedom of the citizens of Uruguay and their elected government to determine their social priorities in regard to smoking bans. In the case of Pacific Rim against El Salvador, the record of mining companies in leaving behind them serious environmental damages is such that the precautions taken by El Salvador are indeed reasonable.\textsuperscript{52} But even so, there is still an argument to make in favor of the halted mining project that priority should be given for
creation of jobs and to taking advantage of an economic opportunity through mining. The point in this case, too, is that if self-determination is of value then it is for the El Salvadorans to set their priorities and decide how high an environmental risk they wish to take for the expected profit from gold mining. Note that the very interesting issue of domestic justice, which arises in the El Salvadoran case—and illustrates the need to pay attention to self-determination and not only to sovereignty—is the role that international interaction plays in domestic distribution of benefits and burdens. The environmental risk of water pollution is particularly high for local rural populations that live nearby the mining site, whereas potential gains are for those already better off within the society and which are not directly and immediately at risk from the damage to the environment. From the perspective of self-determination, the capacity of international interactions to disempower peoples in the domestic process of legislation and to add significant burdens on their effective participation in policy making is a matter of concern. From the perspective of sovereignty, it is the state’s power on the whole that matters first. It is not quite clear that only because the domestic power of certain elites, vis-à-vis the rest of their fellow citizens, is boosted through international interactions, the state on the whole becomes less sovereign.

(2) The consent objection is unpersuasive in our cases for two reasons. First, by signing the treaties the countries consented to clauses that commit them to adequate protection of investors’ interests, outlined in very general terms. The arbitration cases call the tribunal to specify what this protection amounts to in a particular instance. The tribunal is asked to pass judgment on whether the specific policies violate the general protection clauses. From consenting to the general clauses, it does not follow that the states consented to forfeit the freedom to design the specific policies in question. Granted that we accept the legitimacy of the arbitrator to decide, a political theory of international justice may still find the arbitrator erroneous, from a normative perspective, for instance on counts of failing to balance between the obligations of the government towards investors and its right to design environmental and public health policies on behalf of the people that elected it. Legal and political theories regularly evaluate and pass judgments on courts’ decisions. They do not by that, as a rule, challenge the legitimacy of the judicial bodies to take the decision or the validity of the laws based on which the decision is made. Second, in general, consent as a theory either of the legitimacy or justice of coercive power has known problems that need not be rehearsed here. It is not clear that de facto consent is either a necessary or a sufficient condition for legitimizing coercion. At the same time, moralized conceptions of consent—i.e. which pose the question of what an agent could plausibly or reasonably consent to—require a normative answer. In various contexts we find law and regulations as well as philosophical justifications thereof that constrain what people can consent to in practice in light of a moralized conception of consent. For example, a classical case for abolition of slavery is the notion that it is nonsensical for an individual to ‘agree’ to enslave themselves. Among contemporary examples

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labor laws are of interest. Where minimum wage legislation exists, the possibility for employees to agree to work for less is excluded in the interest of keeping work’s fair value. Where working times are regulated by law, the possibility is excluded for employees to agree to work more, without appropriate compensation. In the context of international investment treaties, we do not yet have a solid moralized notion of consent by which to judge whether the states could have reasonably agreed to what they consent *de facto*. A systematic study of the norm of self-determination in the economic domain will contribute to such a normative theory of ‘state consent’.

**CONCLUSION**

I began this article by pointing out that the somewhat conservative application of the principle of self-determination in the current debate about global justice is puzzling, in view of the radical recent history of this idea. I then proceeded to argue and illustrate that a dominant interpretation of self-determination in this debate, the SRPV is incomplete, *inter alia* in that it neglects important components of the content of self-determination in the socioeconomic domains. Further, positive and popular sovereignty perspectives on global justice were examined, which constitute a promising alternative to SRPV and bring the theory forward. Self-determination in the socioeconomic domains overlaps with the norms of popular and positive sovereignty, but is not subsumed under them. An independent account is still required of the international norms that follow from self-determination itself, in particular of the socioeconomic content of this right. In a recent compilation on the future of international law, Judge Abdulqawi A. Yusuf asks:

> Could [the principle of equal rights and self-determination] legally enable ... peoples in the future to throw off the shackles of poverty and underdevelopment, freely to participate in and enjoy economic, social, and cultural development of their countries; and to achieve equal rights in the economic field? Could these expectations constitute a realistic utopia for the twenty-first century in light of the meteoric evolution that the concept of equal rights and self-determination of peoples has gone through in the twentieth century?\(^{55}\)

This article suggests that there are promising avenues for political theory of global justice to explore in this regard.

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NOTES

1. Hurst Hannum, ‘Rethinking Self-Determination’, Virginia Journal of International Law 34 (1993): 2.

2. On the problem of the status of this nominally proclaimed right as binding in current international law, see e.g. Antonio Cassese, Self-Determination of the Peoples: A Legal Reappraisal (Cambridge: Cambridge University Press, 1995); James Summers, Peoples and International Law: How Nationalism and Self-determination Shape a Contemporary Law of Nations (Leiden: Martinus Nijhoff Publishers, 2007); and David Raič, Statehood and the Law of Self-Determination (The Hague: Kluwer Law International, 2002).

3. For cosmopolitan critique of self-determination, see e.g. Charles Beitz, Political Theory and International Relations, 2nd ed. (Princeton: Princeton University Press, 1999), 92–123; and Charles Beitz, ‘Rawls’s Law of Peoples’, Ethics 110 (2000): 677–80. For an overview of cosmopolitan objections, see Simon Caney, ‘Cosmopolitanism and the Law of Peoples’, Journal of Political Philosophy 10 (2002): 95–123.

4. David Miller, ‘National Self-Determination and Global Justice’, in Citizenship and National Identity (Cambridge, UK: Polity Press, 2000), 161–79; David Miller, ‘Against Global Egalitarianism’, The Journal of Ethics 9 (2005): 55–79; Andrew Altman and Christopher H. Wellman, A Liberal Theory of International Justice (Oxford: Oxford University Press, 2009), 123–58; and John Rawls, The Law of Peoples (Cambridge, MA: Harvard University Press, 1999).

5. Cassese, Self-Determination of Peoples, 11–52; and Abdulqawi A. Yusuf, ‘The Role that Equal Rights and Self-Determination of Peoples can Play in the Current World Community’, in Realizing Utopia: The Future of International Law, ed. Antonio Cassese (Oxford: Oxford University Press, 2012), 375–91.

6. A recurring critique of self-determination is the problem of subjects: who and what is a people; who should be recognized as a right holder etc. This issue lies beyond the scope of the current argument and is not discussed here. The elaborate and very rich scholarship on this question suggests that this challenge is not insurmountable, even if it is indeed a serious one. It is worth noting, by way of analogy, that philosophically the question what exactly a person is and what precisely in them anchors individual human rights (e.g. rationality, dignity) is too a matter of dispute. Still we habitually bracket this question when we turn our focus to problems related to the content of a specific right—namely what the right holder is entitled to, e.g. as holder of the right to freedom of religion or movement.

7. Rawls, The Law of Peoples, 61–2.

8. David Miller, On Nationality (Oxford: Oxford University Press), 107. Miller’s theory of global justice is developed in a number of works, which I take as components of a unified position.

9. Rawls, The Law of Peoples, 37. Famously, human rights in Rawls’s theory do not include democracy and the principles in the Law of People apply to liberal and ‘decent hierarchical’ societies alike.

10. Ibid., 106.

11. Ibid., 118.

12. Ibid., 37.

13. A comprehensive and authoritative introduction to public international law is Ian Brownlie, Principles of Public International Law, 7th ed. (Oxford: Oxford University Press, 2008). For developments in international law regarding the rights and obligations of sovereign states to one another, see e.g. Jean L. Cohen, Globalization and Sovereignty (Cambridge: Cambridge University Press, 2012); and Eyal Benvenisti, ‘Sovereigns as Trustees of Humanity: On the Accountability of States to Foreign Stakeholders’, American Journal of International Law 107 (2013): 295–333.
14. Miller, ‘National Responsibility and Global Justice’, 215–17.
15. Ibid., chapter 5.
16. Miller, On Nationality, 104.
17. Ibid., 105; see also, Miller, ‘National Responsibility and Global Justice’, 146–7, 179–81.
18. Miller, ‘National Responsibility and Global Justice’, 75–6, 251–3.
19. Rawls, The Law of Peoples, 111.
20. Miller, ‘National Self-Determination and Global Justice’, 176.
21. Common Article 1(1), ICCPR and ICESCR.
22. For a recent overview of this debate and its state of the art see, Gillian Brock, ed., Cosmopolitanism Versus Non-cosmopolitanism (Oxford: Oxford University Press, 2013).
23. For some of the arguments in favour of this proposition, see e.g. Michael Blake, ‘Distributive Justice, State Coercion, and Autonomy’, Philosophy & Public Affairs 30 (2001): 257–96; Michael Blake, Justice and Foreign Policy (Oxford: Oxford University Press, 2013); Andrea Sangiovanni, ‘Global Justice, Reciprocity, and the State’, Philosophy & Public Affairs 35 (2007): 3–39; and Ayelet Banai, ‘Political Self-Determination and Global Egalitarianism’, Social Theory and Practice 39 (2013): 45–69. For a critique see, e.g. Simon Caney ‘Global Distributive Justice and the State’, Political Studies 56 (2008): 487–518.
24. Miller, ‘National Self-Determination and Global Justice’; Miller, ‘Against Global Egalitarianism’; and Altman and Wellman, A Liberal Theory of International Justice, 123–42.
25. Mathias Risse, On Global Justice (Princeton, NJ: Princeton University Press, 2012).
26. Aaron James, ‘Constructing Justice for Existing Practice: Rawls and the Status Quo’, Philosophy and Public Affairs 33 (2005): 281–316; Aaron James, Fairness in Practice: A Social Contract for a Global Economy (Oxford: Oxford University Press, 2012); and Miriam Ronzoni, ‘The Global Order: A Case of Background Injustice? A Practice-Dependent Account’, Philosophy and Public Affairs 37 (2009): 229–56.
27. Lea Ypi, Global Justice and Avant-garde Political Agency (Oxford: Oxford University Press, 2012); For critique of the confusion between ideal and non-ideal theory see also, Laura Valentini, Justice in a Globalized World (Oxford: Oxford University Press, 2011).
28. As noted above the problem of subjects of self-determination is bracketed in this article. In this context many have asked whether states—the sovereign entities in the world—are appropriate representatives of peoples or nations. This interesting problem does not concern the argument here for two reasons. First, in light of the rich literature on the subjects of self-determination (i.e. who should have the right, what is a ‘people’), it is assumed that there is a sufficiently plausible solution to the problem of subjects. Second, the SRPV accepts peoples, nations and states as workable concepts in the theory—as plausible subject of self-determination—and the argument here does not address this often discussed part of SRPV, but focuses on another, hitherto neglected, problem in this conception of global justice.
29. See, e.g. Cohen, Globalization and Sovereignty; Jean Cohen, ‘Rethinking Human Rights, Democracy, and Sovereignty in the Age of Globalization’, Political Theory 36 (2008): 578–606; and Miriam Ronzoni, ‘Two Conceptions of State Sovereignty and their Implications for Global Institutional Design’, Critical Review of International Social and Political Philosophy 15 (2012): 573–91. On positive and negative sovereignty in international relations, see Robert Jackson, Quasi-States: Sovereignty, International Relations and the Third World (Cambridge: Cambridge University Press, 1993).
30. I will not attempt to defend the proposed distinction from various potential objections; this task shall remain for a future discussion.
31. For instructive overviews on the conceptual history of sovereignty, see Robert Jackson, ‘Sovereignty in World Politics: A Glance at the Conceptual and Historical Landscape’, Political Studies 47 (1999): 431–56; Daniel Philpott, ‘Ideas and Evolution of Sovereignty’, in State Sovereignty, ed. Sohail H. Hashmi (University Park: Pennsylvania State University Press, 1997).
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15–47; and Stephen D. Krasner, ‘Rethinking the Sovereign State Model’, Review of International Studies 27 (2001): 17–42.

32. On the history of idea of self-determination, see Cassese, Self-Determination of the Peoples; and Hannum, ‘Rethinking Self-Determination’.

33. Hurst Hannum, Autonomy, Sovereignty and Self-Determination: The Accommodation of Conflicting Rights, rev. ed. (Philadelphia: University of Pennsylvania Press, 1996); and David Raič, Statehood and the Law of Self-Determination (Leiden: Martinus Nijhoff Publishers, 2002).

34. Hannum, Ibid.; Cassese, Self-Determination of the Peoples; and Erez Manela, The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism (Oxford: Oxford University Press, 2007).

35. Dan Philpott, ‘Sovereignty’, in The Stanford Encyclopedia of Philosophy (Summer 2014 Edition), ed. Edward N. Zalta. http://plato.stanford.edu/archives/sum2014/entries/sovereignty (accessed October 13, 2014). See also, Daniel Philpott, Revolutions in Sovereignty (Princeton, NJ: Princeton University Press, 2001).

36. Exercise through law does not amount to a legalist conception of sovereignty, where the law is seen as the source of legitimacy of sovereign authority. See discussion in e.g. Cohen, Globalization and Sovereignty, 29–41.

37. See, Altman and Wellman, A Liberal Theory; Christopher Wellman, A Theory of Secession (Cambridge: Cambridge University Press, 2005); and Woodrow Wilson speaks of ‘The Principle of Justice to All Peoples and Nationalities and their Right to Live on Equal Terms of Liberty and Safety with One Another, Whether They are Strong or Weak’, in Official Statements of War Aims and Peace Proposals, ed. James Brown Scott (Washington, DC: Carnegie Endowment for International Peace, 1921), 239.

38. Beyond the ICCPR and the ICESCR formulations cited above, see for an overview of the documents, Cassese, Self-Determination of the Peoples; Hannum, ‘Rethinking Self-Determination’; Raič, Statehood and the Law of Self-Determination; and Summers, Peoples and International Law. I bracket the question that has received some, though not sufficient attention, of whether self-determination in this sense means democracy as we know it today.

39. See discussion of the sovereign people and the problem of their participation in Margaret Canovan, The People (Cambridge: Polity Press, 2005), 91–121.

40. A classic case is of Louis-Napoléon Bonaparte (Napoleon III), elected president of the second French republic in 1848, by a wide majority of votes of male universal suffrage. He then used his popularity to declare himself Emperor and to suppress elected representation, in the name of direct exercise of popular will.

41. Claudia Ciobanu, ‘Romanians Mobilise in Protest Against Gold Mine Plans’, The Guardian, September 17, 2013. http://www.theguardian.com/environment/2013/sep/17/romanians-mobilise-gold-mine (accessed October 13, 2014).

42. UNCTAD, World Investment Report 2007: Transnational Corporations, Extractive Industries and Development (New York: United Nations). Legal background on bilateral investment regimes is available e.g. in Stephan Schill, ed., International Investment Law and Comparative Public Law (Oxford: Oxford University Press, 2010); and David Schneiderman, Constitutionalizing Economic Globalization (Cambridge: Cambridge University Press, 2008).

43. A host of cases and various kinds of international interactions are potential alternative cases for illustration, as long as they meet two normatively relevant conditions: (1) the case is no over-determined, i.e. does not constitute a grave injustice for any theory of international justice; (2) it is a case of inter-state interaction that does not suppose the existence of a global basic structure.

44. Philip Morris International, ‘Uruguay Bilateral Investment Treaty Litigation’. http://www.pmi.com/eng/media_center/company_statements/pages/uruguay_bit_claim.aspx (accessed October 13, 2014); and Matthew C. Porterfield and Christopher R. Byrnes, ‘Philip Morris V. Uruguay: Will Investor-State Arbitration Send Restrictions on Tobacco Marketing Up in
Smoke? Investment Treaty News, July 12, 2011. http://www.iisd.org/itn/2011/07/12/philip-morris-v-uruguay-will-investor-state-arbitration-send-restrictions-on-tobacco-marketing-up-in-smoke (accessed October 13, 2014).

45. Information about the claim and allegations is available in the tribunal’s decision: Pac Rim Cayman LLC v. Republic of El Salvador, ICSID Case No. ARB/09/12.

46. The Canadian Press, ‘Pacific Rim files $315-million Claim Against El Salvador’, Globe and Mail April 1, 2013. http://www.theglobeandmail.com/report-on-business/international-business/latin-american-business/pacific-rim-files-315-million-claim-against-el-salvador/article10602326 (accessed October 13, 2014).

47. Miller, ‘National Responsibility and Global Justice’, chapters 7 and 9; and Rawls, The Law of Peoples, 111ff.

48. For example through the UNOPS (United Nations Office for Project Services) that began its work in El Salvador in 1992.

49. John Stuart Mill, ‘On Liberty’, in On Liberty and Other Essays, ed. John Gray (Oxford: Oxford University Press, 1991), 17; and John Rawls, Political Liberalism (New York: Columbia University Press, 1993), 5.

50. Ian Carter, A Measure of Freedom (Oxford: Oxford University Press, 2001), 70–4.

51. Ibid., chapter 3.

52. On challenges to environmental protection, see e.g. John Ruggie, Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (United Nations, 2006). U.N.Doc. E/CN.4/2006/97.

53. On various aspects of the impact of international interaction on domestic justice.

54. Blake, Justice and Foreign Policy, 121–7.

55. Abdulqawi, ‘The Role that Equal Rights and Self-Determination’, 376.