

Entry by Birth Alone?: Rawlsian Egalitarianism and the Basic Right to Invite*

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Abstract: This paper argues that citizens have a basic right to invite family members and spouses into their society on the basis of Rawlsian egalitarian premises. This right is argued to be just as basic as other recognized basic rights, such as freedom of speech. The argument suggests further that we must treat immigration and family reunification, in particular, as central issues of domestic justice. The paper also examines the implications of these points for the importance of immigration in liberal domestic justice and suggests avenues for further research on the interplay of considerations of justice towards citizens and non-citizens.

Keywords:

immigration, family reunification, basic rights, Rawls, egalitarianism, liberalism

Rawls imposes a key assumption in the original position. Call it “the Closedness Assumption.” In *A Theory of Justice*¹ he characterizes it as follows:

“Let us assume, to fix ideas, that a society is a more or less self-sufficient association of persons who in their relations to one another recognize certain rules

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¹ John Rawls, *A Theory of Justice* (Cambridge MA: Harvard University Press, 1971/rev. 1999). “*TJ*” hereafter. All citations herein refer to the revised edition.

of conduct as binding and who for the most part act in accordance with them.”

(*TJ*, p. 4)

“I shall be satisfied if it is possible to formulate a reasonable conception of justice for the basic structure of society conceived for the time being as a closed system isolated from other societies.” (*Ibid.*, p. 7)

In his later works, Rawls retains this working assumption,² and characterizes these closed societies as political states that persons “enter...only by birth and leave...only by death.”³ The assumption is supposed to help us “fix ideas,” restricting our subject matter to principles of domestic justice which, for Rawls, are the principles that members of a single society will agree to. By focusing on agreement between these individuals under the Closedness Assumption, Rawls suggests, we can pursue discussions of domestic justice in a more tractable way.⁴ It is consistent with Rawls’ methodology here that we may then modify the principles of domestic justice once we begin to consider a society existing among others, although he notably moves on to principles of international justice rather than adjusting his conception of domestic justice, “justice as fairness,” to address such circumstances.

² John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), “*PL*” hereafter, and John Rawls, *Justice as Fairness: A Restatement* (Cambridge MA: Harvard University Press, 2001), “*JAFR*” hereafter.

³ *PL*, p. 12.

⁴ I am grateful to an anonymous reviewer for helpful comments on the role that the Closedness Assumption is meant to play in Rawls’ theorizing about domestic justice.

I want to distinguish between two importantly different parts of the Closedness Assumption that are easily run together, and separating them suggests that a different methodology from the one that Rawls actually employed may be promising. There are two notions of closedness that are worth keeping apart, which I will call “Physical Closedness” and “Normative Closedness” to highlight their main differences:

Physical Closedness: All persons are born in and die in the same society, and have no contact with or relations to persons in other societies.

Normative Closedness: All and only members of society are represented in the agreement on the public conception of justice.

Physical Closedness characterizes the people and the territory that our discussion is restricted to. Normative Closedness, by contrast, focuses on the people who are participants in the domestic social contract. These notions are distinct. If you adopt Physical Closedness, of course, it would be odd not to also adopt Normative Closedness, because if the people you have in mind are stipulated to have no contact or relations with other persons in other societies whatsoever, it is not clear why they would need to agree on principles of justice with these other persons. An agreement among themselves would seem to be sufficient. However, one may adopt Normative Closedness, restricting their focus to domestic justice principles—which are to be the subject of agreement among insiders—and this is fully compatible with removing the assumption of Physical Closedness. We may then consider how the agreement between insiders is impacted by the existence of, contact with, and any significant relations they bear to outsiders.

As we know, some citizens of liberal democracies are in close relationships with non-citizens. Among the closest of these relationships are parent-child and spousal relationships, which inform the most central aspects of their conceptions of the good. So if we want our public conception of justice to appropriately include these citizens, we should try to work out the implications of Normative Closedness without Physical Closedness. I take up this task here, restricting my focus to family reunification. I argue that removing Physical Closedness while leaving Normative Closedness in place has surprising implications that are nonetheless consistent with the intention behind the Closedness Assumption of generating a wieldy and plausible conception of domestic justice. In particular, I argue that this methodological tweak has the implication that a new basic right, a “right to invite,” must be regarded as a commitment of Rawlsian domestic justice.⁵

As noted, I will not question Rawls’ commitment to Normative Closedness for the purposes of this paper. I thus leave aside the debate over whether he should have extended the original position to cover interactions between persons on a global scale. Prominent critics working in both the ethics of immigration⁶ and political philosophy more broadly⁷ have argued for this conclusion. Rawls famously rejected this move in his

⁵ For a different proposal regarding a right to invite outsiders, see Claudio López-Guerra, “Immigration, Membership, and Justice: On the Right to Bring Others into the Polity,” in *Difference without Domination*, eds. Danielle Allen and Rohini Somanathan (Chicago: University of Chicago Press, forthcoming).

⁶ Joseph H. Carens, “Aliens and Citizens: The Case for Open Borders,” *Review of Politics*, 49 (1987), pp. 251-273.

⁷ Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1973); Thomas Pogge, *Realizing Rawls* (Ithaca: Cornell University Press, 1989).

later work on international justice, *The Law of Peoples*.⁸ This debate raises important questions about global political institutions and international distributive justice, among others. One important upshot of my argument here is that we don't have to address such questions to see that Rawls' egalitarian theory of domestic justice (henceforth "Rawlsian egalitarianism") has important implications for how societies should treat at least some people seeking to immigrate.

A second important upshot of this paper is that Rawlsian egalitarianism can vindicate some of our deepest commitments about immigration justice. Immigration has become a central topic in political philosophy in recent years. Political philosophers have largely rejected Rawls' view that immigration doesn't hold much in the way of independent theoretical interest. He famously thought that issues of immigration would fall away if most societies became reasonably just.⁹ Most of us think that this is false – people have interests in being able to migrate that have little to do with suffering injustices at home. Further, even if Rawls' conditional claim were true, the antecedent – all societies being reasonably just – is so far-off that it wouldn't lead many of us think that we shouldn't devote considerable attention to the moral issues raised by immigration. However, insofar as one thinks there is value in the Rawlsian project, my argument shows that Rawls' own framework commits him to giving an important place

⁸ John Rawls, *The Law of Peoples* (Cambridge MA: Harvard University Press, 1999). "LP" hereafter. Rawls holds that representatives of peoples, rather than representatives of individual persons, should be the parties in original position thought experiments at the international level. He focuses on describing two international original positions, one where representatives of liberal peoples agree to a Law of Peoples consisting of eight principles, and a second one where representatives of decent hierarchical peoples agree to the same set of principles.

⁹ LP, pp. 8-9.

to matters of immigration, in particular the issue of family reunification. Those of us who take immigration seriously as an area of philosophical investigation may therefore have more reason to think that Rawlsian egalitarianism is a compelling framework for thinking about justice than if we took Rawls' own views on immigration at face value.

Additionally, while immigration is regularly discussed in political philosophy, it is often treated in isolation from other issues of justice. More work must be done to think about how our moral commitments involving immigration should fit into a broader theory of liberal egalitarianism and be balanced with our other moral commitments. Rawlsian egalitarianism is one of the major liberal egalitarian frameworks, and has been used to develop important arguments for open borders¹⁰ and equal treatment of gay and straight couples by a society's immigration policy regime.¹¹ I will argue that a right to reunification is as basic a right for liberal citizens as other recognized basic rights, such as freedom of speech, on the basis of Rawlsian liberal commitments. Establishing this conclusion is part of the broader project of examining liberal commitments regarding immigration, and how different approaches to thinking about liberal justice can be used to address moral issues concerning migration.

¹⁰ Carens, "Aliens and Citizens: The Case for Open Borders."

¹¹ Matthew J. Lister, "A Rawlsian Argument for Extending Family-Based Immigration Benefits to Same-Sex Couples," *The University of Memphis Law Review*, Vol. 37 (Summer 2007), pp. 745-780.

1. JAF, JAF*, and the Basic Right to Invite

As I suggested above, it may be fruitful to consider how justice as fairness (hereafter “JAF”) has been shaped by the assumption of Physical Closedness, and whether it is therefore incomplete in any important way for the actual liberal democratic societies that Rawls means for it to be used in. If we remove the assumption of Physical Closedness, representatives in the original position can take the fact that at least some members are likely to be in important relationships with non-members into account.

Representatives of members are now considering what principles of justice to secure for them in the original position, with the knowledge that these members may be in important relationships with non-members. In such a situation, these representatives would guarantee a basic “right to invite” for members of society within Rawls’ first principle of justice. They would reject JAF, in other words, for JAF*, an extended version of JAF that includes a basic right to invite certain non-members – the ones with whom members they represent may be in important relationships, such as parent-child relationships and marital relationships – into the society with the security that co-membership makes possible.

Why would these representatives be so adamant about including a basic right to invite parents, children, and spouses for their clients? Consider the difference it would make in their lives if members weren’t able to bring in these persons to live with them on the secure basis that co-membership in a society affords. This will not only be highly desirable but urgent in many cases, such as when widowed elderly parents need care or two people are married and prepared to start a life together. The representatives are

behind the veil of ignorance in the original position, and so do not know which member of society they represent, including whether the member bears ties to non-members whom it is important to be able to bring into the society. With the choice between JAF and JAF* as alternative public conceptions of justice, representatives of members in the modified original position¹² would choose JAF* for their clients, which includes a basic right to invite within the first principle of justice.

Of course, I've presented the argument for the right to invite somewhat schematically so far. To be sure that representatives would choose JAF* over JAF, I'll need to say more about the content of this right. I'll also have to discuss how the modified first principle fits into a broader Rawlsian egalitarian conception of justice. But before addressing these issues, it is worth pausing to say a bit more about why we should examine what principles would be agreed to when the assumption of Physical Closedness is lifted.

Rawls acknowledges that the closed society that he envisions when constructing JAF is a "considerable abstraction." Onora O'Neill objects to this description and points out that, strictly speaking, abstractions omit and bracket facts that are true of the matter from which they abstract.¹³ The idea of a closed society, she notes, assumes predicates that are false for all existing human societies, and is thus better described as an idealization. O'Neill makes this point for a very different purpose, which is to critically assess the implications of this idealization for Rawls' account of public reason in

¹² Going forward I refer to the original position as already having the assumption of Physical Closedness removed for ease of exposition, unless explicitly stated otherwise.

¹³ Onora O'Neill, "Political Liberalism and Public Reason: A Critical Notice of John Rawls, *Political Liberalism*," *Philosophical Review*, Vol. 106, No. 3 (1997).

comparison with that of Kant, but it is also useful to consider here. Rather than leaving out facts about real societies, Physical Closedness treats false predicates about the kind of society that Rawls wants his public conception of justice to order as if they were true, in particular that all of the citizens are born and die there and have no contact with or relations to people outside of the society.

Rawls could respond that idealization can be appropriate to a theoretical exercise if it produces some benefits, and is a common feature in philosophy and other fields of inquiry. In physics, the universe is represented as frictionless for the sake of constructing theories of mechanics, and in economics *homo economicus* represents an idealized rational actor with properties that human beings do not possess. Each of these idealizations just mentioned advances the goal of theorists making those idealizations when they are appropriate. Newtonian mechanics flourishes with its realm of importance in physics despite the assumption of zero friction. It is more controversial that economics can derive descriptively adequate pictures of economic behaviors using the assumption of *homo economicus*, but that is at least the claim of proponents of that assumption's use. By analogy, Rawls might claim that we are better able to get a first approximation of a public conception of justice using the assumption of Physical Closedness that we can adjust later to take into account the ways that societies are not closed off to one another.

It is entirely open to Rawls to claim that he is developing a theory of domestic justice with this simplifying assumption in place to make his task more tractable, and that it is possible to later revise the theory by considering relations between societies. But Rawls never did consider relationships between citizens and non-citizens in theorizing about the principles of justice that obtain at the international level. Nor did he revise his

theory of domestic justice to take into account how these relationships bear on the interests of citizens. Further, the question of how Rawlsian egalitarianism should handle relationships between citizens and non-citizens has yet to be given sustained attention in the wide literature on Rawls' work.¹⁴

More importantly, since Rawls does want his theory of domestic justice to be capable of being accepted by citizens of actual democratic societies, it is worth examining the implications of relaxing the assumption of Physical Closedness, allowing the parties access to the simple fact that some citizens are in important relationships with non-citizens. If we can show that this task proves tractable, we will avoid unnecessarily treating these relationships as extra factors that will or will not, as the case may be, wind up being integrated into the public conception of justice. As I have argued, the right to invite should be part of the Rawlsian public conception of justice and its package of basic rights and liberties that representatives in the original position accept. By leaving the assumption of Physical Closedness in place, the ability to bring in parents, children, and spouses is kept apart from a core question in domestic justice theory as Rawls understands it, namely what public conception of justice would be chosen in the original position. One could, of course, just assert that the right to invite doesn't matter enough to be considered here, but this simply begs the question against my argument. The assumption of Physical Closedness postpones the question of the right to invite, and in that sense treats it as a less important issue of domestic justice. Once we lift this

¹⁴ For an important exception, see Lister, "A Rawlsian Argument for Extending Family-Based Immigration Benefits to Same-Sex Couples."

assumption, we arrive at just the opposite view about the centrality of the right to invite in a plausible conception of justice.

I should emphasize that the issues that are not covered in the selection of the public conception of justice, in Rawls' framework, can never have as central a place in the creation and reform of the basic structure as those that are. They can be brought in only at later stages where the public conception of justice is drawn upon in creating a constitution, where specific laws and policies are agreed to that realize its principles, and where judges and administrators apply these laws and policies to particular cases.¹⁵ Part of the reasoning for including the basic rights and liberties within the first principle of justice is to take them off the table for negotiation in these later stages. We inherently treat the right to bring in parents, children, and spouses as less important than the other rights in the first principle if we relegate this right to later stages where it is uncertain whether or not it will be implemented. For immigrant families that have been torn apart by circumstances, and couples that cannot live as spouses in societies where their sexual orientation or other aspects of themselves are not welcome, Rawlsian egalitarianism can provide an answer – you should have a basic guarantee that you can bring in your parents, children, or spouses. On the basis of Rawlsian reasoning, a just democratic order must provide this guarantee as a central commitment of domestic justice. So it appears that the assumption of Physical Closedness gets our theorizing about domestic justice off on the wrong foot, at least with respect to the centrality of family reunification to domestic justice in modern democratic societies, in which many citizens do in fact have parents, children, and spouses who are non-citizens that they wish to bring in. We should

¹⁵ For Rawls' discussion of the four-stage sequence, see *TJ*, pp. 171-6.

therefore take up the project of examining what Rawlsian egalitarianism requires when this assumption is lifted. On my view, a basic right to invite certain persons into one's society on the stable basis that co-membership affords will be required. I now turn to examine the nature and extent of this right.

2. The Nature and Extent of the Basic Right to Invite

The right to invite, like the other rights and liberties in Rawls' first principle, should be understood as a right against the state and not individual persons. The correlative duty of the state is not to prevent the exercise of this right by individual citizens and to set up the appropriate institutions through which the right may be exercised. While other individual members of society may play a role in restricting or violating a fellow member's right to invite, as with the right to free speech or the right to vote in political elections, it is the state's duty to rectify such violations.

How extensive is the right to invite? In other work, I argue that societies should take on a legal obligation to allow non-members who are in certain types of morally significant relationships with members in.¹⁶ They are legally obligatory "unification admissions,"¹⁷ non-members seeking admission for the purpose of living in the same

¹⁶ Matthew Lindauer, "In Defense of a Category-Based System for Unification Admissions," *Journal of Moral Philosophy*, Vol. Vol. 15, No. 5 (2018), pp. 572-598. Of course, as with the argument for the right to invite, this argument does not imply that societies are obligated to allow in non-members who are terrorists or members of criminal organizations. Genuine concerns for national security and public safety can provide reasons to restrict family reunification in particular cases. I am grateful to an anonymous reviewer for mentioning this point.

¹⁷ I prefer the term 'unification' to 'reunification' in general because, while the latter is more commonly used, there are some cases in which people have not lived in the same

society as members on the stable basis that membership affords. While on a case-by-case basis relationships of different types may vary in their relative moral importance, a feasible immigration policy regime cannot treat all equally significant relationships as requiring societies to commit to allowing persons in.¹⁸ I don't have the space here to fully argue for this point, but my own view is that societies should treat parents, non-adult unmarried children, and spouses of members, properly specified, as legally obligatory unification admissions and commit to insuring that these persons can immigrate. This category includes non-biological parents and children of members. These non-members must be taken in unless very pressing reasons can be given for keeping them out. Limiting the category of legally obligatory unification admissions to these persons, I've argued, will be feasible and compatible with the other responsibilities and moral constraints that societies are subject to in immigration.¹⁹

In order not to be disadvantaged in the global economy, societies must leave room for at least some skilled workers to be admitted. They may also have asylum seekers arriving and requesting refugee status, and they have moral and international legal

society as, or even met, their family members. They may nonetheless still have important claims to bring these persons in. Where I use the term 'reunification' in this paper, I do so only for ease of exposition.

¹⁸ For a contrasting view, see Luara Ferracioli, "Family Migration Schemes and Liberal Neutrality: A Dilemma," *Journal of Moral Philosophy*, Vol. 13, No. 5 (2016), pp. 553-575.

¹⁹ The focus on these family relationships does, of course, reflect the value typically given to the family in modern liberal democracies. As I argue in previous work, the importance of these relationships could change over time, leading to a change in the relationships that are most in need of unification (Lindauer, "In Defense of a Category-Based System for Unification Admissions"). In such circumstances, the content of the right to invite could be reconsidered, but it is unlikely that it would not be crucially important for at least some citizens to bring in some other persons, and hence unlikely that a right to invite should be removed from the first principle altogether. I am grateful to an anonymous reviewer for mentioning this point.

obligations to take these persons in and determine their statuses. By restricting the category of legally obligatory unification admissions to parents, non-adult unmarried children, and spouses of members, societies can ensure that immigration flows are not entirely exhausted by unification admissions, and retain the ability to take these other persons in. Of course, the point here is that the right to invite can be restricted when doing so is required by the demands of feasibility and the other responsibilities that a society must uphold. If these demands and responsibilities can be upheld while putting a broader right to invite in place, it is fully compatible with my view that this broader right should be implemented.

3. The Basic Right to Invite as Part of the Revised First Principle

Rawls' framework also provides support for the decision to restrict the basic right to invite to the set of persons that the society can feasibly commit to treating as legally obligatory unification admissions. Rawls' first principle holds that each person has an equal claim to a fully adequate scheme of equal basic rights and liberties where that scheme is compatible with the same scheme for all.²⁰ What counts as a fully adequate scheme can depend on facts about the society where it is implemented.²¹ The ability of members to bring in their parents, non-adult unmarried children, and spouses will be

²⁰ *PL*, p. 5. The equal political liberties are also to be guaranteed their fair value, and only these liberties. In *Justice As Fairness: A Restatement*, Rawls states the first principle solely in terms of basic liberties (see *JAFR*, p. 42). However, he clearly still includes equal basic rights within the principle, such as the right to vote or hold public office, and so this doesn't mark a substantive change in his view.

²¹ The following discussion benefited from Thomas Pogge, *John Rawls: His Life and Theory of Justice* (Oxford: Oxford University Press, 2007), pp. 82-91.

feasible to maintain in the modern democratic societies that Rawls has in mind existing under “the circumstances of justice,”²² in particular where there is only moderate scarcity of natural and other resources. On Rawls’ understanding of what it means for a scheme of basic rights and liberties to be fully adequate, it must be the case that the rights and liberties set out in the scheme do not conflict with one another in ways that are difficult to resolve. The parties to the original position and the real citizens that they represent will want to prevent later conflicts, and so mutual adjustments may have to be made when giving further content to these rights and liberties in a society’s actual institutions. Such mutual adjustment still must leave the most significant aspects of each right and liberty intact and, if needed, only restrict their less significant aspects.

Rawls distinguishes between the more and less significant aspects of a given basic right or liberty in terms of whether they are tied to the first two fundamental interests that he stipulates that citizens possess.²³ These are the interests in developing and exercising the capacity for a sense of justice and the capacity for a conception of the good, which he refers to as the two “moral powers.”²⁴ Within a given citizen’s conception of the good are an ordering of attachments to persons and associations and a view of the world in light of which these attachments are understood.²⁵ The most significant attachments of

²² *TJ*, pp. 109-112. Rawls states that his account of the circumstances of justice largely follows that of Hume (*TJ*, p. 109, note 3). See David Hume, *A Treatise of Human Nature*, eds. David Fate Norton and Mary J. Norton (Oxford: Oxford University Press, 2000), at bk. III, sec. ii, and David Hume, *An Enquiry Concerning the Principles of Morals*, ed. Tom L. Beauchamp (Oxford: Oxford University Press, 1998), sec. III, pt. 1.

²³ *JAFR*, pp. 112-4. Rawls leaves aside the third fundamental interest, which is the interest in being successful in terms of the particular conception of the good that one has. For a discussion of this point, see Pogge, *John Rawls: His Life and Theory of Justice*, pp. 86-91.

²⁴ *PL*, pp. 59-60.

²⁵ *Ibid.*, pp. 333-334.

persons within this ordering are often to their parents, non-adult unmarried children, and spouses, although other persons may be ranked as equal to or higher than these for some citizens. It then makes sense from a Rawlsian perspective for the basic right to invite to be restricted so as to grant members the ability to bring in parents, non-adult unmarried children, and spouses and not necessarily other non-members. The development and exercise of a citizen's capacity for a conception of the good will often involve the ability to live near or care for these persons. For citizens whose parents, non-adult unmarried children, and spouses are not also citizens, the option to bring them in on the stable basis that co-citizenship affords protects this ability. Attachments to other persons will tend, in general, to be somewhat less significant and not require unification. We may be very close to a sibling or friend, but it will generally be less important to safeguard the ability to live in the same society as them, even if we would prefer for this to be the case. Given that these other attachments tend to be less significant, their inclusion within the basic right to invite would be a less significant aspect of this right and subject to adjustment in order to maintain a fully adequate scheme of basic rights and liberties.

A Rawlsian rationale, then, can be given for a restricted basic right to invite that places a society under an obligation to allow in parents, non-adult unmarried children, and spouses of members. If this circumscribed basic right would be accepted by representatives in the original position, we may then ask what else may be due to members of society as a matter of justice in terms of the ability to bring in non-members. The Rawlsian reasoning for restricting the extent of the basic right to invite derives from the need to balance the importance for citizens of being able to bring particular persons in with the need to fit this right into a practically implementable set of basic rights and

liberties. It is implausible that the right would endanger the ability to maintain a fully adequate scheme of basic rights and liberties as guaranteed by the first principle or other particular basic rights and liberties, such as freedom of speech or liberty of conscience and thought, when limited in this way. Whether a broader right to invite would conflict with such a scheme is a topic for further inquiry.

4. The Right to Invite and the Second Principle

I just argued that a restricted basic right to invite can fit into a fully adequate scheme of basic rights and liberties as guaranteed by the first principle of justice. A further issue concerns whether the addition of the basic right to invite to the first principle of justice is implausible in light of the relation between the two principles of justice. The first principle covers the basic rights and liberties of citizens while the second principle covers social and economic inequalities. The first principle is lexically prior to the second principle of justice in Rawls' framework, which prevents tradeoffs from being made when infringements of the basic rights and liberties would be justified or compensated for by raising the socioeconomic position of the worst off. The second principle includes two lexically ordered principles within it which hold that social and economic inequalities (i) must be attached to offices and positions open to all under conditions of fair equality of opportunity and (ii) must be to the greatest benefit of the least advantaged members of society (the "difference principle"). Whether the right to invite should be included in the first principle depends in part on whether it is plausible

that representatives would safeguard the right to invite against tradeoffs that would increase the fulfillment of the second principle.

It is true that some of the other rights and liberties that Rawls lists in his original first principle generate cases where many will quickly and strongly judge that we should not sacrifice their security for a higher socioeconomic position for the worst off. It seems especially clear that representatives would not choose to allow freedom from psychological oppression and physical assault and dismemberment, which Rawls subsumes together under “integrity of the person,” to be less secure for the sake of raising the socioeconomic position of the worst off. We may also agree with Rawls that representatives would hold that restrictions to freedom of speech cannot generally be justified or compensated for by such improvements. Given that not everyone will have non-citizen parents, children, or spouses that they wish to bring in, does this speak against securing and protecting the basic right to invite in the same way? Should the representatives of citizens in the original position be willing to tolerate a less secure right to invite for the sake of a higher socioeconomic position for the worst off?

It is worth noting that other rights and liberties that Rawls mentions may be subject to similar concerns, in contrast with integrity of the person and perhaps other basic rights and liberties within the first principle. If voter turnout and democratic participation in liberal democracies is any indication, it is unlikely that all citizens are especially concerned with the security of their right to vote. This is even more plausibly true of the right to hold public office. Rawls refers to these two rights as components of “political liberty” on his list of the basic rights and liberties included in the first principle. It would be inconsistent from a Rawlsian perspective to argue that because some citizens

are unlikely to value or exercise a given right or liberty that it should then not be included among the basic rights and liberties and secured against tradeoffs. One might respond by noting that it is in every citizen's interest to live in a society in which all can vote and hold public office. Yet any citizen can wind up in the situation of having to bring their parents, children, or spouse into their society. It is also quite important for them to live in a society where all citizens can do so.

The basic right to invite will be especially important for citizens with parents, children, and spouses that they wish to bring in and cannot simply go and live with in other societies. They may have elderly parents who require care living in the societies that they cannot immigrate to, children whom they cannot live with except in their own society, or spouses that they cannot share a life with except through unification. Increasing the fulfillment of the second principle by restricting the right of other citizens to bring in their parents, children, and spouses would ignore the importance of this right for the citizens who need to exercise it to unify with these persons. The representatives of citizens should not allow for such tradeoffs as the ability to bring in parents, children, or a spouse may be especially important for the citizen that they represent.

Additional support for this point is provided by the fact that a principle requiring that citizens' basic needs will be met in Rawls' later statement of his public conception of domestic justice is lexically prior to the first principle of justice.²⁶ This principle requires society to ensure that the basic needs of citizens are met insofar as their being met is required for citizens to understand their basic rights and liberties and be able to fruitfully exercise them. According to Rawls, such a principle must be assumed in applying the

²⁶ *PL*, p. 7.

first principle²⁷ and is a constitutional essential.²⁸ JAF* also treats this principle as lexically prior to the first principle and only differs from JAF in virtue of adding the basic right to invite to the first principle of justice. Given this fact, it will not be the case that representatives must consider instances where the worst off members of society would only have their basic needs met by restricting the right to invite, or other basic rights and liberties. This additional point helps to show that it is plausible that the representatives, thinking about restrictions to the right to invite for the sake of greater fulfillment of the second principle, would not allow such tradeoffs to be made.

5. The Right to Exit and the Right to Invite

Another potential objection to my proposal is that there need not be a basic right to invite in liberal societies because these societies always grant their citizens the right to exit. This objection falsely presupposes that citizens can always immigrate to another society where the persons they wish to invite live. It will not always be the case, for instance, that a gay married couple can rely on the other spouse's society as a safe alternative to live in together. The society where the other party to a marital or parent-child relationship lives may be unsafe for any number of reasons. That region may be torn by conflict or war, there may be discrimination against persons bearing other qualities that one of the parties to the relationship has, and so on. It also cannot be assumed that a third country can be found that both parties could immigrate to. The fact

²⁷ *Ibid.*

²⁸ *Ibid.*, p. 166.

that there may not be a safe option to immigrate to the prospective invitee's society, that the only path to unification may be through invitation into the society in question, and that there may not be a third society to unify with a given non-member in undercuts the objection that the basic right to invite is unnecessary due to the ability of members to emigrate.

In considering this objection, it is helpful to examine the decision that would have to be made by the representative of a citizen in the domestic original position. Suppose that they are considering JAF, which does not include a basic right to invite, and JAF*, which does. Should the possibility that the citizen whom they represent would potentially be able to move to other societies where the persons whom they want to invite make the representative indifferent between JAF and JAF*? It should not, and the considerations just mentioned explain why. Their citizen might be a member of a minority group that has a lot of trouble finding societies where they can live freely, as individuals or in their relationships with persons whom they will want to bring in.²⁹ There may be multiple persons that they wish to bring in from different countries, where no other option would allow them all to live together as citizens of the same country. And there may not be a third society that will let them in along with the immediate family members whom they intend to unify with. Additionally, the citizen may really value their own society's political culture, social institutions, and their other friends and family members who live in the society, and so not wish to leave. All of these points would

²⁹ These conditions typically go hand in hand for gay people, but are distinct and could be separate or of differing levels of severity in certain places. For instance, there could and may in fact be societies where there isn't a strong social norm against being gay but where same-sex partners cannot safely display affection towards one another publicly.

push the representative of a citizen in the original position towards JAF* rather than JAF. In other words, they would prefer a public conception of justice that included a basic right to invite at least some persons over one that did not so long as, as I have argued, there are no important downsides to including this right that outweigh its benefits for citizens.

6. Situating the Argument for a Rawlsian Basic Right to Invite in Relation to Other Responses to Rawls

Having discussed the place of the right to invite in Rawls' broader conception of domestic justice, I will now describe some of the ways in which my argument differs from those that have been offered by theorists responding to Rawls' conception of the divide between domestic and global or international justice and his views on immigration. On the former, Charles Beitz³⁰ and Thomas Pogge³¹ have argued that Rawls' original position should be extended to global interactions between persons. Rawls himself, by contrast, presents the global original position in his later *The Law of Peoples* as a contract between representatives of peoples, or political societies, rather than individual persons as he did in constructing his theory of domestic justice, justice as fairness. Pogge³² has also criticized Rawls' lack of emphasis on the effects of politics

³⁰ Beitz, *Political Theory and International Relations*.

³¹ Pogge, *Realizing Rawls*.

³² Thomas W. Pogge, "Assisting the Global Poor," in *The Ethics of Assistance: Morality and the Distant Needy*, ed. Dean K. Chatterjee (Cambridge: Cambridge University Press, 2004), pp. 260-288; Thomas W. Pogge, "The Incoherence Between Rawls' Theories of Justice," *Fordham Law Review*, Vol. 72, No. 5 (2004), pp. 1739-1759.

outside the state on domestic justice and the coherence of *LP* with Rawls' domestic justice theory. By contrast with these other theorists, I argue that even within the domestic original position, issues concerning the treatment of non-citizens emerge, given the ties that citizens bear to them.

In the ethics of immigration literature, Carens³³ prominently offered a Rawls-inspired argument for open borders that remains an important contribution. Using a global version of the original position, representing people from all over the world, Carens argued that representatives behind the veil of ignorance would agree to an open borders policy. Rawls himself, however, did not believe that justice as fairness was committed to open borders. In *The Law of Peoples*, Rawls states that his views on the role of borders and the responsibilities of peoples to manage their territory, its environmental integrity, and their population imply that they have a qualified right to limit immigration.³⁴ Unlike Carens, I do not hold that Rawls' theory commits him to open borders. This is, in part, because my view does not require adding non-members as parties to the original position, as Carens' does. I argue for the Rawlsian basic right to invite by considering what representatives in the original position would secure for their client citizens.

Here a further difference between my approach and these others is brought out. Whereas some theorists have argued for extending the Rawlsian original position thought experiment to include non-members of society, or non-citizens, I am committed to no such extension. But in theorizing about domestic justice, using Rawls' framework, I

³³ Carens, "Aliens and Citizens: The Case for Open Borders."

³⁴ *LP*, pp. 8-9, pp. 38-9.

remove the assumption of Physical Closedness, and so the existence of non-members is brought to salience even when thinking about what societies owe to their own members alone. Carens does offer a libertarian line of reasoning for open borders (as well as one grounded in utilitarianism), and suggests that anything but open borders limits the freedom of members of society to enter into consensual contracts with adult non-members. But Carens himself is not a libertarian, and is merely showing that the open borders position should be endorsed from a range of political perspectives. Many will also reject this line of reasoning, given its libertarian bearings, and hence Carens makes sure to emphasize the appeal of open borders for liberal theorists who share many of the commitments regarding social and political justice that Rawls defends.

Lister³⁵ has also adopted a Rawlsian view of immigration and, in particular, the view that it is a requirement of domestic justice to give equal access to family reunification to married same-sex couples. In a sense, Lister's approach is closest to mine, in that he does not require the original position itself to take on new parties – citizens are still the only people represented. Lister notes that Rawls does not mention family-based immigration among the causes of immigration, and holds that this oversight explains Rawls' view that if most societies were just, immigration would nearly cease.³⁶ However, Lister does not require the removal of the assumption of Physical Closedness in the original position. He believes that the motivation for keeping it in place is to make sure that the parties do not pick principles of justice that they might want to skip out on if

³⁵ Lister, "A Rawlsian Argument for Extending Family-Based Immigration Benefits to Same-Sex Couples."

³⁶ *Ibid.*, p. 759.

they end up as one of the less fortunate members of society.³⁷ It seems to me that this is the wrong motivation to cite, both textually and theoretically. For the reasons given earlier in distinguishing between Physical and Normative Closedness, it is more likely that Rawls' main motivation was to keep his project tractable, although as I have argued here, it will then have to be extended in some way to account for the fact that citizens stand in important relationships with non-citizens. There is little reason to think that the possibility of emigration connects with what Rawls has in mind when he mentions the need to "fix ideas" by stipulating that the society in question is closed. Further, because liberal theorists are clearly committed to the freedom to emigrate, I cannot see why the fact that emigration is not on the table should lead them to be more haphazard in choosing principles of justice. Why should they assume that there will be anywhere else to go where they will wind up in a better position? This move, however, has the further consequence that Lister cannot argue for the requirement to honor same-sex couples in family reunification in terms of a basic right to invite for all citizens. He instead holds that the representatives of citizens would bring rights to family reunification in at the later constitutional and legislative stages. The requirements implemented at the original position stage, however, are treated as central issues of domestic justice. Rather than later additions that may or may not follow on in the later stages where the public conception of justice is applied, securing rights to family reunification for all citizens, regardless of sexual orientation, should be more deeply enmeshed in the Rawlsian framework. As I have argued, this position matches the importance of the right to invite for the higher-order interest fulfillment of some citizens. It is not a matter for later

³⁷ *Ibid.*, p. 764.

deliberation, but instead a fundamental part of a Rawlsian egalitarian conception of domestic justice, that citizens are guaranteed that they can bring in their parents, children, and spouses.

7. The Basic Right to Invite and *The Law of Peoples*

Insofar as the argument offered in this paper is meant to remain as consistent as possible with Rawlsian commitments, we should also check to see whether there are potential conflicts with values or principles that Rawls argues for at the international level. Whereas in the domestic case we were interested in how the basic right to invite would fit into a fully adequate scheme of basic rights and liberties for all liberal citizens, here we ask whether granting this right would conflict with the interests that Rawls regards peoples as possessing.

In terms of the equality of Rawlsian peoples with other well-ordered peoples, a few points should be made. First, the notion of equality that Rawls has in mind pertains to their standing in the international original position, the Law of Peoples that they select through this procedure, and actual international agreements, such as treaties and trade agreements.³⁸ Keeping this in mind, it is clear that the interest in equality that representatives of peoples are meant to advance, for Rawls, does not rub up against the basic right to invite.

Second, another separate concern for equality, issued in the spirit of the interest in equality perhaps, is worth taking up. One might be concerned that a Rawlsian people

³⁸ *LP*, pp. 37-41.

will be disadvantaged with respect to other nations in virtue of implementing this right when many others do not. Knowing that Rawlsian societies recognize a basic right to invite, people may tend to want to live in these societies rather than others. Rawlsian societies could then bear disproportionate burdens in virtue of being more desirable places to settle in than others. Yet the basic right to invite only secures the ability of existing citizens to bring in their parents, non-adult unmarried children, and spouses. By restricting the basic right to invite in this way, the burdens that it creates will be minimal and securing this right, which Rawlsian societies are committed to as a matter of justice, will be made feasible.

Additional support for this point comes from the fact that there is good reason to think that liberal societies more generally are required to secure the ability to bring in parents, children, and spouses for their members. The Rawlsian basic right to invite is one way of articulating the requirement to treat parents, children, and spouses as legally obligatory admissions. I want to remain pluralistic about how this requirement is understood and conceptualized across different liberal societies. As long as the requirement to let in unification admissions that the Rawlsian basic right to invite upholds is plausible on more general liberal commitments, as I argue, concerns for the equality of Rawlsian peoples should be mitigated.³⁹ Any burdens associated with

³⁹ For other liberal arguments in support of family reunification schemes, see Joseph H. Carens, *The Ethics of Immigration* (New York: Oxford University Press, 2013), Ferracioli, “Family Migration Schemes and Liberal Neutrality: A Dilemma,” Lindauer, “In Defense of a Category-Based System for Unification Admissions,” and Caleb Yong, “Caring Relationships and Family Migration Schemes,” in *The Ethics of Immigration*, ed. Alex Sager (Lanham, MD: Rowman and Littlefield, 2016).

implementing the basic right to invite for Rawlsian peoples will be borne by liberal peoples more generally.

8. Concluding Remarks

In this paper I argued that Rawlsian egalitarianism is committed to including a basic right to invite among the basic rights and liberties protected by the first principle of justice. This argument also has the implication that Rawls' methodology of theorizing about domestic justice and international or global justice in isolation from one another is misguided. By operating under the assumption of Physical Closedness, Rawls cannot examine what representatives in the original position would secure for their client citizens in terms of relations these citizens bear to non-citizens. Even when we leave the assumption of Normative Closedness in place, examining a hypothetical agreement on principles of justice that only citizens are represented in, representatives of citizens would insist on their ability to bring certain non-citizens into the society as new citizens. In the domestic original position, they would secure a basic right to invite parents, children, and spouses within the first principle of justice, and hence select a modified version of justice as fairness that includes this right (JAF*) over Rawls' stated version (JAF). They would not treat immigration as a secondary issue of domestic justice, in the sense of being addressed only once a public conception of justice for their society was agreed upon, but would include this basic right to invite within that conception. I defended the addition of this basic right to invite within the first principle of justice against a number of likely objections, and also considered how this right would fit with Rawls' commitments at the

international or global level. The argumentative strategy employed in this paper therefore also demonstrates the methodological point that we cannot distinguish between domestic justice and international or global justice issues as, respectively, the issues that directly concern only the treatment of citizens and of non-citizens. Given the existence of relationships between citizens and non-citizens, societal policies and actions concerning the treatment of non-citizens may raise issues of domestic justice. One could also investigate topics such as humanitarian giving, disaster relief, trade policies, and others in light of the interests that citizens have in their society's treatment of non-citizens, but this would go beyond the scope of the present paper. While immigration and the right to invite serve as an important case study here, political philosophers must think through these issues more broadly in further research, as the increasingly interconnected domains of domestic and international or global justice become more difficult to theorize in isolation from one another.