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A liberal approach to a not so liberal policy – refugees in international society.

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Acknowledgments

The question of migration and refugees has been a field of particular interest since I first encountered the academic discourse. It was spiked by during an exchange at the University of Cape Town back in 2007, perhaps also due to a profound disagreement with one of my otherwise excellent professors. My first real encounter with Rawls happened during my first year at the University of Oslo, and to this day I can still remember the seminar held 15 years ago by Dag Einar Thorsen (my supervisor for this thesis), who at the time, was already a formidable and engaging person. A lot has happened since then, and I am grateful that he agreed to be my supervisor for this thesis. His dedication, flexibility, and insight has proved invaluable during this process. I could not have asked for more thoughtful and intellectual advice. I am also grateful that he agreed to stay on board for all these years despite my need for personal leave of absence. I am also grateful to have had a second supervisor, Stig Jarle Hansen, who always finds time for advice and a good conversation. How he has a special way of maintaining a source of energy, intellect, and continuous inspiration that seems never ending. He also remains the true gatekeeper of International Relations at NMBU.

The path to completing this thesis has been a long one. I feel humble and grateful to those who believed in me despite my unexpected personal leave due to medical reasons. In terms of the end result, it might not only have been a disadvantage, as my own thoughts on the subject have matured over time. There is a saying that the only ones that are likely to ever read a thesis is your supervisor, yourself, and your external sensor. No “rule” is without exception, and I have enjoyed the feedback and comments of some eminent IR friends during this process. First of all, I am indebted to Arne Olaf Velaphi Meyer, a very good and knowledgeable friend, who despite living over 10 000 km away have remained a true friend for the last decade. In terms of this thesis I am grateful for the endless hours where we have discussed everything, from theoretical insights and dilemmas, to commas and whether an alternative spelling derived from middle, or old, English would be the most appropriate. I am also massively indebted to Paul Beaumont for all the good conversations during the last years, his theoretical insight, and the invaluable comments and proofing especially during this summer. Likewise, I am also indebted to the long conversations and insightful comments by my former classmate, and now lecturer, Clifford Collins Omondy Okwane. You are all unique in your own way, and an invaluable source of inspiration.

Finally, I would like to thank my parents who I dedicate this thesis to. They have always stood by my side and without their relentless, and unconditional support, I doubt that this thesis would ever have seen the light of day.

Prologue

This thesis is the result of years of consideration. Some of the main ideas were presented in a short paper in 2015. At that time, I wrote that taking on such a momentous task would barely scratch the surface, but that sometimes it is better to start with a sketch and that more colour and details hopefully would be forthcoming. Five years later, I maintain the claim that the task is momentous, but at last I have been able to expand, and provide some detail and colour to my theory.

The format of a thesis, laying between an article and a monologue, has proved both a blessing and a curse. On the one hand a limitation is welcome as I could easily have written considerably more both in detail, and in scope. On the other hand, a restriction forces an abridged version where I present the core of what I consider the most relevant. Nevertheless, there are many aspects that would have deserved more attention, or that I unfortunately simply had to leave out. To quote from the 'Foreword' in Rousseau's *The Social Contract*: "... this is the most considerable, and the one I think the least unworthy of being offered to the public. The rest no longer exists." Unlike Rousseau, my notes and ideas not presented here still exist. If they ever will see the light of day, to complete the picture, remains to be seen.

A liberal approach to a not so liberal policy – refugees in international society.

“Everything has boundaries. The same holds true with thought. You shouldn't fear boundaries, but you should not be afraid of destroying them. That's what is most important if you want to be free: respect for and exasperation with boundaries.”

— **Haruki Murakami**, *Colorless Tsukuru Tazaki and His Years of Pilgrimage*

1 Introduction

Over the last decades the world has witnessed a rise in the number of refugees and Internally Displaced People (IDP's) while the international system has changed from a bipolar system during the cold war to a unipolar, or multifaceted system. At the same time, we have witnessed a sharp decline in interstate wars and proxy wars on behalf of the major powers. Instead, the post-cold war era has displayed a surge in conflicts, particularly in what we call the “global south”. Alongside this development, we have seen an increase in the number of democracies and the embrace of liberal policies and values amongst the key international organizations that have largely become the only game in town. However, the rise of democracies and the apparent embracement of liberal values stands in stark contrast to the sharply rising number of refugees and IDP's which collectively currently stands at almost 80 million (UNHCR)¹.

The striking discrepancy between a world that is seemingly more peaceful, more democratic and more liberal on the one hand, and the rising number of refugees² on the other, underpins the starting point for this thesis -arguing that currently liberalism is failing; both as a political system and theoretically in addressing the question through normative political theory. This thesis argues that there is a mismatch between the political values advocated both by major actors in the international political community and the scholars who engage in liberal normative political theory. This is not to imply that the debate, neither publicly nor in academia, is lacking but rather that normative liberal theory has to a large degree failed to produce an adequate framework for dealing with the 21st century refugee crisis, when a change both in theory, discourse and policy is overdue to remain relevant.³

¹ The figure also includes ‘asylum seekers’. See UNHCR for more details: <https://www.unhcr.org/figures-at-a-glance.html> See also: Norwegian Refugee Council <https://www.nrc.no/global-figures/>

² This thesis will tend to use the term “refugees” generically to encompass both refugees and IDP's unless otherwise specified or it is apparent from the context.

³ The way I present it, think of it, is with all likelihood coloured by a personal western bias partly because of my own upbringing, but also as a result of how International Relations and political theory is thought, read and discussed. There's little doubt that the discipline is biased. This is no full excuse of course and the thoughts

Some could argue that I am already mixing the theoretical side of liberalism with the more practical and political policy side of liberalism, and that these two should be kept separate. However, although this argument has some merit, one of the core arguments of this thesis is that normative theory should serve as an inspiration for the development of policy and as such it makes sense to view them in conjunction – while at the same time maintaining a distinction. Looking away and avoiding this question would not only be a matter of ignorance, but as I will argue also a question of putting normative theory on the side-line and diminishing its relevance.

Today we stand at a crossroads in international politics in both theory and practice. A position where the demand for action is clear, while the idea of how, remains obscure. Some would argue that normative debates are a theoretical exercise and thus a poor substitute for political action. Some scholars, like Brown (2011) argue precisely that an emphasis on the normative aspects preclude political actors from taking action:

The search for some kind of morally satisfying general theory which will delineate our duties to and responsibilities for refugees is almost certainly a waste of time, and too much emphasis on trying to determine the shape of a morally just world order, valuable though as such theorizing is in principle, leaves things as they are here and now (Brown 2011: 166).

This thesis will argue that the two are not mutually exclusive, and that there is indeed a need for a new normative approach to the case of Refugees and IDPs. The pressing normative question is how long liberal democracies can keep on defending and promoting liberal values as universal, while at the same time excluding refugees to a position that Bosniak (1998) calls the *Aliens of International Relations*. A normative approach does not exclude immediate action; rather, long-term solutions and action beyond mere “humanitarian action” necessarily stem from norms and ideas. Indeed, what Brown, and many others that favour action over theorizing, seem to be blind to is that action ultimately derives from theories and ideas. Short term humanitarian action might be called upon without bringing about the required normative change. However, the question of when humanitarian action turns from ‘humanitarian’ to becoming ‘de-humanizing’ as a result of an

presented would clearly have benefitted from an even broader perspective. The rise of alternative non-western countries as drivers and inspirations for development is interesting. Nevertheless, the above statement and the following argument is still in line with the predominant view which tends to be dominated by western ideas at least since the end of the cold war.

increased humanitarian scope, is becoming more and more pronounced. In fact, what is happening is that we normatively seem to accept the 'exception' as something "normal".

The seemingly ever-increasing number of refugees is not a small technical challenge that can easily be solved without serious rethinking within the political establishment. Rather, simply calling for action based on the current political principles also neglects the fact that policies tend to stem from the development of norms – in this case where these are seemingly lacking or at odds with each other. A singular approach putting theorizing and action as opposing dichotomies, is exactly what will ensure that 'status quo' remains.

Further, the thesis argues that within normative liberalism the focus has tended to be towards various forms of cosmopolitan liberalism. As entertaining and useful as these might be as an academic exercise, they seem to raise the bar of liberalism to a standard that is both too utopian to be useful, as well as harmful to the objective of advancing liberalism. This argument is particularly valid in two areas; the first is the apparent denial of global pluralism (the theory *a priori* assumes that all societies (should) adhere to liberalism). Second, and related to the first, is cosmopolitan liberalism's embedded, and sometimes explicit advocacy of coercion in order to change the political and societal order. The other troubling aspect to cosmopolitan liberals is the fact that, although one should note the very important distinction between "liberal politics" and "liberalism" as a theoretical genre, where the first obviously is informed by other schools other than thought than liberalism, the influence from modern liberal philosophy diminishes as large parts of the tradition goes beyond the realistically possible, and ventures into utopia. In this way, variations of cosmopolitan liberalism have become the dominant "mainstream liberalism"⁴ (Beitz 1983,1999; Caney 2005; Pogge 1989, 1992; Tan 2004), and thus renders it less relevant in developing policy. One could argue that this is contributing to the fact that "liberal values" in international politics is not developing in pace with the international society(ies). Therefore, by putting amore "conservative" form of liberalism back in the spotlight of normative political theory, this thesis seeks to make a (small) constructive step towards countering this trend. Liberalists need to acknowledge that utopia is just that; utopia, and sometimes we have to settle for the realistic utopia. Embedded in the discussion of where liberalism

⁴ To mention a few of the most influential: Beitz, C. (1983). *Cosmopolitan Ideals and National Sentiment*; Beitz, C. (1999). *Social and Cosmopolitan Liberalism*; Buchanan, A., (2000). *Rawls's Law of Peoples: Rules for a Vanished Westphalian World*; Caney, S., (2005). *Justice Beyond Borders – A global Political Theory*; Pogge, T. (1989), *Realizing Rawls*; Pogge, T. (1992). *Cosmopolitanism and Sovereignty*; Tan, K. (2004). *Justice without Borders*.

There are obviously variations within liberalism and cosmopolitanism. For a discussion on trends and variations see: Valentini, L. (2011). *Justice in a Globalized World*.

should put the bar, is also a discussion around what “liberalism” truly contains. Is it possible that a more restrictive, or “conservative” approach⁵, might actually be more liberal than a radical, or cosmopolitan approach as it is possible to achieve?

Seeing that cosmopolitanism is contrasted as the theoretical “opposite” of the more conservative sides of liberalism (and thus also the framework that I will present in this thesis), a working definition of cosmopolitan is in order. There are almost as many versions of cosmopolitanism as there are scholars within the field; but essentially they are “committed to these two central ideas: first, the equal moral worth of all individuals, no matter where they happen to be situated on the planet and what borders separate them from another; second, that there are some obligations that are binding on all of us, no matter where we are situated.” (Brock 2009: 15). The working definition that underlies most of the discussion in this thesis is taken from Beitz: “At the deepest level, cosmopolitan liberalism regards the social world as composed of persons, not collectivities like societies or peoples, and insists that principles for the relations of societies should be based on a consideration of the fundamental interests of persons” (Beitz 2000: 677). In short, cosmopolitan theory puts the individual perspective and rights above anything else, while at the same time combining them in the sense that they are supposed to be equal across all borders. To the extent that the approach allows for particular commitments and obligations to a particular society varies among cosmopolitans, which often provides a source of theoretical debate. The central point here is in contrast to Rawls, whom Beitz characterises as a “societal liberalism” (ibid.), due to his emphasis on the collective level of societies, rather than individuals, when it comes to the international arena. However, I will argue that both a Rawlsian, and my approach, who favours a societal approach on the international arena ends up doing more, not only for liberalism, but also from an individual point of view both in terms of the number of individuals included, but also for due to the level of tolerance for inclusion.⁶

⁵ The label “conservative” (or “liberal conservative”) with regards both to Rawls, and my own approach, might be open for debate. It is consistently put in “”, as it is intended to describe a notion of continuum when it comes to some values and overall form of organization through societies in which there will be special responsibilities, duties, obligations and benefits. The approach can therefore be seen as “conservative” in this sense of the word.

⁶ To establish a comprehensive definition of “cosmopolitanism” is not an easy task. The number of versions from *weak* to *strong*, and *moral* and institutional. Despite slightly different versions, the gist of it is the emphasis that all starts and ends with the individual. A cosmopolitan approach does not entail a notion of a “world government”, even if some certainly allude to it making this a bit tricky. Perhaps one of the most well-known examples of this is found in Pogge (1992) where he goes a long way towards arguing against tearing down the borders of societies and states. In fairness, he argues that he separates *legal* from *moral* cosmopolitanism, and that this move should be seen as *moral cosmopolitanism*. Nevertheless, the move suggests a play with a more radical version of liberalism bordering on an idea of a “world government”. For a

This thesis offers a different liberal political approach centred around John Rawls theory as foremost expressed in *Law of Peoples (LoP)* (1999), while also attempting to bridge theories and concepts from different disciplines within social science. As Owens (2011) notes: “some of the most innovative work on refugees has occurred on the margins of IR” (Owens 2011: 134). Through a normative approach, it will explore the idea of a *social contract* in relation to refugees and IDPs, and in particular if the works of the perhaps most prominent liberal social contract theorist, John Rawls, could be used to set a normative basis for how we think of refugees and IDPs in the international system, and within International Relations.

In particular, this thesis will probe the question of whether John Rawls principles of interaction between ‘peoples’ in the *Laws of Peoples* (Rawls 1999) could be extended to include *decent* ‘people’ who are currently deprived of decent societies. Before probing into Rawls normative philosophy, and how this might be extended, some attention to the system of sovereign states is justified; both because Rawls himself refrains from using the term *state*, because of the embedded implications, and because they are seen as the underlying foundation, both in the international system, and in parts of the major International Relations theories⁷. Seeing that one of the main purposes of the thesis is to challenge the mainstream discourse, and what will be argued is often a chronofetish stand within political theory and IR, the thesis will follow Rawls in arguing that societies is a better term than states, though they might currently often overlap. The belief is also that a normative theory should ideally be able to adapt to evolutions and changes in the international system. The term societies cover the need for flexibility, while at the same time retaining some core anchors, or attributes. A normative theory is not by necessity dependent on a particular institutional design, rather it should focus on the content and ideas that binds individuals together, forming societies⁸.

By adapting and expanding on Rawls’s approach in “The Law of Peoples” (1999), claiming that refugees and IDPs generally fit the description of what he deems ‘decent people’, and as such it will be elaborated on, fills the criteria for inclusion amongst what Rawls deems worthy of a place

further discussion on cosmopolitanism see: Brock (2009). *Global Justice: A Cosmopolitan Account*, and Aurélio et al. (2011) *Sovereign justice: global justice in a world of nations*.

⁷ The importance and the emphasis put on the role of the *state* varies between theories within International Relations. Arguably, Realism and Institutional Liberalism pays most attention to the role of the state. Nevertheless, most theories must at least deal with the fact that the state holds a particular function and status in International Politics.

⁸ This is one of the hotly debated topics within liberalism. Buchanan (2000) is one of several critics of the approach of abandoning states as the relevant unit of analysis. The topic will be elaborated on in chapter three and four.

amongst the Society of Peoples. Although some, like Freeman (2007) have noted the opening in Rawls theoretical approach, no one has as far as I have been able to ascertain, attempted to go down this third path developing a theoretical approach despite the fact that Rawls himself opens up to this in the very beginning of his book: “[O]ther possible kinds of decent peoples I try not to describe, but simply leave in reserve, allowing that there might be other decent peoples whose basic structure does not fit my description of a consultation hierarchy, but who are worthy of a membership in a *Society of Peoples*.” (Rawls 1999: 4). It is exactly this gap, or “category X”, that this thesis will argue can be used in the pursuit of situating refugees within a normative theoretical framework. In my approach I will draw on Rawls as the main source of inspiration, but the theoretical approach will also be informed by other theoretical arguments. Here inspirations can also be found amongst critics, as well as within different schools of thought such as critical theory and constructivism, but also more marginalized areas (in terms of IR) such as historical sociology and the like⁹.

The cosmopolitan challenge

Rawls is often criticized for his inclusion of non-liberals into his category of ‘decent peoples’ and as worthy members of the Society of Peoples (Buchanan 2000; Beitz 2000). The cosmopolitan argument is that this approach, although perhaps pragmatic, takes the starting point of assuming that the liberal stand, being superior to all other forms, is the only acceptable form. The cosmopolitan approach as such suffers from the lack of recognition of other beliefs, and the respect for other possible political systems, while they might be more persuasive in their arguments for coercive change within *foreign policy*. However, the disregard for other approaches is not only problematic from a liberal standpoint, but also from a pragmatic point of view (Jenkins 2010). The extent to which policy can be successfully transmitted, coerced, or even forced, upon a society deserves more attention. This is a point where Rawls might be too evasive, while cosmopolitan stands tend to vary, although they are generally for a larger degree of redistribution¹⁰. The case for non-inclusion of other than liberal societies, is a difficult subject to swallow for many liberals, who argue that liberalism should be concerned about promoting liberalism starting from the individual perspective living in a liberal society. To compromise on this question violates what they deem as

⁹ The list here could be endless, but some of the most prominent writers on the topic would include: Brettel and Hollifield 2011; Betts 2009; Betts and Loescher 2014, Betts and Collier 2017. For a different and more critical approach see for instance: Gündoğdu, A. 2015. *Rightlessness in an age of rights – Hannah Arendt and the Contemporary Struggles of Migrants*. Oxford University Press.

¹⁰ This is a difficult topic also for cosmopolitans. For instance, Tan, and Beitz (in his more recent works) tend to favour a more radical (re)distribution, while Pogge and Beitz in his earlier works are more satisfied with equality on a societal level. For a broader discussion see Valentini, L. (2011). *Justice in a Globalized World*.

their fundamental starting point. To counter this, I will argue that refusing to accept other thoughts and values is a clear violation of one of the most central values of liberalism – tolerance. Tolerance and acceptance for the fact that there might be people that do not wish to live in a “liberal” society, at least there should be a theoretical opening, otherwise the premises for a fruitful discussion seems locked even before the deliberation is even started.

Where he, Rawls, might seem to compromise on some of the liberal values, it can be argued that he makes up for this in other aspects such as tolerance for others and that values and ideas should not be forcefully imposed. This is not to say that one cannot argue in favour of a more liberal world, rather that this should not be an *a priori* demand for inclusion. By allowing for differences in opinion one acknowledges that around the world there are numerous individuals who do not endorse the liberal paradigm, a significant theoretical challenge for liberalism (Jenkins 2010: 129). Essentially, one can argue that LoP changes the discourse from a question of adhering to liberal democratic principles to a question of decency that is not dependent on a specific form of government.

Hence, the debate comes down to whether one starts at an *ideal point* (though if this is actually ideal can be questioned), or whether one takes a more pragmatic approach. One of the arguments raised against Rawls is that he does not argue for a world of liberal societies even as his end goal. In this, I differ in my approach, arguing that although the likelihood of achieving this for all societies (at the same time) is most likely theoretical, it should not be excluded as a possibility.

1.1 Research Question

The thesis will centre around a main research question:

Can an extension of Rawls’s “conservative” liberal approach help fill the current lacuna within normative liberalism in tackling the issue of migration and social contract theory?

While the main research question goes to the heart of the thesis, we must also consider how this fits within the liberal tradition and liberal principles. Hence a sub-research question is needed:

Would such an approach be possible without yielding from the fundamental principles within the liberal tradition?

The research question stated above requires some unpacking. First, it will be argued that there is in fact a lacuna within normative liberalism and that very little has been done to address over the last decades. In particular this is true for the “conservative” side of liberalism, on which the emphasis of this thesis is based. It begs the question of why? Initially it seems like liberalism, after Rawls has turned to a more radical stand, for instance students of Rawls like Pogge and Beitz favour a cosmopolitan approach. Another, possible explanation could be that researchers and scholars seemingly tend to stray to other schools such as constructivism, and that the growing diversity amongst theoretical approaches has led to a period where relatively little normative approaches have been made within the oldest and largest theories (such as realism and liberalism). Thus, further contributing to their declining relevance. Following the debate stirred by LoP around the turn of the millennium, very little has occurred within normative liberalism. There is clearly a gap to fill in a theoretical landscape where the liberal world appears to be cemented¹¹.

The second part of the question relates to an important debate within liberalism – How to consider ranking various conflicting principles within liberal thought? This is a question that has been subject to some debate, and naturally connected to the intra-liberal debate. At the core of this is which principles are absolute, and what happens when multiple principles clash – in what this thesis will coin “The clash of liberal principles”. What happens for instance when the principle of tolerance goes up against liberal ideas of individual freedom? The arguments can be made both on the individual level and on an international systematic level. Following in the lines of Jenkins (2010), it will be argued that a more restrictive approach does not necessarily result in either a less liberal world on an individual nor on an international level.

Above all, is the question: what would it entail if we deemed refugees, or rather a significant proportion (those satisfying the criteria of ‘decent peoples’), into a Society of Peoples? What would be the theoretical and practical implications? Here, the thesis will provide some guidance, but there will naturally also be aspects of the debate that will go unanswered – and in part that is also the intention. A revival of the discussion is needed, and the belief that all answers could be found in one text would be preposterous. However, two main options seem to surface; either the international community needs to apply pressure on the society in which these people currently reside, or they must be allowed to leave their territorial society in order to be able to live a life that is in accordance with the principles of decent societies. The implications of extending a liberal theory to include

¹¹ This statement is obviously open for discussion, but it is striking that any list of liberal thinkers or influential theorists tend to end with the generation that followed Rawls (Beitz, Pogge, Tan etc).

refugees as I purpose, might in some ways seem to contradict Rawls stand on redistributive and economic justice. How would this interfere with the social contract within a society, and how far does the duty to assist others go? In this I differ with Rawls, going a bit further arguing that although economic concerns, etc. in itself is not a sufficient reason to demand acceptance into another society, political and inhumane treatment and humanitarian aspects might be deemed worthy causes. How this responsibility and the division of rights, duties and obligations that would follow will be discussed in the theoretical approach (chapter three), the critique (chapter four) and to some extent in a more practical side of policy and implementation (chapter six).

As indicated above, this is first and foremost a theoretical thesis; however, the implications for policy have also been highlighted, as such it will be argued that these should not be viewed solely in isolation. Likewise, there is sometimes a fine line between the normative and the descriptive. At times, the descriptive can help inform the normative. At the same time, one must take care not to fall into the trap of arguing a normative theory that relies too heavily on current and historical trends, as the aim is to avoid a chronofetish approach. A perfect balance is perhaps impossible, but in the sense of thoroughness, it is worth striving for. How to approach *the normative* will be discussed in the “methodology” chapter (chapter two). Methodology is not to be understood in the “normal positivist” sense of the word, but rather an attempt at outlining the fundamental arguments and guidelines for grasping normative principles.

Rawls was one of the strongest advocates for a methodological approach, arguing that normative theory *should be* conducted based on the facts of human psychology and institutions. Nevertheless, normative theory has largely been shielded from both methodological advances as well as methodological scrutiny (Dowding 2017: 202). However, even if we, in the end, might have to accept that normative theory relies on inductive approaches, and not only deductive, there is still value in laying the best foundations for inductive approaches. In other words, how we deduct the principles on which the theory is based cannot be fully separated from an inductive process as to how elements are understood in various contexts – for instance a term such as *freedom* can be understood differently by individuals and the societies they form - influenced by culture, beliefs, etc. Accordingly, the concept of *freedom* can also be ordered differently both in content and importance. How we understand *freedom* will also affect how we understand *coercion*; hence care will be made to identify concepts as independent as possible. It is imperative that the foundations of the theoretical assumptions shall be made clear, and as independently as possible. The aim is to make

clear the underlying foundations for the reader, but also to strive for as much clarity as possible amongst those who engage in normative theoretical approaches.

1.2 Outline

The rest of the thesis will start with a brief methodology chapter, or rather it should be read as the approach chosen to achieve the foundations for the arguments put forward. This section will rely both on the works of Rawls himself, who insisted on a methodological approach and more recent work on normative theory in general. After a pause in theoretical advancement in this area, there has been some renewed interest in recent years. Specifically, the works of Dowding (2017) will be central in chapter two.

Chapter three is the theoretical core of the thesis. It starts with an introduction to Rawls and the argument of how and why a theoretical approach to include refugees as a conceptual group of societ(ies), that should be deemed worthy of a place amongst the Societies of Peoples. Although much of the theory builds on Rawls, it is not limited to his approach. Chapter three does not only offer a theoretical approach to the possible inclusion of refugees as ‘people(s)’ and thereby worthy of a place amongst the Society of Peoples, it also makes an important theoretical contribution in sketching a path, or a procedure, to reach the ‘veil of ignorance’. My theoretical approach here is not only the core of the thesis, but also the foundation for the discussion in the remaining chapters.

Chapter four focuses on the liberal critique and discusses both this and how it might play out against the extensions presented in chapter three. Chapter five touches upon some of the aspects of incorporating the norm with emphasis on the more practical and political policy side of it. Although this is not the main focus – as I have already argued normative theory should strive not only to be an academic playground, but also influence policy and societal development. In essence my theory has not only provided a strictly theoretical and hypothetical framework, but also one that informs the debate by what I argue is to avoid the “humanitarian trap” – and reinvigorating the debate with insisting on a separation between the individual (right of asylum), the short-term collective (humanitarian), and the long-term collective (which require consideration for other policy measures beyond humanitarianism). This illustrates how hypothetical normative theory can help advance more practical normative theory and policy, and why we should not insist on a separation between the normative side and the policy side of liberalism, and normative theory in general. By discussing some core elements of implications for development of policy, this chapter also points at some aspects for further research, as the interaction between the *ideal* and the *non-ideal* here could easily

have been a topic for a thesis in itself. Finally, chapter six concludes with a brief discussion of the findings and possible ventures for future research within normative theory and especially within liberalism. The thesis concludes by arguing that the quite detailed analysis of the theory presented, and its implications, leads to a conclusion where a “conservative” liberal approach is favoured over a cosmopolitan one. Staying within a ‘realistic utopia’, acknowledging the imperfections of the world, enables my theory to deliver something that ‘utopian’ theory can never achieve.

2 Methodology

“It is hard enough to remember my opinions, without also remembering my reasons for them!”

— Friedrich Nietzsche

Theoretical approaches in the social sciences in general have through time been a subject of debate. Especially criticized by the natural science stand for not truly being able to have a positivist methodology that can prove causation. Albeit, the degree of methodological debate tends to vary within social sciences – and much has been done to bridge gaps in methodological approaches. The approach towards methodology is obviously easiest in the quantitative side of social science and more difficult the further we move into the qualitative, and especially when entering the normative and philosophical area. Perhaps not all studies’ theoretical advancements need a positivist approach? In this case; dealing with normative theory – the element of methodology often becomes blurred. Indeed, after extensive reading there seems to be an understanding by many that methodology doesn’t really matter. Hence, in a way the initial quote from Nietzsche might hold some truth. Even though reaching, and agreeing, on a methodological approach in the classical positivist sense might be neither possible, nor desirable - it does not mean that attempts at clarifying the foundations and the reasoning behind the arguments put forward is without value. In short, methodology should here be understood as a systematic framework for clarifying normative arguments. Understood as such, there is a basis for using the word methodology and insisting on a methodological approach that seeks to adhere to certain principles, both for the sake of the argument, and as a way of continuously developing the field further.

In fact, by insisting on using the word methodology, the “old” established view of the concept is already challenged. This is in a way a deliberate teaser, as it relates to several of the points that we will return to later in this chapter; but specifically, semantics and the evolution of words, language and concepts. The fact that words carry meaning and resisting change or evolution is impossible and not always desirable, even if it would be a huge theoretical advantage within political theory if they would have remained static. However, to dismiss it just as a teaser, or as an unnecessary quarrel would also be unfair towards the advances done within political and normative theory, and the continued quest for a more scientific approach.

Some of the broad ideas by Rawls is mentioned in this chapter, while the specifics of the methodological and theoretical approach by Rawls, which is the main inspiration, is the subject of

chapter three together with my theoretical extension which is the pumping heart of the thesis. This might beg the question; why bother writing a methodology chapter at all? Of which the honest, instantaneous, answer is – patience. Even though the immediate relevance might seem unclear – there are two reasons that justifies the existence of this chapter. First, there is generally speaking a lack of debate and acknowledgment of normative aspects in terms of methodology within normative political theory. Hence, some general clarification is warranted. The second and foremost reason is the debate that will follow in subsequent chapters will be centred around, related to, and in terms of guiding principles -something that I will strive to uphold.

2.1 A note on methodological approaches

In terms of methodological approach, it is natural to start with Rawls who was a prominent proponent of a scientific approach. Already in his earliest work “Outline of a Decision Procedure for Ethics” (1951) he discusses the premises of such an approach. The argument was further established in “A theory of Justice” (ToJ) (1971), the same year which saw the first issue of the journal *Philosophy and Public Affairs*. In many ways this sparked a debate about how to think about political philosophy and setting the agenda for future debate (Dowding 2017). In relevance to this thesis, “The Law of Peoples” (1999), where he takes his theory to the international stage must not be forgotten.

Beauchamp (2010) makes an important distinction between *general applied ethics* and *applied ethics* (2010: 210-228). Here he is distinguishing between the idea of constructing and establishing general ethical principles, while the later refers to the implementation of such principles. The separation of the two, and the notion that it is possible to reach an understanding of the principles without agreeing on the implementation, is a separate and important question within normative theory. If the two are not in concert it could sometimes be because the agreement is only a matter of pretence, but this does not necessarily have to be the case. Looking at contract theory the idea that it is possible to reach second-order agreements on moral questions and by that resolving how to manage first-order disagreements (Barry 1995; Rawls 1993) – implies that these conflicts of justice are political rather than metaphysical or comprehensive (Dowding 2017: 209).

Following Dowding (2017) there are three elements which become of particular interest within conceptual analysis: concepts, evidence in normative theory and constitutional (or contract) theory (2017: 204; Dowding and Van Hees 2007). Imbedded in this is the notion that it is impossible to write

a fully impartial or neutral theory, not only because of personal preferences, but because words carry meanings, sometimes beyond the imaginable and they might be understood differently across time, populations and cultures, or even between different sub-societies or sub-cultures within a society. Nevertheless, by adhering to some core principles we can minimize these effects. A brief run-through of these will help clarify the justification of how we can order normative arguments and help in understanding how conclusions are reached, and hopefully avoid counterfactual claims.

2.2 Concepts

Writing, thinking, or speaking about political and normative theory without using concepts is simply impossible. A concept does not necessarily have to hold a truth value or a clearly universal defined definition. One of the most debated concepts would be the concept of *freedom*. A concept where there are almost as many approaches and definitions as there are scholars who have written on the subject. The debate is practically endless and goes way beyond the classical division of negative and positive freedom. The concept can additionally be interpreted as to whether intentions matter, values, consequences and so on. The concept of *Freedom* will be central in the debate around refugees and how they are understood both in a contractual sense and in a more general humane sense. Another example of concepts is *state* and *society*. Clearly there are other concepts, or traits connected to both; but most would agree that the concept of *state* have stronger connotations and draws in other, and more explicit, concepts to define it such as for instance sovereignty, borders, institutions etc. on the other hand *society* is a slightly more independent concept in the sense that it can be understood differently and with less ties to other strong concepts within political theory. It is partly for this reason that this thesis adopts Rawls' position and uses 'society', rather than 'state', as the unit of organizing people.

This is coherent with the principle that concepts should be defined as independently from other concepts¹² as possible (Dowding 2017). There are two main reasons to strive towards this goal, and sometimes they inherently intertwine and reinforce each other; Firstly, the more tentacles and connotations entangled to a concept - the more likely it is to be influenced and change it's meaning as concepts and words inevitably evolve in their usage and meaning. Secondly, it will also interfere

¹² There is a classical distinction between *concepts* and *conceptions*. In short conceptions are situated concepts in that their meaning and interpretation is defined more clearly within specific boundaries. Rawls (1971: 5) is one of the proponents of conceptions. The distinction is not unwarranted in a more specific debate, for the discussion here however the distinction in terms of methodology at this point is of minor value, and hence they will be treated as the same.

with the aim of avoiding chronofetishism. Arguably the ideal situation is not fully attainable, but the strive for employing as independent concepts as possible reduces both the chances of a static approach, as well as an approach that is subject to (unpredictable)change.

Furthermore, Dowding and Van Hees (2007) identifies three important constraints to conceptual analysis, namely: semantics, the normative and the methodological. *Semantics* are concerned with the language in which we use to describe concepts, and as far as possible when describing a concept, one should strive for an everyday language as unambiguous as possible and avoid a politicized or complex language, unless this brings more clarity or adds nuances otherwise left out to the concept. Sometimes we need to use context, or complex language to clarify a particular stand. However, this results in the risk of a need of de-politicizing and de-contextualizing the language in order to achieve the original meaning. A related point worth nothing is what Barry (2010) calls the “political argument”. The danger here is that by situating a concept, and an argument in a political context, the value, and the embedded meaning might easily change as politics change. This could happen both by change in political norms, connotation and extensions; or as Dowding notes: “[A]s words must take on new extensions, so their normative force extends; or their normative force might alter along with a concept’s extension” (Dowding 2017: 204).

The main point with the *normative* criteria is that changes in the extension of concepts should not overly change the normative meaning of a concept (Dowding 2017: 204). Essentially, this means that as soon as we start to qualify and limit a concept, we risk altering the broader meaning of it. If we for instance take the concept of “poverty” and start distinguishing between various forms of poverty, or at least employing it in various terms without clearly defining the relativity of the concept – it will alter as well as become ambiguous. For instance, being poor in the western world today following various national, or regional standards, might make sense in a certain context, but at the same time the word can seem utterly out of place in a more traditional understanding, or in a different context. As the example of poverty suggests, we must be aware of such developments, and that usage of terms and concepts might alter their original meaning and connotations. The same trends can be seen as poverty has been strongly linked to development, and as such we have witnessed a change in discourse within the developmental field from a broader understanding of poverty, especially within (economic)development circles, back to a more monetary focus. Hence, it is not just the relativity within the understanding, but also the content and connotations of the concept itself that might be subject to change.

The *methodological* approach here quite simply relates to the awareness and sensitivity of concepts and acknowledge that their content and meaning might change both through time and place, as well as if we apply for instance a moral or legal approach to concepts such as equality, freedom or poverty (Dowding 2017: 205). Thus, it follows that the often complex interactions and understandings of concepts that are vary of attention, and furthermore that conceptual analysis should follow a path as parsimonious as possible – in that by striving for a simplistic approach there is ideally no need for a further analysis or deconstruction of a concept. By abiding by these rules, we would ideally achieve a position where even as theories change and evolve their basic concepts would not change. Though this would be ideal for political theory, it is an ideal that remains unattainable (Ibid 2017: 205). Despite being unattainable in its fullest extent, the idea should inspire political theory as concepts ought to be as free from normative implications as possible- or to phrase it differently; a concept: “should not be defined to fit with theoretical desiderata; rather, theories should be designed to promote the desiderata derived from their basic concepts” (Dowding 2017: 205). This is why my approach puts emphasis on employing a relatively simple language, and strives towards avoiding using concepts and connotations, both in the theoretical framework, and subsequently in the discussion as to render the theory as accessible and relevant through time as possible.

2.3 Evidence within normative theory

How we view evidence within normative theory depends largely on the main approach to theory. A simplistic distinction would be to separate those that take a consequentialist approach and those that take a deontological approach. The consequentialist takes into account the (likely)outcome, and often ends up arguing for the greater good, i.e. many would be inclined to lean towards a utilitarian view. The deontological approach puts its emphasis on the actions themselves, and less on the outcome. In between the outliers lies a massive grey area, and indeed proponents of both approaches can often come to the same conclusion on easier normative puzzles, albeit with different reasoning.

In order to illustrate these approaches; the creation of hypothetical dilemmas like the “Trolley problem” (Foot 1968) or “The Surgeon” (Thomson 1985) has been widely used, debated and critiqued¹³. In short, the dilemma is variations over sacrificing one (or the few) in order to save the many. In the trolley dilemma a tram is out of control and approaching a track switch. On the original

¹³ See for instance: JafariNaimi (2018) *Our Bodies in the Trolley's Path, or Why Self-driving Cars Must *Not* Be Programmed to Kill* and Khazan (2014) *Is One of the Most Popular Psychology Experiments Worthless?*

track there is five persons tied-up or incapacitated, while on the other there is only one person. The person standing by the lever has the dilemma of diverting the trolley from the original track saving the five but killing the one. What is the morally right choice? Variations of this dilemma; if it is possible to sacrifice one for the many has been presented in various forms. In surveys, although one should stress, they are hypothetical, the majority favours sacrificing the one (Greene et al 2001). However, this proportion shrinks if the one sacrificed is a relative or a loved one (Bleske-Rechek et al 2010).

But what does this tell us about evidence in normative theory? If the majority believes that intuitive thoughts should help guide moral decisions, as is the case for most normative writers. “[T]he evidence of their intuitions is telling them something constitutive about moral theory. By contrast, empirical evidence in positive theories is an epistemic check upon the theory: does the theory provide correct predictions? We might consider evidence for normative theory to be ontological: does the theory constitute morality?” (Dowding 2017: 207).

The loophole to avoid this question is to create a loop, by allowing the evidence to inform the theory, which again would lead to new theoretical developments until we reach a common judgement. This is what we call “reflective equilibrium”, of which Rawls is perhaps the most famous proponent, but far from the only one. Allowing for a reflective equilibrium can help us solve dilemmas such as that of the Surgeon; where a transplant surgeon has the possibility to save five patients, by taking the organs from a healthy patient who happens to be in for a routine check-up and is a perfect donor match. The point here is not that it is possible to solve this through a reflective equilibrium, but that different equilibriums can lead to the same result, based on different arguments. The deontological equilibrium put simply is that it is wrong to remove organs from a perfectly healthy individual even if it could save others. Likewise, even the stoutest utilitarian perspective could easily come to the same result, but not in order to save the one per se, but because of the consequences such an act might lead to. Such a practice would simply scare people away from hospitals and medical professionals, and the detrimental state that would cause on the society would lead the utilitarian to arrive at the same conclusion, albeit by different criteria.

The example above illustrates a known problem - “how do we rank different reflective equilibriums”? Attempts have been made, but this is still a highly contested field. Keeping in mind that the case presented above is a relatively simple imaginary case, but that the same holds true for complex cases – and even more, we find that consequentialists and deontologists argue both,

between each other and against each other, as there might be multiple reflective equilibriums on each side.

The idea created by Rawls (1951; 1971) is perhaps not able to do what it set out to do if we allow the equilibriums to play out in its fullest (Dowding 2017: 207-209). Does that imply that reflective equilibriums and the idea put forward by Rawls, specifically to rule out a utilitarian outcome, is useless? Far from it – admitting that a theoretical tool is not perfect is not to say that it is without value. Rawls' use of the reflective equilibrium under a 'veil of ignorance' has for decades played a centre stage role in how we think about normative values and contractual theory.

2.4 Contractual theory

Contractual theory¹⁴ or constitutional theory is a result of taking philosophical questions from an individual, or context specific case, to a wider understanding of how we can use normative theory to organize society, and more specifically how to find common ground for people to exist together. This is even if they don't necessarily agree on first-order moral issues. Or as Dowding (2017) puts it: "While people need not agree in their first- order moral views, they might be able to reach second-order agreement over how we manage first- order conflict (Barry 1995); or, in Rawls's (1993) terms, theories of justice are political not metaphysical or comprehensive. To that end contract theory has been the major tool in modern political philosophy." (2017: 209). However, all social contract theories that claim that their theory is a theory designed for mutual benefit, inevitably allow the strong to dominate the weak (Barry 1989), or they require some form of constraints. Harsanyi (1955; 1977), Rawls (1971) and Buchanan (1991) are all constrained by their theory by their own particular version of the 'veil of ignorance' (ibid 2017: 209).

As such we can call the Rawlsian approach a "*Contractarian Deontological Theory*". Although critics like Harsanyi (1973) argues that the outcome of such agreements does not have to be deontological, and that some might choose utilitarian principles. Although this holds some merit, it does not necessarily refute the Rawlsian approach, nor by extension my own approach - as any theory would be susceptible to the same type of criticism. As normative theory stands today, any grand theory will be open for scrutiny and questions (Dowding 2017: 209-211). However, I disapprove of the overly negative picture often painted of normative theorization. Even if we accept that theories are incomplete, it is not the same as to say that they are without relevance; and as I have argued they

¹⁴ Contractual theory is here understood in the hypothetical sense.

can aspire to both further theoretical, as well as political developments. Rather they should be accepted at their own premise – and Rawls' approach, and in all modesty my own extension, should by no account be immune to criticism, but I still uphold the argument that as far as normative theory goes this is the most promising path.

3 A defence for an extension of liberal thought¹⁵

“Let every nation know, whether it wishes us well or ill, that we shall pay any price, bear any burden, meet any hardship, support any friend, oppose any foe to assure the survival and success of liberty.”

– John F. Kennedy, Inaugural Address 1961.

As indicated in the introduction my normative extension of the how and why a theoretical approach that includes refugees¹⁶ as a conceptual group that is worthy of inclusion amongst the Society of Peoples should be considered not only as a theoretical goal, although the theory is the main emphasis here, but also because I maintain that the theoretical and policy part of liberalism are, and should be, intertwined – therefore such an inclusion would not only be a matter of theoretical debate, but might also reinvigorate liberalism and also influence policymaking.

Essential both to the extension proposed, as to much of the discussion within liberalism, is the aspect of *tolerance* – and whether one takes an individualistic approach or a collective approach; the question of how far the principle reaches is a fundamental one. However, these are questions that deals with the instrumental side of the theory, because underpinning the whole discussion lays the central question that is worth bearing in mind during these deliberations; even if by introducing it already here could be considered as a way of “jumping the gun”, it underpins the whole reasoning behind the theoretical extension – Would we accept x millions of refugees in the world if they were to be included as equals under the ‘veil of ignorance’? Implicitly, that also begs the question if liberalism both theoretically, and more broadly speaking as a political idea, and as a political system, can accept the current status of leaving them on the margins of both domestic and international politics.

The slightest mentioning of liberal, or liberalism in a theoretical discussion inevitably risks unwrapping a ‘Pandora’s box’ of worms when it comes to arguments, objections and discussions of what liberalism is and should be¹⁷. Considering the sheer number of liberal thinkers, and what we might identify as *liberalisms* rather than *one liberalism*. The interaction and debate here will

¹⁵ The idea, and theoretical contribution, presented here builds on an idea I first presented in a paper written as part of an IR-theory class in 2015. *In search for a liberal normative approach to a not so liberal policy – The case of refugees in International Relations* (Hansen 2015). The plan, stated already in 2015, has been to elaborate and build on the thoughts presented back then. Therefore, some overlap in arguments and perhaps even paragraphs is to be expected.

¹⁶ If not otherwise specified, refugees will hereafter refer to refugees and IDP’s collectively.

¹⁷ For an overview see for instance: Ryan, A. (2012) *The Making of Modern Liberalism*.

inevitably be limited, some might even say selective – seeing that the main objective is to present an alternative liberal approach to the central challenge of refugees, not to give a full and exhaustive account of the numerous quandaries within the liberal tradition. Nevertheless, some of them will be touched upon in chapter four.

The case of refugees is a question that obviously enters the realm of humanity but should not be reduced to a case of simply being a “humanitarian question”¹⁸. Just because a case enters one realm, does not mean that it does not also belong to others. The borderline cases, or categories that cross the traditional boundaries of how we think, are the most theoretically challenging, but also often the issues with the greatest potential for new developments. To apply the humanitarian aspect, and appeal to the consciousness of others might initially seem like the decent, and correct thing to do, but the case of refugees goes beyond that of humanitarianism. Not because one disagrees with the human suffering, but because this tends to legitimize a status of exemption - where normal political rules, values and norms need not apply. As such, an uncomplemented humanitarian approach risks devaluing a question that deserves a more in-depth discussion on a political level. Instead of accepting a status that leaves a large number of individuals on the margins of society, the discourse should be concerned with the inclusion of refugees; the fact that people for various reasons ends up as refugees is (in many cases) not only as a temporarily exemption, but a de-facto group of people that are in reality stripped of their social contract and the possibility of exercising their fundamental political rights. It is precisely the apparent discrepancy between official recognition and the lack of a (meaningful)political status, that opens up the possibility of hiding behind the clause of “exemption”; that effectively inhibits a lack of action in terms of policy, as well as within political theory. It is against this background I propose to examine a normative theoretical approach that will encompass this group and lay the foundation for further debate. A central point here is therefore to distinguish between those that according to the theory deserve inclusion, and a place amongst the Society of Peoples, and those that should remain within a more limited *humanitarian* sphere.

A last, but significant point with this chapter is to propose a model for a procedure to determine whether a ‘people’ fulfil the criteria for inclusion under the ‘veil of ignorance’. Neither Rawls, nor any other theorist using the ‘veil’ have made any attempts at putting forward such a model. Apparently, this is a silently accepted “Gordian knot”, better left alone. The claim will be made that taking this position is insufficient and effectively it also hampers the attempt of inclusion. Hence,

¹⁸ See for instance: Barnett, M. 2011 *Humanitarianism, Paternalism and the UNHCR* in *Refugees in International Relations* eds. Betts, A. and Loescher, G. 2011.

after a brief introduction to Rawls, this question will need to be addressed, albeit admitting that there might not be an ideal solution to the problem, before continuing to the extension itself. It will be argued that the original theory has a weakness in both ends. Hence, there is a need to construct a theoretical bridge to reach the hypothetical stage of the 'veil of ignorance', as well as a theoretical extension that opens up for the possibility of inclusion of refugees as 'people(s)'. The theoretical inclusion of refugees amongst the Society of Peoples is at the heart of the thesis, while the normative policy implication is better explained in chapter five.

3.1 Building on the foundations of Rawls

The theoretical contribution proposed here is largely an extension of the theory proposed by John Rawls and his theory of interaction amongst societies on the international level put forward in "The Law of Peoples" (LoP) (1999). Rawls is perhaps the most prominent liberal social contract theorist of the 20th century. Although Rawls is considered to belong to the liberal tradition, he is more conservative than some of his colleagues in the sense that he does not argue for an international redistribution of wealth above what is needed to sustain a decent life (Rawls 1999: 105-120). Neither does he take a cosmopolitan stand, as some of his students and prominent scholars, such as Beitz and Pogge (Huseby 2001). He is also sometimes seen as the modern re-incarnation of Immanuel Kant. Though there are resemblances in many aspects, they differ, most profoundly when it comes to part of the ethical philosophy where Kant insists on a categorical imperative, something that Rawls rejects. In his early years Rawls changed his position and explored various angles through different disciplines. This is especially true for the 1940s and 50s, where he initially held a view closer to that of Wittgenstein (Forester 2019). Post-war US provided both a boost in universities, as well as an empty space within political philosophy. The preoccupation with rebuilding society were in large part put to economists and related disciplines, while philosophy and social sciences were sidelined. Rawls, in his theoretical development also became heavily influenced by his stay at Oxford, where he interacted with the British labour movement, moving him a degree or two to the left in the political landscape (Forrester 2019)¹⁹.

Rawls is perhaps best known for his "A Theory of Justice" (ToJ) (1971), but he is also well known for "The Idea of Public Reason" and "The Law of Peoples" (LoP) (1999) where he focuses on the

¹⁹ Although dwelling too much with his early years, as fascinating as they are, is not the main object here – the epoch, and perhaps even more how he evolved through studying, and interacting, with different disciplines is important to understand how he arrived at his conclusions. It also serves as an inspiration for daring to venture outside the classic disciplinary borders and boxes and draw on inspiration from various disciplines in order to achieve new insights (Forrester 2019).

international aspect of his theory, and which is the main inspiration which this extension builds on. In LoP Rawls extends his idea of 'justice as fairness' which he presented in ToJ²⁰ to the international arena. Although some of the elements which were implicit in ToJ, they became explicit and much more elaborate in LoP.

In LoP Rawls extends the idea of a social contract from the domestic to international arena, and what he calls the Society of Peoples. Rawls deliberately chooses the term 'peoples' instead of 'nations' or 'states' because he "conceive of peoples as having different features from those of states, since the idea of states, traditionally conceived with their two powers of sovereignty was unsuitable" (Rawls 1999: v). This thesis will adopt the same policy, and much of the reasoning. It is not only that the connotations and assumptions connected to "nations" and "states" will lead to presumptions in the argument, but also that these are so complex concepts, that if we look at them in a historical and sociological perspective, they have and still are undergoing a massive transformation, while at the same time having different contextual meaning around the world. Hence, what can initially be seen as a more vague terminology, will provide more clarity, less ambiguity, and be more immune to the dangers of chronofetishism. This line is also in accordance with the principles discussed for normative debate in chapter 2.

In the first part of the LoP, Rawls outlines the first part of his 'Ideal Theory', which is mainly concerned with the task of outlining a political philosophy, which he terms 'Realistic Utopia'. "[I]t is realistically utopian when it extends what are ordinarily thought to be the limits of practicable political possibility and, in so doing, reconciles us to our political and social condition" (Rawls 1999: 11).

The next step in Rawls theory is familiar and draws upon placing people in the 'original position' and utilizing the famous 'veil of ignorance', in order for people to make decisions that are not clouded by knowledge of their own background and standing in society. The original position includes the 'veil of ignorance', meaning that the participants are not aware of their own standing in society, sex, income, occupation and so on. Initially, in ToJ the idea is primarily used to decide on moral and ethical guidelines within the domestic sphere of liberal societies. In LoP, the same principle is put in

²⁰ Rawls concept of 'Justice as fairness' first appeared in *I. Justice as Fairness* (1957). Then, slightly modified in 1958 where the qualification of "common good" was added in *Justice as Fairness* (1958). However, to most it is known through his main work(s) (Forrester 2019).

place also for the international stage. The idea is that the participants are free from knowing their standing in society, and only knowing what kind of society they live in, will come up with a reasonable and just conclusion. The original position is used twice in the first part of the book that deals with the domestic area. First, in order to elect representatives, and then for the representatives to agree upon a Law of Peoples. However, the original position is used only once in the second part dealing with the interaction amongst the Society of Peoples which include well-ordered decent hierarchical societies since the original position can only be used domestically among liberal 'peoples' or societies. The Society of Peoples consist of, as we will return to, both liberal 'peoples' and decent hierarchical societies.

Rawls starts out by outlining the different categories of 'peoples'. The two first, is those he deems worthy of a place amongst the Society of Peoples. In general, little attention is paid to the other categories, and he seems to follow a conservative view that the benefits of the political ideas amongst the Society of Peoples, and especially of the liberal societies, will spread as other 'people' see the benefits of these. In this sense, we can see a clear resemblance to a Kantian (1795) way of thought.²¹ The category of peculiar interest for this thesis is what is here listed as category "X", and which is the opening in Rawls this thesis uses to build the argument for an extension that includes refugees amongst the Societies of Peoples. What is here labelled as category "X" is only mentioned in the very beginning of the book, as a category he leaves in reserve for others to fill²². The labelling and filling of "category X" takes advantage of a space left open and is the main theoretical advancement I aim to fill with my theoretical approach.

1. Reasonable liberal peoples
2. Decent peoples
- X "Other possible kinds of decent peoples I do not try to describe, but simply leave in reserve, allowing that there might be other decent peoples whose basic structure does not fit my description of a consultation hierarchy, but who are worthy of a membership in a Society of Peoples."
3. Outlaw states
4. Societies burdened by unfavourable conditions
5. Benevolent absolutism

²¹ It might very well be that Rawls here is influenced by the duality that has marked U.S. foreign policy. The balance between being a role model "The view on a Hill", or if liberal interest should be actively pursued (for a general discussion of this point see for instance Restad, H. E. (2010).

²² To be meticulous, he does return only to repeat what he said in the very beginning once again on pp 63-64 (Rawls 1999).

(The list is derived from the text in LoP - Rawls 1999: 4).

In the first part of *The Law of Peoples*, Rawls lays out what he calls an *ideal theory* of social relations. In the second part, he extends the same principles to a Society of Peoples. Although this Society of Peoples will not necessarily be liberal, they will have a decent consultative hierarchical body, and fundamental respect of the most basic rights. Rawls has received heavy criticism for his willingness to stray from a liberal stand and include non-liberal societies (Tan 1998, Beitz 1998, Dworkin 1985), while receiving more support from Freeman (2007). However, Rawls argument is that a too narrow definition would limit the individual freedom and make way for a dangerous path where one thought or idea might be seen as absolute, or superior to all others (Rawls 1999: 59-60).

A main task in extending the Law of Peoples to nonliberal peoples is to specify how far liberal people are to tolerate nonliberal peoples. Here, to tolerate also means to recognize these nonliberal societies as equal participating members in good standing of the Society of Peoples (Rawls 1999: 59).

Liberal societies are to cooperate with and assist all peoples in good standing. If all societies were required to be liberal, then the idea of political liberalism would fail to express due toleration for other acceptable ways (if such there are, as I assume) of ordering society ... [P]rovided a nonliberal society's basic institutions meet certain specified conditions of political right and justice and lead its people to honor a reasonable and just law for the Society of Peoples. In absence of a better name, I call societies that satisfy these conditions *decent* peoples (§8.2) (Rawls 1999: 59-60).

Rawls argues that the Society of Peoples will agree to the same political principles as in the domestic case. These mainly outline the basics of a standard liberal argument, but entails a principle of toleration also for other forms of government, that make them valid both for *liberal* and *decent* societies, who collectively make up the Society of Peoples (Rawls 1999: 37; 68-70)²³:

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe a duty of non-intervention.
5. Peoples have the right to self-defense but no right to instigate war for reasons other than self-defense.

²³ An in-depth analysis of these criteria and how they fully comply with my theoretical extension is beyond the space allocated here, but an interesting path for future endeavours. Some of the main criteria, and the spirit behind them will be the subject of debate in this thesis.

6. Peoples are to honor human rights.
7. Peoples are to observe certain specified restrictions in the conduct of war.
8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political regime.

The eight principles are initially drawn up for liberal 'peoples' in the first part of LoP, but as he asserts later, the same principles are not restricted only to liberal 'peoples', but also valid for 'decent hierarchical peoples': "There is, however, no inconsistency: a people sincerely affirming a non-liberal idea of justice may still reasonably think its society should be treated equally in a reasonably just Law of Peoples" (Rawls 1999: 70).

The possible interaction between several of these can easily become a subject of debate. Immediately, in the case of refugees' number 1, 4, 5 and 8 stand out. If these are taken literally, as a condition, or requirements that need to be in place before inclusion some of these criteria could undermine the whole theoretical inclusion. The counter argument is that these requirements cannot be made in full towards refugees as a 'people', prior to inclusion amongst the Society of Peoples. They can only be made fully applicable after inclusion. The question of inclusion must therefore be determined upon the expressed *will* to honour these. The judgement if they satisfy the criteria will be left to the judgment of "peers", in this case 'people' who recognize themselves as *liberal* or *decent* (see 3.2 below).

The theoretical inclusion is something we shall return to later in the chapter, but before leaving the fundamentals of Rawls a comment on number 8 and the duty to assist and the point of redistribution is warranted. Number 8 is discussed by Rawls in §§ 15-16 (1999) and is as previously mentioned especially controversial. This is because it is not entirely clear what he means. It's been interpreted both as an opening, but also a limited opening to intervention, as Rawls' tends to favour that societies primarily are concerned with their own well-being. In one sense Rawls is criticized from two angles, both for being too lenient and inclusive in accepting non-liberals – as a true believer one should stick to the liberal ideas and advocate them. At the very least one should not accept 'people' that are not considered liberal into a Society of Peoples on an effectively equal basis. The argument for this position has been raised by a number of critics, often also quoting Dworkin's quite decisive stand in "A Matter of Principle" (1985). On the other hand, Rawls is also accused of not being inclusive enough! The argument being that all 'peoples', or individuals, should belong

under the 'veil of ignorance'. However, how to combine the two, seeing that critics seem to often hold both stands at the same time, is hard to grasp without there first being a radical global shift towards liberalism. The interaction between these will in many ways constitute a core element in the thesis. Because although Rawls is reluctant on the responsibility to assist burdened societies; "category X" would be a separate matter, although they might exist as a 'people' within a burned or otherwise unjust society, it would be unfair to judge refugees as members of a society, which they are *effectively* denied being members of. Even if we are to agree that refugees constitute a special role, the considerations in regard to assistance, redistribution and the responsibility towards others are still important to keep in mind as they lay an important part of the foundation for the later separation between those worthy of inclusion, and those who we merely have a universal humanitarian responsibility towards.

In the case of inclusion of decent hierarchical societies Rawls has two main criteria. The liberal societies are to Rawls far more obvious. The criteria for inclusion should not be confused with the criteria for the society, these are complementing factors in Rawls theory, and these criteria comes in addition for decent 'peoples', and as he indicates without elaborating any further on this, they would also be valid for any other "worthy peoples", or what I have listed as here as category "X". There are two criteria: The first criteria is that the society does not have aggressive aims, and if it seeks to expand its influence it is done with respect and compatibility with other societies. The second criteria have three components; the first that there should be a decent legal system, a conception of moral and duties and obligations, and thirdly an idea of a common sense of justice within the society (Rawls 1999: 64-67).

On the responsibility to assist burdened societies, Rawls is restrictive. *Burdened societies*, is not aggressive, but marked by the fact that they lack political, cultural, and human resources, and therefore cannot be included amongst *decent* societies:

The long-term goal of (relatively) well-ordered societies should be to bring burdened societies, like outlawed states, into the Society of well-ordered Peoples. Well-ordered societies have a *duty* to assist burdened societies. It does not follow, however, that the only way, or the best way, to carry out this duty of assistance is by following a principle of redistributive justice to regulate economic and social inequalities among societies Rawls (1999: 106).

Other moral questions can be raised to his lack of emphasis on the redistribution amongst societies, and the lack of responsibility to outlawed or burdened societies (ref Rawls 1999: 105-120). Here he seems to take the stand that they will eventually realize that liberal or at least decent societies are

preferable, and that they eventually will convert. In the case of outlawed societies Rawls opens up for the possibility of intervention for the defence of liberal rights or societies. However, there is a minimum of moral obligations toward burdened societies. This resembles the important distinction made later in this thesis between the humanitarian responsibility, which includes all 'peoples', and the extended responsibility we have for members of the Society of Peoples. Above this again lays the special responsibility within a society.

The distinction noted above is crucial to the theory, but it would have no meaning if the first theoretical challenge of including refugees and how and why we should view them as a 'people' are not addressed. However, before getting to the main contribution the other important aspect mentioned initially – namely a procedure for inclusion is necessary. To be precise, I differ with Rawls, and many others, that it is possible to go directly to the state where 'veil of ignorance' applies without first outlining a procedure to get there. The subsequent part therefore, is not only an attempt at sketching a methodology for inclusion that would apply in the case of the extension of the theory in the case of refugees, but also a necessary theoretical step that all 'peoples' would have to go through before they can be included under the 'veil of ignorance'.

3.2 A procedure for inclusion under the 'veil of ignorance'²⁴

The criteria for inclusion both as liberal and decent hierarchical societies is relatively clearly laid out in LoP. Certainly, it can be argued that the liberal criteria start from the maximum position, whereas the criteria for decent hierarchical societies can be viewed as the minimum criteria for inclusion (see Rawls 1999: 67). The question that Rawls, and others using the 'veil of ignorance', unfortunately omits; is the question of who gets to decide if the criteria set out are met or not. This is not a matter of minor importance, nor does a perfect solution probably exist. Nevertheless, ignoring addressing the question of qualification for a place behind the 'veil of ignorance', is possibly one of the greatest theoretical weaknesses that does need to be addressed. In other words, we need a procedure, or a "theoretical bridge", to decide who belongs behind the 'veil of ignorance', and this cannot be done under the 'veil of ignorance' since the 'veil' is not applicable to all 'peoples'. Therefore, a procedure,

²⁴ I admit that the procedure laid out here, is far from a complete account of how this could, or should, be done. The main point is to draw a sketch by deducting back to the basics of what I conceive as the most promising path for a procedure for inclusion. The fact that this aspect seems to be absent and seemingly more or less forgotten in the theoretical debate, is in my humble reckoning unforgivable. An in-depth inquiry into this problem is in order. However, it is beyond what can possibly be included here, and perhaps beyond the abilities of the author, at the very least at this stage.

which can never be ideal, given that there will be pre-existing knowledge at this state, should strive to follow the same guiding principles as if under the 'veil'. It will also be argued that in the procedures laid out below there will be little incentive to systematically manipulate the system, although one must admit that a system relying on the judgement of its peers can never be ideal. Rawls himself merely touch upon the subject as he does during the discussion of decent hierarchical societies:

There may be a wide range of institutional forms satisfying decent hierarchical ideas, but I shall not try to survey them. My aim has been to outline an idea of justice that, though distant from liberal conceptions, still has features that give to societies so regulated the decent moral status required for them to be members in good standing of a reasonable Society of Peoples (Rawls 1999:68).

It is possible to find other similar passages in Rawls work, but no actual method, explanation or justification for omitting this step. The same is true for other theorists utilizing the 'veil of ignorance' in various forms both in a *thick* contractual term like Rawls, or a *thin* utilitarian version like Harsanyi²⁵, or the many critics that have used or commented on the theoretical approach – they have slightly different criteria, or ways of approaching them, but they all seem to skip the important theoretical step of a procedure for deciding how people are to be chosen and situated under the 'veil of ignorance'. It appears to be an acceptable "Gordian knot" that is best left aside.

In LoP, Rawls does a fine job of laying out the principles and criteria for different societies, but when it comes to evaluating them in terms of worthiness of inclusion, there is an obvious gap that also has repercussions if one seeks to extend the theory. Therefore, we need to come up with a principle for inclusion. The argument is that an inclusive approach that illuminates this aspect is vital if political theory is to be relevant, and we cannot simply make a theoretical leap over difficult aspects that might include "catch 22" situations. Ideally, we would like 'people' under the 'veil of ignorance' to decide who should be included, this is obviously impossible as the participants first need to be appointed. It is therefore necessary to settle for a second-best solution; the recognition of the majority of your peers who identify themselves as either a liberal or decent 'people'. Remembering that on the international arena liberal and decent peoples are considered equals, an a priori distinction between them is not required at this point.

²⁵ Harsanyi (1978; 1979). Moehler (2018) has raised an interesting point that the known dispute between the two versions of the 'veil' is based on two fundamentally different perspectives of the moral ideals. Rather than simply right or wrong – it is a matter of a contractualist vs an average utility perspective.

This might at first seem like an overly simplistic solution, but sometimes it is necessary to deconstruct, and go to the foundation of the theory in order to advance. There are several reasons why this solution is appropriate. Firstly, we should remember that we are applying a “thick” version of the ‘veil of ignorance’ – effectively giving the ‘veil’ more power. Second, societies that do not fill, or seek to fulfil at least the minimal requirements, would not seek approval from their peers out of fear for the consequences they would subsequently face based on decisions passed under the ‘veil of ignorance’. Admittedly, there will always be border-line cases; these will have to be resolved by the society first “applying” for inclusion, and secondly on the approval of their peers. Again, it should be stressed that the inclusion of unworthy members is highly unlikely as they would not benefit from a membership amongst the Society of Peoples, as most decisions, or fundamental decisions that go against their core beliefs and political structure would put their own societal structure in jeopardy if they attempted to join.

The same principles can be acknowledged and used in the case of refugees seeking inclusion as ‘people(s)’. If we leave some of the criteria that need leniency aside for now, and argue that territory and formal hierarchy is not a necessity for inclusion in the case of refugees as they are effectively denied to fulfil these criteria as long as this is by no fault of their own. In these cases, we expand the aspect of toleration to also include *intent* and apply the same principle as above with the need of an expressed willingness to apply to these criteria, and secondly the need for recognition by their peers.

Once the selection process is done and the ‘veil of ignorance’ is established, they will be able to deliberate further on criteria for inclusion. The theoretical problem here is first and foremost to establish a way to reach the stage where the ‘veil’ can be applied in the first place.

The procedures broadly outline above is by no means a perfect solution, and in all likelihood not all worthy of inclusion, especially amongst refugees, will be found admissible. To some extent also because it might be hard to judge if they actually desire to fulfil the criteria needed as a ‘people’ worthy of inclusion. Despite this, the proposed selection has the advantage of utilizing the aspect of peers to determine inclusion. The *thick* ‘veil of ignorance’ will deter those that do not fill, or seek to fulfil, the criteria from applying, due to the consequences. The minor fault is that not all worthy of inclusion will be able to provide a sufficient “application”, and on the other hand since the admission process is without a ‘veil of ignorance’ one might fear that some of these applications will be unfairly refused. However, if the majority decides to rule out all applications that are not in complete compliance, which have in them the intent to do so, there is little hope for liberalism as a theory or

project at all. Therefore, the argument stands that the process will in all likelihood lead to the inclusion of some representatives amongst refugees, and by doing so it will also change the conditions for the 'veil of ignorance', as refugees for the first time will be a part of the decision making process. This will in turn likely produce a 'snowballing effect' where gradually more will be accepted as the first refugees enter the 'veil of ignorance'. As the Society of Peoples subsequently take over the decision making regarding inclusion, they will obviously know the state of the applicant, but the mere fact that some are already included in the hypothetical state means that the judgement of 'peers' have now been altered both in composition and through entering the state of the hypothetical.

The inclusion of refugees as a category, or 'people', in the international society will by no means solve all challenges within the theory, but it might be a fascinating place to start to reinvigorate liberalism. First, it will divide refugees as described above, rendering some at the mercy of humanitarianism (where they largely are situated today), while others will have a new position beyond that of humanitarianism. As such, the theoretical extension also seeks to avoid what I call the "humanitarian trap", where the ability to exercise proper political rights are succumbed by a perceived goodness of the international community. Rawls, as well as others, does not discuss the possibility of exclusion. Though it might not be a common occurrence, there should be a safety mechanism with the possibility of exclusion, or other measures in the reverse order. Or to put it differently, my theoretical approach does not only open for upwards mobility, but also for the theoretical possibility that societies might decline, and no longer be worthy members of the Society of Peoples.

3.3 Avoiding the "humanitarian trap" and status quo

Individuals and peoples are organized in societies, where the primary responsibility currently rests on the society of origin. For refugees that, whether they are physically removed from their society, or just denied taking part in the social contract within the society – are by most treated as an exception. People that live on the margins of society, a situation that is on the side-line of international politics, and often in a state that is presumed to be a temporary state. By existing on the margins of their own society, and the international society - refugees make an easy prey for humanitarianism. Because who is responsible? How should responsibility be distributed, and to what extent does it exist? Before touching upon these questions, the claim that there is a humanitarian trap needs some clarification.

The acceptance of humanitarianism, not only as an exception, but as a way of life is what gives credence to the term “humanitarian trap”. The situation they are often put in is well described by Gündoğdu (2015), in her retake on Arendt’s philosophy:

[B]ut her caution against compassion becomes all the more relevant given that we have seen an increasing convergence of human rights and humanitarianism since the 1990s. One of the most troubling effects of this convergence has been an increasing tendency to reframe challenging questions of injustice as problems of suffering based on a narrow understanding of human rights as “the minimum conditions for any kind of life at al.” In this rendering human rights risk losing their democratic dimension as political claims articulated by those who are denied these rights to contest existing forms of injustice, including those that cannot be reduced to “minimum conditions” of life; instead, they come to be understood as the bare essentials of victims who need compassionate others to survive (Gündoğdu 2015: 76-77).

The argument for less compassion can easily be misunderstood if read through the eyes of the devils’ advocate – it is not to be understood as such, but a recognition that minimum conditions of life that borders on the very possibility of surviving – also is an active way of denying participation. A cry for compassion, and more humanitarianism in the cases where it does not belong, risks doing more harm than good. Indeed, it might “save” more individuals in the short term, but by making this the norm, it also becomes the normative “correct” response. If this response is allowed to dominate the discourse, where those that are most affected, are denied an actual voice – the search both within theory and amongst the public for more sustainable, and arguably a more “human” solution, are side-lined by the immediate cry for action and compassion. By allowing such a category to exist on the margins of both humanity, society, and the international arena, we are at the same time accepting what Bosniak (1998) coined “The aliens of IR”. Just in the last five years since I wrote my first paper on the subject, the number of refugees has gone up by around 30 million to almost 80 million today (UNHCR)The exact number is less relevant for theoretical approaches, but the rise in the number suggest that Gündoğdu (2015) have a point in that the discourse has changed, as well as the world situation. The end of the cold war could be seen as a glorious moment for liberalism, but perhaps amongst all the glory some aspects of essential renewal were forgotten, and in the glory of success it also ended up becoming a sleeping pillow for liberalism. Although it received much criticism, both at the time, and particularly later, Fukuyama’s famous book “The End of History And The Last Man” (1992) stands as a symbol of this era. To say that liberalism has not evolved later would be too simplistic. Nevertheless, there is some truth to the statement of an apparent blaring sense of being content, leaving a flawed understanding of the dynamics unfolding that has hampered liberal theoretical development over the last decades. Where the idea of what constitutes

liberalism has not kept up with new challenges in a world that is seemingly more liberal, democratic and stable than before – in a more complex and pluralistic world, the ideas of liberalism have not managed to evolve to encompass these new developments (Grugel 2002).

On the other hand, it does not make sense to make radical changes to the refugee policy in those instances where the exemption status is considered to be reasonably short, and the possibility of returning to a normal status is likely to be reached without unreasonable hardship. The exact boundaries for these conditions can always be subject for debate, but the general point is that there is a room for the humanitarian aspect also within this theoretical approach. The idea that is stressed is that there needs to be a clear distinction between those that can, or should, be met with a humanitarian approach – who in all likelihood would be able to return to their societies within a reasonable period of time, and those cases where this doesn't appear to be a viable option. The point is to distinguish between the two. People that are refugees as a result of natural disasters, or political unrest that is considered as temporary, and where the likelihood of returning within a reasonable timeframe, are likely to be instances that would be accepted both by liberal and decent 'peoples' as temporary. In these cases, if any assistance is needed, it would fall within the humanitarian sphere. Effectively, you could argue that these "refugees", that actually are temporary, should not really count as refugees. It is first when they cross the unacceptable threshold of time and harshness of duress when the situation is so severe that the society of origin is not capable of handling the situation. Then they would count in the sense that they would need a new consideration under this theoretical approach. In addition, it should also be pointed out that those refugees that do not qualify as decent or liberal, would also then not qualify for inclusion, and hence the responsibility towards them cannot be considered to go beyond that of humanitarianism. The distinction of what can be considered as an acceptable temporary condition would be agreed upon under the 'veil of ignorance'. By distinguishing, we avoid the "humanitarian trap" as we clarify the space for humanitarian action, and when the international community needs to take action that goes beyond what often is the case if people are rendered to humanitarianism alone.

The definition of a refugee in accordance with these criteria, would have to be decided by the Society of Peoples. It is unlikely that we can achieve a world society absent of refugees. This has

both to do with practical implications and dilemmas of intervention and policy implementation that we will return to (in chapter 5), as well as what is defined as an unbearable situation or status.²⁶

The refugees we are talking about are those that are denied a position within their society on a long-term basis. The true test for liberalism in how we incorporate this group in an international society, would be to allow them a place under the 'veil of ignorance'. Under the 'veil of ignorance' where we are stripped of our knowledge of our position in society, the idea is that fair and reasonable people would agree on "laws" and systems that are just and fair. This does not imply a society where all are perfectly equal in terms of means like status, economic dispositions etc. Differences would then minimize as the position within the society is unknown, yet where opportunities and rewarding effort would still be a natural part. The question of redistribution and responsibility lies more in the fairness of the interaction, than in simply re-distributing economic means. Exactly how an agreement would look is impossible to determine, as it would require that 'people came together in an original position to decide. However, for the extension of the theory, we only need to know the parameters that the agreement would occur within – namely the eight principles referred to above. The obvious question that has been laying beneath the surface is if people would accept the position that refugees are in today, under the 'veil of ignorance', if they are aware that they themselves could be in this position? Initially, the answer seems rather straightforward. Reasonable and just people would likely agree that this is not a fair or tenable situation. This leaves us with the question why liberals have not ventured down this path (without ending up as cosmopolitans as we shall see in chapter 4), and secondly where, and how to draw the boundaries. Or, to rephrase and say it in a Rawlsian terminology by asking what would reasonable people agree on, and subsequently what would be the impact and implications of such an agreement?

3.4 Extending the theory

As noted earlier, Rawls leaves open a category that he reserves for "[O]ther possible kinds of decent peoples I try not to describe, but simply leave in reserve, allowing that there might be other decent

²⁶ To draw on an analogy from Nils Christie (2004); there will always be crime, or will there? It is a question of definition and perception. In essence, we have to come to terms with the limitations and settle for "a suitable amount of refugees" (drawing on the title: "A suitable amount of crime"). In the same way he approaches the question of refugees, we need to approach the question of refugees. It is a phenomenon we are unlikely to abolish, but we should strive for a condition with "a suitable amount of refugees". Here, this would refer to a situation where both the aspects of time and severity are drawn into the calculation.

peoples whose basic structure does not fit my description of a consultation hierarchy, but who are worthy of membership in a *Society of Peoples*" (Rawls 1999: 4). Or what I have labelled category "X".

Rawls leaves this category completely open, and he himself does not return to expand on it, leaving it open for future scholars to expand on. Other writers like Freeman (2007) have briefly noticed this point, but it seems that, in general, this point has been paid very little attention. As far as I have been able to establish, no direct link has been made to *refugees* and *IDPs* as a category that could fit this description. When it comes to the question of refugees, it seems like most of the normative literature is concerned with either maintaining that the issue should be dealt with within the existing structures of state sovereignty and international organizations (and therefore a humanitarian approach). Or else the literature (Beitz 1983,1999; Caney 2005; Pogge 1989, 1992; Tan 2004) seeks a more radical liberalist, or cosmopolitan view, than the one advocated by Rawls. The case of making a "moderate"- or what I have claimed "conservative"- liberal argument for inclusion of refugees in the international society seems to fall between the cracks, and arguably unrightfully so.

A classical liberal objection would be to start with the idea of individuals, and not 'peoples' as the base unit of analysis. Indeed, after LoP was published, Beitz commented:

It is one thing . . . to hold that a global Society of Peoples would be a desirable goal of political and social change and another to hold that international political theory should begin with peoples—that is, that principles of international conduct should be founded on considerations about the legitimate interests of peoples rather than persons" (Beitz 2000: 681).

To claim that a theory built on 'peoples' rather than 'individuals', might prove to entail more personal freedom than an approach based first and foremost on the aspect of individuals, might at first appear contradictory. Nevertheless, I will argue that the two are entwined and cannot be separated. A theory based on individuals *first*, and 'peoples' later, will struggle to encompass the difficult interaction between them, that forms the freedom of the individual. In line with Rawls himself, and later comments like Jenkins (2010), the argument will be presented that a liberal theory built on the premises of 'peoples'— offers the individual more freedom, than a theory based primarily on the individual – at least in a context of international politics.

The core contribution of this thesis is raising the question of whether refugees could be considered as a 'people(s)' worthy of consideration for inclusion? The implications of such an approach would

be dramatic both politically and theoretically if they were to be accepted – and subsequently adopted. A range of new questions would emerge that would have to be dealt with in due course ranging from more administrative and technocratic exercises, to questions of distribution, belonging, rights and duties and where to draw the boundaries for intervention and finally the distribution of responsibility between members of different societies in a new world order. It is way beyond the scope of this thesis to attempt to answer all these questions in full. Rather, the goal is to make a bold attempt at drawing a *sketch* for how such a theoretical extension could be done and touch upon some of the aspects it would inevitably encounter. Taken to its full extent the proposition laid out below might be accused of raising another well-known question within political science; what to prioritize if left with the question of *order vs justice*. But such an objection, that a proposition of inclusion would upset the order (hence status quo should be favoured), relies on the false assumption that a world that accepts status quo is an “ordered world”. At best, it might be said to be a suppressed world, at least for the millions of individuals denied a place, and a voice, amongst their society. Furthermore, it would give fuel to the chronofetishism within political theory, which I strongly object to. If history has taught us anything, it is that the world never stops. Hence, favouring the “status quo” will inevitably lead to failure down the road, as it simply rests on the illusion that it is possible to maintain.

Refugees as a ‘people’

One of the main theoretical challenges that so far has been downplayed, is that of representation. Even if we agree that refugees fill the ethical criteria for inclusion as a ‘people’, or ‘peoples’, how can the theory be extended as they will, in all likelihood, lack some of the necessary criteria as a ‘people’. Although some leniency can be argued, and will be necessary, there still must be a mechanism in which they are able to select representatives and participate in the decision making amongst the Society of Peoples. Some might argue that an individualist approach would be better served in this case, and although that might intuitively seem more fair from a liberal stand-point, it would go against the essential claim that we need to treat individuals as part of a ‘people’, in order for the individuals to gain a larger freedom. These two are entwined and cannot be separated. Yet they are at the same time theoretical opposites. An approach that would deviate and start with the individual (noting that we keep isolated humanitarian cases outside of this), would be to surrender to a policy that would easily be a slippery slope into a cosmopolitan understanding of liberalism. We must acknowledge that using the original position across all ‘peoples’ equally, in the same manner as we can with liberal societies, is simply not possible, as non-liberals do not hold the same principles on a domestic level. Yet that does not imply that the theory is inconsistent, as decent, but non-liberal

'people', would be able to put forward reasonable and just claims on an international stage even if there might be basic inequalities on the domestic level: "[a]lthough full equality may be lacking within a society, equality may be reasonably put forward in making claims against other societies". As for an individualistic approach, it would easily transcend into a position that would "straightaway ground human rights in a political (moral) conception of liberal cosmopolitan justice" (Rawls 1999: 82). The argument against this will be elaborated on in chapter 4.

In order to consider refugees as 'people(s)' the dichotomy of a 'people' and the individual will come under pressure. It would make sense to not completely abolish the individual approach. However, we must take care in trying to situate the relatively few that should continue to be treated on an individual level – this would for instance be single cases of political refugees and the like. In other words, the proposed theory is not meant to abolish the asylum institute, but to give a new inclusive role to the larger refugee population.

So far, the theory has assumed that a 'people' are either liberal or at least decent on the one hand, or; outlawed, societies burdened by unfavourable conditions or living under benevolent absolutism on the other (Rawls 1999). The possible borderlines within a society is to a large extent excluded from the debate. How are we to judge a society that is just, perhaps even liberal, for the large majority – but who excludes a minority whether it be for religious, cultural, ethnical or other reasons? Both historically, and presently this is relatively common amongst societies today. Yet, where we draw the moral or ethical line seems somewhat arbitrary in our judgement. This is also one of the points where Rawls can be considered vague. In part we could defend this by again referring to the fact that the exact point of toleration should not be decided by a person, or stated explicitly in a theory, as long as the theory builds on a functional decision making body. However, the grave questions of injustice due to conflict deserve more attention. The second reason why it deserves more attention is the phase described in 3.2, the selection phase that will inevitably happen before entering the state where the 'veil' can be applied. Despite the criticism, few if any, have come up with a credible alternative. As a method for inclusion prior to entering the 'veil', but under the guidance of the same principles, I suggest a method based on the "judgment of peers" as outlined above. Here we will focus on the implications in the case of refugees, but also noting that there might be other cases where this problem might arise as a theoretical challenge. The question that lies before us here, is the implementation of the extension; how do we decide that someone (a group, or a 'people' - within, or across another society(ies)), in this case refugees, are worthy of being considered as a separate 'people' with their own voice.

There are two main ways of looking at refugees in this context. 1) The first disregards some of the classical traits of a 'people' but maintains that their commonality as refugees and their more or less clearly expressed desire to be considered as a 'people', makes up for these. At the core here lies a recognition of a group of individuals that might not be considered as a "natural group" in the classical sense that they necessarily reside within a common geographical location, have the same culture or language; they simply share the communality of a desire to belong to a society that is worthy of inclusion, but are denied to even be heard in their own society as to how this could be achieved. It is this communality that binds them together as a 'people'.

2) The second way is reminiscent of the first in the sense that weight is emphasized on the expressed unity; but it differs in requiring a stronger internal connection in order to be considered as a 'people'. This position holds that the bindings and communality of being a refugee should not be considered the main criteria. Although this might be a unifying factor the other original criteria for being considered worthy of inclusion remains as the criteria for judging the eligibility of inclusion. This holds true with one important moderation – the criteria must be evaluated in terms of what is possible. In this sense refugees would stand in a unique position, requiring some leniency. The criteria should therefore be judged against both which criteria are met, and those that they express a clear desire to comply with - but are denied the possibility of doing so due to no fault of their own.

The first alternative is of course tempting in wanting to include as many refugees as possible, but the challenge with this position is obvious. The fact that individuals have a common trait does not necessarily unite them, at least not to the point that they can be considered *one* 'people'. It is therefore hard to see that there is another viable option for inclusion than that of the second option. But also, this position will raise the question of where to draw the line of what can be considered a 'people', both as a unit, and secondly if they are acceptable in terms of the criteria.

Immediately the question of the main characteristics of 'peoples' that are worthy of an inclusion amongst the Society of Peoples, are most profoundly put forward in the eight principles recited above. These illuminate an immediate concern with the theoretical expansion. It is hard to see that refugees would, or could, fulfil all these criteria. To take number one as an example; refugees can hardly be considered to be "free and independent" and going down the list one could easily argue that they do not fulfil several criteria. Should this be considered as a justifiable reason to abandon the whole theoretical exercise of extension? I would argue that instead refugees due to their very

specific nature must be viewed in a different light. Nevertheless two conditions for leniency must be present; first, the lack of compliance cannot be due to lack of trying or by other means contributed to a lack of effort from the side of the refugees, and second the principles must be something that refugees strive for and adhere to in spirit, even though they are denied exercising them in practice. Granted, it is harder to fairly evaluate the hypothetical than the actual. Yet, the international community would have to do an evaluation based on the information available, as the requirements can only be made fully operational once they are included amongst the Society of Peoples. The question we should ask is not simply *if* they fulfil, but in this case also *why* they are not able to fulfil these. The answer will inevitably vary a bit, but the gist of it would circle around the lack of permanent structures and organization, and in many instances that they are prevented from building and maintaining institutions that could enable an internal structure that would meet these demands. The next question that needs answering is; can we acknowledge some leniency without damaging the intentions and fundamentals of the theory? I would argue that it is possible. The extent to which inclusion would be granted would be up to the international society. As I have argued before they would likely not admit all that would have been admitted if put under the ‘veil of ignorance’, but it is highly likely that some would be found to fulfil the criteria to a sufficient degree and be included, as long as their peers hold a reasonable standard for inclusion. The solution is obviously sub-optimal, but it is worth remembering that as soon as one “refugee people” are recognized and admitted into the ‘veil of ignorance’ the dynamics would start to alter. Therefore, I hold that for a more just interpretation we first have to accept a sub-optimal phase. The remaining refugees would in this phase be left in the humanitarian sphere in this transitional period. As I have elaborated there is ample reason to assume that as soon as the first “refugee peoples” enters the ‘veil of ignorance’ we would witness a far more active policy towards refugees and the question of the duty to assist. This should not be confused with a massive general, for a lack of a better word, “liberalization” in terms of redistribution, as there is no reason why this in itself should radically alter the relation between societies in other aspects. It would be natural to assume that it would lead to a far more active, and perhaps pro-active role in terms of intervention in cases where societies violate human rights (remembering the special role of human rights in LoP). Likewise, one can assume a more active role towards societies in order to find a solution both politically, economically and if necessary, by intervention. These, and some of the other likely policy applications that would follow from an inclusion is something that we will return to in chapter 5.

An example – a variation of Kazanistan

In terms of minorities Rawls discusses this in his hypothetical case of “Kazanistan”. Here there are dissent, but there are bodies of consultation hierarchy where objections and views can be debated. Further, he holds that a society can be considered reasonably just, without being perfectly just – or upholding the common standards advocated by liberalism. The important part is the consultation hierarchy, and that basic human rights are protected. (Rawls 1999: 78-80). As he concludes on the matter the goal should be “to conceive a reasonable just Law of Peoples that liberal and non-liberal ‘peoples’ could together endorse. The alternative is a fatalistic cynicism which conceives the good of life solely in terms of power” (Rawls 1999:78). The argument of where to draw the line in terms of toleration will always be subject to debate. Central to the argument of what can be acceptable, in addition to the aforementioned eight points, is the acceptance of human rights. Within political theory, and policy, the content and scope of human rights have expanded throughout the decades. In terms of respect for human rights in LoP, as well as in the extension advocated here, a narrower definition that goes to the base of human rights is adopted.

Human rights in the Law of Peoples, by contrast, express a special class of urgent rights, such as freedom from slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and genocide. The violation of this class of rights is equally condemned by both liberal peoples and decent hierarchical peoples (Rawls 1999: 78-79).

Rawls here displays a clear tolerance for ‘peoples’ that do not qualify as liberals. Where he fails, or perhaps rather, what he does not deal with in LoP is the cases where minorities (and others) are not heard and at least somehow accepted and protected by “urgent” human rights. One could argue that these societies as a whole fall into the other categories such as “outlawed states” etc. which he renders little consideration, but if we allow this descent and refuse to consider the minority as a possible ‘people’ with the rights to be considered and judged on its own grounds as a liberal or decent ‘people’, accepting that there might be a case for a ‘people’ within or across the borders of the already accepted ‘people’. This would question the current norm of sovereignty, but in this case, it can be, and I argue that the question of sovereignty is already subject to debate in a situation like this. There might not be one pre-defined solution, as the theory also presumes that policy will evolve both as agreements are made under the ‘veil’, as well as to the nature of evolution of society. Rawls argues for toleration in the original version of “Kazanistan” where there are mechanisms in place, even though they might be considered imperfect, where he concludes that the alternative to tolerance is “a fatalistic cynicism which conceives the good of life solely in terms of power” (Rawls 1999: 78). The argument here is not contradicting Rawls argument for tolerance, but it is rather that

in this version, the minority is not heard and actively discriminated and persecuted against by the government. In such cases the argument for toleration, as advocated in Rawls's example is not present, as the right to be heard is not only essential, but a condition for decency.

In some cases one could imagine that a 'people' within a 'people' (or society) could have leaders and even a "shadow government" in exile, and although in practical terms it would be hard to fulfil all the general criteria, it might be easier to accept these on a theoretical level. Normatively however, one could argue that it should not really matter, but in reality it probably will, as it would be easier to judge. If we assume then that "Kazanistan" does not have a consulting hierarchy body, or treats dissidents in a fair manner, it would alter the judgement of whether we can consider Kazanistan a decent society. The system might be *fair* for the majority, or those close to power, but unfair towards a substantial group within "Kazanistan". If we then assume that the dissent and treatment amounts to persecution and otherwise unliveable conditions for a group within the society, how are they then to be categorized? The argument made above is that the option of de-classifying the society (i.e. they're no longer members of the Society of Peoples), or the other option of accepting "Kazanistan" as a decent 'people', while rendering the dissidents, or refugees (IDPs), within the humanitarian sphere requires careful consideration before it can be deemed just. The challenge for inclusion is coming up with criteria for inclusion amongst the Society of Peoples that are achievable for 'people' who are denied a voice and place within their own society, without breaking the minimum accord of decency. Those that would fail to meet this threshold should not be left entirely to themselves, these are the cases that should be handled within a humanitarian approach.

Returning to the question of restraint, or moderation, in terms of the duty to assist (for a moment leaving the inclusion aside) looking at it from a normative point of view the question of how far the duty goes would also entail the question of *us versus them*. Or, to rephrase which duties are to be considered universal and which are particular to each society.

The Law of Peoples assumes that every society has in its population a sufficient array of human capabilities, each in sufficient number so that the society has enough potential human resources to realize just institutions. The final political end of society is to become fully just and stable for the right reasons. Once that end is reached. The Law of Peoples prescribes no further target such as, for example, to raise the standard of living beyond what is necessary to sustain those institutions (Rawls 1999: 119).

Here, Rawls does not only draw an important distinction towards the cosmopolitan stand within liberalism, but also a general stand as to what one normatively can, and should, expect from people.

The principle of equality is one of capabilities and institutions, not one of radical redistribution. The reasoning behind is evident throughout his work, and perhaps not pin-pointed at a particular point. He addresses this on multiple occasions, and it is also one of the areas that he has been most criticized for (Beitz 1999; Tan 1998; Pogge 1989, 2007). The exact point of redistribution can obviously be debated, but there is ample ground to support the main argument of showing some restraint for two reasons. A radical redistribution would change the entire international system beyond comprehension. There is a difference between challenging elements of the current system and structure, moving towards an evolution, and to move completely away from an international system based on societies. To rebut, one would have to argue for a true cosmopolitan version, and as we will return to in chapter 4, is not necessarily in the best interest, either from a 'peoples' aspect, nor from an individual point of view. What seems implicit through his work is the importance of maintaining a society. Not that a society would not, or should not change, but the idea that maintaining certain values in a society in itself carries a value.

This is also why Rawls is restrictive when it comes to the requirements that people have towards other societies. The duty to assist is for Rawls a duty that stretches to the point where a society is self-sufficient, and able to determine its own future. Again, we see that the point of redistribution and assistance is paired with the aspect of tolerance even towards burdened societies. This can of course be seen as a way of escaping an ethical redistribution, but as Rawls maintains it is not up to the Society of Peoples, or liberalists to dictate the future and opinions of other societies.

The crucial point is that the role of the duty of assistance is to assist is to assist burdened societies to become full members of the Society of Peoples and to be able to determine the path of their own future for themselves , It is a principle of *transition*, in much the same way that the principle of real savings over time in domestic society is a principle of transitions. ... [R]eal saving is meant to lay the foundation for a just basic structure of society, at which point it might cease (Rawls 1999: 118).

Building on this we can extrapolate and draw a parallel to universal versus particular duties and responsibilities. Goodin (1988), made not only an important distinction between rights and duties that are universal, and those that are peculiar within a society (state), but he also made the very important point that we sometimes require more from "our fellow countrymen" than we do from foreigners (Goodin 1988). This goes to the core of the question; the social contract within the society (generally) provides both more benefits as well as duties, and possible restraints that go beyond what can be claimed to be universal. Although, the main impression is that the members of a society are treated preferably with access to public services etc, they are also subject to limitations, and

restrictions that it is hard to imagine being imposed on “foreigners”. Goodin makes a long list of examples ranging from expropriation of property, conscription, and taxation to name a few (Goodin 1988: 668-669). Taken to the extreme, a state (or ‘people’) can require from its members that they put their own life on the line for the sake of the society. This is of course not something that can be imposed on non-members of the society. On balance, it is therefore not necessarily unjust to argue that “the social contract” gives both benefits and duties, that should not necessarily be radically redistributed. Some of the benefits which are built up over a long time such as pensions, health care, education can be seen as an investment that is peculiar to members of the society. The benefits are often associated with being a member of a society. However, the special duties that often follow, and would not apply to *foreigners* are often forgotten. Hence, it is perhaps so strange that it follows that we have a special duty towards our own, or as Goodin would have said “our fellow countrymen”, is perhaps not so strange. The fact that states²⁷ can often impose sanctions or restrictions, which they cannot impose on foreigners, is also an argument against a radical redistribution, as the social contract within the society rests on an assumption of fairness. This is also, indirectly an argument against cosmopolitan versions of liberalism. At least, until they have managed to reach their end-goal, which at this stage seems a rather utopian thought, if even that. However, the larger debate within liberalism is reserved for chapter 4.

Conclusion

The proposed extension goes a long way towards placing refugees *within* the sphere of international politics. The argument that a significant proportion are worthy of inclusion is strong. The differentiation between those deemed worthy, and those that will be excluded, draws a useful line between the humanitarian aspect, and that of tolerance and inclusion. By including refugees as a ‘people(s)’, some are also likely to be included in the original position – giving them a voice and influence under the ‘veil of ignorance’. This is crucial as it forces the question of determining the acceptable. Is the current status of refugees an acceptable position? This is not only a crucial point in itself, but also because it would likely be deemed an unacceptable position - demanding action and implies that people would decide what is acceptable without prior knowledge of their own position. Only this way can a truly just international society be built. This is likely to expand the “duty to assist”, but more in the amount that it is needed, than in stretching the theoretical basis for it.

²⁷ Goodin (1988) uses “states” in his analysis. For the purpose of the argument here, it makes no difference. The argument would be equally valid if replaced by “societies” or “peoples”.

In the work towards the extension, it was also necessary to construct a crude framework for a selection procedure before entering the 'veil of ignorance'. As such the chapter has also addressed another crucial pre-existing theoretical gap, if in a basic manner. This is a matter deserving much more attention than what is possible here, yet for the argument to work as a foundation for debate we need at least a sketch that can serve as a theoretical bridge.

In the international society today, the extension, if implemented, would clearly challenge the responsibility of both societies and international organizations often constructed based on representation of states. Regardless of how a society is perceived in the form of its structure – the imminent concern especially for liberal democracies, but also for other decent societies, is how liberal or human values can be defended as a universal norm, as long as almost 80 million individuals are excluded from the possibility of partaking in the Society of Peoples. After assessing some of the existing, and anticipated critique, in chapter 4, chapter 5 will introduce, and discuss, some of the likely, and potential consequences for political policy if policy were to be informed by the extension outlined in this chapter.

4 Facing (expected) critique and challenges

“Criticism may not be agreeable, but it is necessary. It fulfils the same function as pain in the human body; it calls attention to the development of an unhealthy state of things. If it is heeded in time, danger may be averted; if it is suppressed, a fatal distemper may develop.”

— **Winston Churchill**, *New Statesman* interview, 7 January 1939.

This chapter seeks to address some of the expected critique. To an extent, when discussing a theoretical contribution, that is not yet presented, some of the critique will by necessity be hypothetical. While some of the criticism of the fundamental arguments against liberalism and Rawls, is well known, and will occupy most of this chapter together with the intra liberal discourse. Churchill’s words above remind us of the importance of not shying away from criticism. Well founded and constructive criticism is what carries us forward. The theoretical extension proposed in this thesis is not immune to criticism; first of all, it is not (yet) a fully developed theoretical concept, which requires more detail and depth than what is permitted within these pages. Secondly, it rests on a theoretical bridge that is promising but not fully developed. It offers a path when it comes to the selection of those worthy of inclusion amongst the Society of Peoples. Although I provide a sketch to bridge the apparent gap in the theory as suggested in 3.2, this is an area that I argue will require more work in the future, and that I did not anticipate at the outset. Whereas this task cannot be sufficiently addressed here, it still requires some thought; both to the argument of necessity, and to the extent my sketch holds any premise worthy of further deliberations. This theoretical “bridge” constitutes the first element worthy of a brief discussion. Thereafter, it will be followed by a discussion about possible and expected critiques of my theoretical expansion in this thesis, and to an extent entwined, the existing intra-liberal discussion. Central to this debate will be the discourse within liberalism and in particular the critique raised from the cosmopolitan strain of liberalism, as many of the same objections raised against Rawlsian interpretation of liberalism are also likely to be echoed against my theory. The second part attempts to address both some of the expected critique as well as recognizing some of the challenges therewith. Rather than considering these as faults, I believe that identifying and assessing challenges within one’s own work is the first step towards creating opportunities for developing solutions and does not constitute a theoretical fallacy.

Let us recall how Rawls set the stage for a new era within social contract theory when he published a ‘Theory of Justice’ (1973). As mentioned in the methodology chapter, the way he insists on a scientific approach to normative theory, while at the same time going back to the roots of a

“Socratic dialogue”, reframing it to a modern philosophical debate. It is the same ideas that have inspired my theoretical approach.

In “The Law of Peoples” (1999) he drew on his previous work and clarified his theory for the international arena. No matter how you look at it – it has taken on the status of a seminal reference:

The Law of Peoples has become something of a North Star, or a series of several moving North Stars, within many debates central to contemporary political philosophy. In matters of international justice, whatever your understanding of Rawls’s position, and whether you’re with it or against it, it is one of the pole stars by which you set the course of your argument (Martin and Reidy 2006: 8).

Wherefore it has taken on this position is probably because it stood out in its time, creating a new path of thought that did not exist in the modern discourse. Its unique position is not only due to the aspects of toleration discussed earlier, but also how this is combined with the aspect of restraint when it comes to economic redistribution. The combination of these two aspects is what makes the Rawlsian approach both remarkable, and I will argue far more realistic. Or as he refers to it, the aim is a “realistic utopia”, and while others dream of a perfect world with equality, and equal distribution – the clear boundaries that are drawn between duties and obligations – have left liberals puzzled, since it does not conform with most of modern writers’ conception of fairness when it comes to (economic)redistribution. At the same time, it is this aspect that makes the theory more realistic, and more “dangerous” as the implications become far more viable.²⁸ It is precisely this which makes it an excellent theoretical starting point on which I have developed my theoretical approach.

4.1 A note on the “theoretical bridge”

My theoretical bridge presented in the start of chapter three (3.2), is admittedly insufficient and not yet a fully developed approach. Rather it should be seen as an initial preliminary framework that serves the purpose of completing the theoretical puzzle - The puzzle of how to agree on who is to be included in the Society of Peoples, or to put it simply, who is to judge whom is permitted entering the ‘veil of ignorance’? This is not only absent in works by Rawls, but also to the best of my knowledge, in that of other authors who utilize various versions of a ‘veil of ignorance’ (Tan, Beitz, Pogge etc). The challenge with all of these, on the international level, as I claim, is that logic implies

²⁸ A hypothetical framework can obviously not be implemented as such. But, by making the conditions more realistic it can influence policymakers in a way that other (liberal) theories cannot (see also a more in-depth discussion of this point in chapter 5).

that the decision of who is to be included necessarily must be done before the participants enter a state where they are under the 'veil'. In other words; "full knowledge" will be available at this point, and there is no difference between a Rawlsian approach who accepts "decent hierarchical peoples", and those who draw the line at "liberal" societies. The main question still remains; who is to decide if the necessary requirements are fulfilled, and thus who gets to participate. The question of who is in the "in-group" and who is in the "out-group" is only decided by what characterises the groups, and not who will determine if these criteria are met. Worth noticing is that this will apply to both the thick (Rawls) and the thin (Tan) versions of the concept.

The way I see it there are two possible reasons for this: 1) Since this is first and foremost an academic exercise with a hypothetical theory, or solution, it is not necessary to cover the aspect of reaching the state of 'veil of ignorance'. 2) The theoretical problems that start appearing when you probe the theoretical questions are too difficult for them to answer, and there is the added danger of diverting attention from the main objective, which is clarifying the state under which the hypothetical works. Judging by the omittance both by authors and critics, my inclination is that the answer mainly lies in the latter. Simply because this can lead to a "pandora's box" of issues better left alone because there are no simple or reliable answers that comply with the main theoretical approach, as there is no way around decision making prior to entering the hypothetical state. While the argument can be raised that discussing at length for a procedure to solve this would be counterproductive, and strictly not a necessity, since we are mainly concerned with the possible outcome of the hypothetical (and if we acknowledge that the hypothetical can never be reached in this case). It is sufficient to define the criteria for inclusion (or exclusion), leaving the procedural aspect alone. The problematic point with this approach is not the recognition of the hypothetical, but rather if the hypothetical remains a hypothetical without a path to get there, I will argue that the conclusions reached under these conditions severely weaken their arguments. If the path to the hypothetical is not even theoretically achievable, the result will not only be a hypothetical, but a "hypothetical squared"²⁹. This does not only weaken their argument, but also the potential influence that theory could have on forming policy. The more remote a theory becomes, the less relevant,

²⁹ What I here call "hypothetical squared" rest on the argument that as long as there is no path, or way of determining which societies are eligible to enter, this essentially leads to a circular argument in the sense that how can a society decide its' own classification, or for those that reserve their theory only for liberal societies the question is who decides that a society is liberal? In other words, shying away from the theoretical challenge adds a hypothetical to the theory. In essence, that would render the theory with two hypotheticals (hypothetical X hypothetical). It is exactly these kinds of circular theoretical problems my approach avoids by bringing in the theoretical bridge.

transferable, and inspirational it becomes. Thus, giving some weak ammunition to those who argue that normative theory is largely an academic playground.

The next question is: Does my attempt at constructing a “bridge” (see 3.2) make sense? I will argue a preliminary yes. As imperfect as the theoretical bridge is constructed, it does not yet avoid all of the problems described above. It sets out a system of recognition by peers as the best alternative to achieve a road that leads to the “hypothetical state” where the ‘veil of ignorance’ can be applied without dodging the bullet of how to get there. The bridge offered here is not ideal, as less refugees is likely to be included in the initial stage. Because as I have argued in chapter 3, this will eventually snowball when the Society of Peoples is established and can take over the responsibility of admission – but this time under the ‘veil of ignorance’.

4.2 A challenging theoretical extension

The theoretical extension provided in chapter 3 relies heavily on the thoughts put forward by Rawls (1999). However, it ended up with a theoretical extension in both ends of the theory. Whereas the first, which I have called “the bridge”, became clear to me during the process, that without providing a sketch towards a more complete theory, I could possibly end up contradicting myself in a circular argument. I have therefore initiated a framework that starts to address this, without shying away and avoiding possible self-contradiction (see 3.2 and 4.1). This was a challenging revelation, but as important as I claim that the bridge is, the main theoretical contribution lies in filling the gap left open by Rawls (what I have labelled “category X”). In the aspects where I follow Rawls, both in refraining from using the term “states”, to the more important factor of including ‘decent hierarchical societies’, I am vulnerable to some of the same criticism and debate that followed the publication of LoP.

My theoretical extension which includes refugees, takes advantage of the opening in Rawls’s theory. It would be interesting to speculate whether he would have agreed today to refugees as a ‘people’(s) that could satisfy the criteria for inclusion. That, we will never know, but more important is perhaps if it follows his spirit, as I argue that even if I have to give some more leeway on the criteria, than Rawls initially does, in order to make the extension possible, I maintain that the gist of it follows his line of thought. It is definitely in his spirit to extend the position beyond the deterministic view that only liberals should be accepted within a liberal framework. In this regard I do not suggest that refugees cannot be liberal, only that they do not necessarily have to be. As decent would suffice for

inclusion, and that in this case we must also evaluate the more difficult position of 'intent', and not only a society's established practice.

The question of intent, and how to assess intent, can never be an exact science. Essentially this is where political science and political theory meets psychology. Even if some within International Relations like to disregard intent – that in itself is actually an acknowledge of intent³⁰. Intent plays a larger role than it is often given credit for. An offensive realist like John Mearsheimer would argue that since intent is difficult to assess properly, one should always assume the worst when it comes to the intent of one's adversaries (Mearsheimer 2014). Other realists like Waltz (1979) put their emphasis on what we can call the material capabilities. In other words, the (supposedly) clear manifestation of power through recognizable power. It could well be argued that these authors do not delve much into the underlying delicacy of intent and motivation. This is regarded as of minor importance, compared to the overall rationale. The realist assumption, as many others, tend to focus on states and their security, and although the majority don't delve with the aspect of intent, the debate is not without interest as acceptance of refugees would likely also contain a notion and evaluation of security. Although countering realists' and other notions of security are not the main task, the idea of the state (or as I call it society) as an actor is fascinating. The fact that a "conservative" approach to liberalism can on the international stage, have the agency of the society/state in common to some extent, and a position which cosmopolitans from their position would reject. What can not be stressed enough is that the emphasis put on the society in my approach, is not a rejection of the individual, but rather a defence of it. This is a major point I will return to, but to conclude on the aspect of security and intent; as Yarhi-Milo notes, more recent studies emphasise the combination of capabilities and intentions: "Existing studies have typically dealt with the broader question of perceived threat – which includes a combination of capabilities and intentions – but rarely have they explored or theorized about the source of assessment about the adversary's intentions per se" (Yarhi-Milo 2009: 2).

Refugees, to the extent that they are subject to debate in International Relations, it is either as anomalies existing on the very margins of the organized world, and/or as a source of potential threat and instability to the world. While I differ on this, and there is ample evidence to support the claim that refugees at large do not pose a security threat in the traditional understanding of the word. In

³⁰ Keren Yarhi-Milo is one of the more recent scholars who have taken up this issue within IR. See *Knowing the Adversary Leaders, Intelligence, and Assessment of Intentions in International Relations* (2014) and *Who Fights for Reputation: The Psychology of Leaders in International Conflict* (2018).

the long term however, it is clear that the continuously rising number of refugees presents challenges to the current international structure. – The challenges largely challenge the system, and particularly the liberal system – but the threat is not mainly a security threat as it is commonly suggested, but a threat in the sense that it challenges both the liberal values and norms, as well as the established way of organizing international and domestic societies. A question we shall return to, is if it is only a problem, or also a symptom of a larger development within the international system. In the words of Haddad (2008): “what in fact is “going wrong” when refugees appear is that the theory and practice of the international state system and the concept of sovereignty on which it relies are failing to coincide” (2008: 4).

The only part, where there is a halfway agreement with my theoretical approach and the mainstream of IR, is on the unit of analysis when it comes to international relations, but it is only halfway as I will argue that ‘states’ as a concept have too many connotations and too much of a nexus of norm-related concepts too it, that in my analysis would impede the possibility of reading the world in a more open manner. While my theory accepts that individuals are likely to flock together in groups that might resemble today’s states, it is by no means a given that the states will remain with the same functions and characteristics as we know them today. Hence, looking back to the discussion in chapter two, I will refrain from using ‘states’ as a unit in the theoretical debate and stick to ‘societies’ and ‘peoples’. Here, it is imperative to note that the current state system is in both relative and absolute terms a new structure. While the state system within IR is commonly backdated to the peace of Westphalia in 1648, this is a truth with major modifications (Osiander 2001; de Carvalho et al 2011; Krasner 1995).

If we accept that the concept commonly understood as sovereignty is a special creation that grew out of a particular time and process, and even more importantly- these foundations are continuously changing, then it has severe ramifications for many of the major IR paradigms. This would especially be true for Realism, but also for parts of liberalism and to a certain degree also most other theories of International Relations. The importance of a shared understanding both about how the state has been situated historically, as well as the attributes that we currently prescribe to it, is essential to the hesitation of using this term in the theoretical terminology. However, shying away from it entirely in a critical discussion is difficult as so many within the field continue to employ it: “The logic of world systems theory is heavily sociological and structural, and it discounts the role of politics and the state in social and economical change. Mainstream scholars of international relations continue to place the state, a unitary and rational actor, at the centre of their analyses of any type of

transnational phenomenon, whether it is trade, foreign direct investment or international migration (Hollifield 1998, 2004).” (Brettel and Hollifield 2015:11). When writing within the liberal tradition, realism is the classical archenemy, but in fairness the situation is not that much better within other schools of thought. As Andrew Hurrell reminds us “In terms of recent evolution in international society, refugees provide a sobering reminder of the limits of liberal solidarist change within international society. In part this has to do with the intrinsic tensions within the liberal solidarist conception of international society and in part with a broader set of forces pressing international society back towards ‘Westphalia’” (Hurrell 2011: 85).

This might at a glance appear as a less relevant argument when it comes to my theoretical approach, but seeing it as such would not only miss out on the importance of repeating self-fulfilling myths, but more importantly the need to create a theoretical approach that can stand the test of time – meaning that it deliberately tries to avoid the usage of language and concepts that have too many, and strong connotations connected to them – as these, no matter what International Relations theory sometimes like to reiterate, inevitably are subject to change³¹.

4.3 The intra-liberal debate and cosmopolitan critique

The intra-liberal debate, and in particular the criticism raised from the cosmopolitan side of liberalism has been hinted at throughout this thesis. This is perhaps to be expected as they have tended to dominate modern liberalism. Therefore, it comes as no surprise that they too criticised Rawls after LoP was published³² The fundamental critique from the cosmopolitan side can broadly be put into four categories. First, they disagree with ‘people’ as the base unit of analysis, arguing that all theoretical approaches must start with the individual. Second, and related to the first is the critique of maintaining an international system that is reminiscent of how it has developed through the 20th century with a state-centric focus, thirdly the aspect of toleration of non-liberals, and finally the question of (economic) redistribution.

³¹ This is also the reason why I refrain from using current examples in the theory part, as the aim is to keep this “timeless”. In the following chapter regarding policy implementation, I slightly deviate to illustrate how theory should interact with practice.

³² There was even a special symposium in *Ethics (Ethics, Vol. 110, No. 4 (July 2000))* dedicated to discuss, evaluate, and criticise the publication of LoP. This goes to show that even though some might be critical to parts of his work, it still stands as one of the foremost seminal works within normative liberal theory in the 20th century together with ToJ.

The unit of analysis and the system

To start with the individual as the core unit of analysis has a long standing within the liberal tradition. However, sticking to the broad lines of cosmopolitan thought, as opposed to what Beitz call 'social liberalism'³³ (or Rawlsian approach), is the idea that domestic societies have no privileged status over the common cosmopolitan society.

The most prominent alternative interpretation of the internationalist tradition is cosmopolitan liberalism. Although it is consistent with a conception of the world as a society of domestic societies, the cosmopolitan view, in contrast to social liberalism, accords no moral privilege to domestic societies. At the deepest level, cosmopolitan liberalism regards the social world as composed of persons, not collectivities like societies or peoples, and insists that principles for the relations of societies should be based on a consideration of the fundamental interests of persons (Beitz 2000: 677).

Although, one could initially be inclined to such an understanding, one has to ask the question of how societies are then ordered if they do not hold a special place, and is it possible to hold a special organizational role without there also being a special moral or ethical connection? This is where I differ with the cosmopolitan view. It is simply not convincing how you can practically accomplish domestic societies as a unit without giving them a status that is independent, and also inevitably, through its social contract, would hold a unique moral bond between its members. Essentially, Beitz does not argue against this but seems to maintain that this bond is not superior to that on the international stage. The functional implications of cosmopolitan liberalism become even more difficult to grasp if we look at the separation between 'moral cosmopolitanism' and 'legal cosmopolitanism'. This is perhaps most prominent in Pogge's work, but it also seems to have a wider adaptation giving cosmopolitans a way out when their theory becomes too utopian or unrealistic. The problem with this approach is not that we as individuals have multiple connections, and one could argue that we even belong to multiple groups, sub-cultures, and societies (though they might play a different role depending on their organizational structure and power), but that they are given equal status. It is here cosmopolitan liberalism runs into a theoretical explanatory problem. As such, I would argue that monogamy in terms of a primary society, is the only morally correct solution, as it is hard to imagine that this polygamous approach to societies can be entertained, and never mind maintained, unless they can also come up with a structure where individuals have the same, or rather an equal relation to the international stage, as to the domestic. This is not to say that individuals cannot hold multiple connections to various societies, rather that it is difficult to see

³³ The term 'societal liberalism' appeared in an article as a response to LoP (Beitz 2000).

them as being fully morally or ethically equal. I assert the exemption of a (theoretical) situation where there is some kind of overarching world government.

However, I have to side with Rawls who follows Kant's lead (1795) - and numerous other writers³⁴- that the idea of a "world government" is far-fetched; and if implemented would likely lead to a situation where "a unified political regime with the legal political powers normally exercised by central governments – would either be a global despotism or else rule over a fragile empire torn by frequent civil strife as various regions and 'peoples' tried to gain their political freedom and autonomy" (Rawls 1999: 36). These are essential points that cosmopolitans fail to address adequately. I will maintain that there is a fallacy in the lack of addressing it or coming up with an adequate alternative. The burden of proof should primarily rest upon those who advocate in favour of a new world system that largely ignores the basic realities of the current system.³⁵

Even if the above argument stands on its own, it is worth recalling the previous discussion. Notably the objections, or rather reasons why we have special duties and obligations to our domestic society as put forward by Goodin (1988). Even if his article does not (explicitly) deal with the cosmopolitan debate, he goes to show why we have a special relation to "our own", and that these are not exclusively positive reasons; a point which is often forgotten in the debate. The possibility that a society have to impose "negative" duties, or sanctions, on its own members, which they cannot do to "foreigners" - like certain forms of taxation, expropriation of property and ultimately conscription to name a few examples, goes to show that there are special bonds that cannot easily be overlooked (Goodin 1988). As long as we agree that there is a special bond between the individual, and the primary society, to which it belongs is special, then how can it be that it is not different and in some ways not morally superior to that of the international stage? If duties and obligations are superior, also in a negative sense, shouldn't members of a society justly demand that they also have a special role in receiving the benefits of investing in their society, and is that not part of the social contract?

The aspect of toleration and redistribution

Another aspect that has been a cause of great debate, is the aspect of toleration of non-liberal societies in LoP. The argument is embedded in a large part of liberal thought, and often referred to

³⁴ Hume (1752) *On balance of Power* and Hinsley (1963) *Power and Pursuit of Peace* to mention a couple.

³⁵ In fairness Beitz, Pogge and other cosmopolitans do not explicitly favour a "world government", although their arguments sometimes allude to it. Their exact position on the subject remains open to debate, which in itself is problematic.

by the most prominent cosmopolitans like Beitz (2000). Pogge (2006), even goes so far as to say that Rawls' theory in the case of the domestic liberal societies renders all power to, and puts the emphasis, on the individual. On the international stage then, the emphasis has shifted from the individual to the 'people' (2006: 222). Tan, and others often stress (with reference to the more general principal theoretical works of for instance Dworkin (1985)) why the individual must be the unit of analysis for liberalism.

The aspect is closely entwined with the question of which perspective offers the individual the most freedom – the (purely)individualistic, or the collectivist approach. The primary argument that must be countered is that liberalism always has to start and end with the individual. I will follow Jenkins (2010) in arguing that it is possible to offer an individualist defence of LoP's approach to toleration, and hence the debate between cosmopolitans and 'political liberals' should be reframed to a debate of what best serves liberalism, and individuals at large on the international arena. According to Jenkins (2010) the central question that should be debated is not "whether peoples or persons should have moral primacy in a theory of international justice, but instead concerns the influence of liberal ideals on principles of international justice given global pluralism" (Jenkins 2010: 112).

In other words, the effects of tolerance must be given primacy over a hypothetical idea of primacy to a utopian point of advocating unilateral adherence to liberal thought. A strict criterion that requires everyone to be liberal, is in itself illiberal. Those who argue in favour of a strictly individualistic and liberal framework end up defending the individuals within those very same societies, while ignoring individuals in other societies who might choose a different path than the liberal one, yet as I claim still should be considered as decent if they uphold the standards of a 'reasonably just society'. This is in keeping with the principle of tolerance and self-determination.

To rephrase, both Rawls, and my theory, which goes even further when it comes to inclusion and acceptance, manages two points that cosmopolitan liberalism does not. First, on the international level, it offers the same protection of individuals for 'decent peoples' as well as refugees.³⁶ Second, it recognizes that 'decent peoples', in addition to refugees (who in the case of inclusion might be either liberal or decent), share the same governing principles of international relations³⁷. Thus, my theory includes a significant number of individuals that cosmopolitan theorists simply largely disregard! A final point is that my approach, unlike LoP, also includes an individualistic point, in

³⁶ The actual inclusion of refugees will be an ongoing and gradual process (ref chapter 3).

³⁷ With the exception of the inclusion of refugees, this argument is indebted to Jenkins (2010).

arguing for keeping an institute of asylum. Hence, separating the individualistic reasons for consideration as a refugee from the societal one. Taken together this reframes the debate of what advances liberalism and includes persons - in the case of 'decent peoples', on a collective level, and specific individuals through the asylum institute on the individual level. In a world where pluralism amongst societies still exists – the wider scope of my theoretical approach defends and incorporate more individuals through its theoretical framework³⁸.

The lack of economic redistribution in LoP is, apart from the inclusion of non-liberals, the most debated and contested topic in the debate. In large part, I side with Rawls in his argument that these obligations should not be stretched to a point where the primary connection to your own society is endangered – not only because it would likely upset both the individuals within the domestic social contract, but also the wider legitimacy of relations between societies. This is both due to the fact that the world is likely to consist of various types of societies, and the 'original position' can only be used domestically in liberal societies. Secondly, there is also an element of fairness involved in maintaining a special bond and responsibility towards the primary society, as so far as the social contract between the members here, must take primacy over other possible social contracts and obligations. This is not the same as saying there should not be a higher degree of responsibility to act than what we have historically observed. Even within any limitations of the framework, there is room to argue that the obligations towards "others" goes further than Rawls. The theoretical addition of including refugees as 'people'(s) will inevitably also address some of these issues, and will increase the economic, social, and moral responsibilities of societies. It is important to stress that the increased costs, also the economical ones, that will appear through my framework, will happen under a 'veil of ignorance' that would leave them acceptable, and fair, to all members.

It is also worth recalling that while the theory stipulates no redistribution amongst well-ordered societies, that does not mean that there is no responsibility towards other societies. Even though I have argued that certain of these responsibilities should be extended – I maintain that keeping the responsibilities on a manageable level, is important, not only from a practical policy implication standpoint (which we'll get to in chapter 5) but also from a normative aspect, and a conception of

³⁸ My theoretical approach builds largely on Rawls, but as I have emphasized before I am not bound by all factors. It is worth nothing that in discussing immigration, Rawls recognizes the theoretical and practical problem of not having a right to immigrate, while having the right to emigrate in LoP. However, it is important to recognize that my approach differs from Rawls in that it brings refugees into the sphere of international society; both on the collective level of 'peoples', through separating the humanitarian sphere from the refugee question, and at the same committing to maintaining the asylum institute on an individual level.

justice, which Pettit (2006) summarizes as: ““The idea, roughly, is to articulate the requirements of justice as “basic fairness among peoples” (LoP: 115), not justice among the individuals who constitute different peoples”” (2006: 40). This raises the question whether Rawls takes the individual seriously in LoP, since he effectively lowers the bar compared to his domestic (liberal) approach outlined in ToJ, and the criticism of utilitarian thought. Notably, there would be some merit to such criticism as some compromises on the *individual* are necessary for the theory to work on an international stage that also includes decent, and not only liberal peoples. But to argue that this makes the theory subject to the same critique as the one he himself affords utilitarianism, would be to miss the point that there are still demands on how societies should treat the individual. Bearing in mind the emphasis on basic human rights, and the requirement of a ‘consultation hierarchy’. Rawls himself, argues precisely this, that sometimes one has to settle for the *reasonable just*, and not the *perfectly just* (Rawls 1999: 78-80)³⁹. It is this ‘elastic way’ of treating liberalism I build upon in my own approach. This should not be confused with utilitarianism, as there are limitations to the pragmatism in my theoretical approach. The need for liberal pragmatism comes as a result of different liberal values colliding in what I initially called the ‘clash of liberalisms’, or liberal values, where the liberal value of *tolerance* sometimes will come up against the value of *self-determination*.

4.4 Concluding remarks on the extent to which my theoretical extension is susceptible to (the same) critique?

To clarify, although I do use Rawls’ as the basis of my position, my own theory also deviates on other aspects. Some of these are a consequence of a slightly different framework, while others are differences of opinion. To a large extent my theoretical approach could be subject to some of the same objections and debate as Rawls’. However, I will argue that my holistic approach in making the theory as coherent as possible, and with a clear policy relevance, as outlined in chapter five renders my theory with qualifications that are more difficult to dismiss. I will focus mainly on the differences that occur with the case of refugees as a people(s) that would comply with consideration among the Society of Peoples. My theoretical contribution of “bridging” the theory has been elaborated heretofore (see chapter 3.2 and 4.1).

Ever since the idea of a possible inclusion started brewing years ago when I first made the connection between the opening in Rawls and refugees (Hansen 2015), the main challenge has not been to sympathize with refugees as a possible people, but also to build a theoretical framework

³⁹ See discussion in 3.4. For a general defence of LoP on an individualistic basis, see Jenkins (2010).

that is in line with the overall normative theoretical approach, and to not unnecessarily compromise on the demands required of a people. The Rawlsian conception of a people can be summarized as a unified body with a leadership that acts as the agent of its people and are domestically constrained both by a conception of justice and through formal institutional structures. These can be set up in different ways, and with different religious beliefs, and does not by necessity require acceptance of the liberal idea⁴⁰. I agree with this position as a general rule but reserve some leniency when it comes to the possible inclusion of refugees as a people (see 3.4).

The main theoretical challenge is that Rawls throughout his works builds his theory exclusively around societies that are structurally and instrumentally functional. The main gap I am expanding on is the possible inclusion of other kinds of societies which he opens up for, but theoretically otherwise ignores. Even Pettit (2006) who makes an excellent analysis of the requirements for a people, restrains his view within the settings of a structure similar to the ones known today:

Rawls's answer to this question is that the persons who constitute a people must be related to one another in the manner that leads us to say that their society is well ordered. They must subscribe as a matter of common awareness to certain ideas about how their affairs should be ordered. They must treat these ideas as common reasons that constitute the only currency in which it is ultimately legitimate to justify the way things are done in the collective organizing of their affairs. I speak here of common rather than public reasons since Rawls speaks only of the ideas that operate in liberal regimes as "public reasons" (Pettit 2006: 44).

He also argues that: "[I]t means for a government to act appropriately, according to Rawls, is that it allows itself to be domestically constrained by a public conception of justice, whether liberal or merely decent in character (LoP: 65–6)" (Pettit 2006: 43).

This raises the question – How can we even begin to defend situating refugees within such a framework? In answering this, I will have to return to the opening statement made by Rawls "...other people I do not try to describe" (Rawls 1999: 4). Already here, I will argue that there is certainly leeway for my extension albeit within the overall spirit of the framework. Note that I do not subscribe to all of Rawls' ideas or principles, certainly not without modification. Although this might appear as an easy way to avoid criticism, it is in fact on the contrary as I am establishing. Whilst admitting a large theoretical indebtedness as a basis and starting point, my theoretical extensions and modifications expands novel principles that stand out as a separate theory. I will maintain the

⁴⁰ The two main criteria with their sub-criteria are set out in LoP (1999: 64-69).

argument that my theoretical advancements are not strictly in line with all the criteria that Rawls set out, but it remains in good keeping with the spirit of Rawlsian theory.

A crucial point that I have added, and which admittedly is hard to define both theoretically and practically is the aspect of 'intent'. Nevertheless, I will make a short attempt at describing what I have in mind. It implies that formal structures in the case of refugees might be missing, must be so due to no lack of effort of intent on their part. Likewise, I have argued that there must be a leadership that the people unite behind. This will inevitably be a judgement call, as common ways of asserting this are likely to be missing. At this point the theory relies on the judgement of peers, as there cannot be an *a priori* defined definition that fits all. It should be considered based on acts, expressions of intent and the degree of actual compliance with the formal requirements set out for other members. The leeway that must be allowed to encompass and understand refugees as 'possible peoples', are obviously closer to complying in some instances than others. The first that are likely to gain acceptance would be minorities who hold a significant position both in size and a form of internal structure and leadership, though not at the same scope or strength as the established societies. What would be the most likely objections to my theoretical approach? These will naturally be hypothetical, but nevertheless a short discussion will also serve the purpose of shedding light on some of the potential for future research.

From the cosmopolitan camp one would expect that they would reject it altogether, both based on the inclusion of what might be considered non-liberals, and the fact that it is a fluctuating theory depended on the evaluation and support of peer societies. Likewise, I argue for restrictions when it comes to engaging in equality in the sense of redistribution, beyond the necessary, for developing and determining the path of their own society. In my approach a society's equality lies in the possibility of developing and determining its own development. At the same time, some aspects like the inclusion of the asylum institute might be seen as a step towards the right (individualistic) direction, but hardly deemed substantial enough to address the "real dilemmas". From other directions within IR theory it will likely be criticised for various reasons, but perhaps mainly for going too far and upsetting the world order, which I will counter. Much of the above has been mentioned earlier, but I believe the question of *order versus justice* warrants a discussion.

Order versus Justice

The question of order versus justice is one of the old classics within the tradition, and even if it is often associated with the English School⁴¹, it preoccupies a wide range of traditions and scholars. With the danger of repeating myself, some will argue that the theory is not sufficiently just, while others will be concerned with potentially uprooting the world order. The first we have already touched upon, but the second presumes that there is a world order to preserve in the first place, or at the very least that this approach will cause more disorder than the current system. It is often argued that since the end of the cold war, the world has apparently become more peaceful, more democratic, and more liberal (Grugel 2002; Abiew and Keating 2000; Kissinger 2015). In terms of intrastate wars, this might very well be true, but the rise in conflicts, and number of refugees, suggests that such a conclusion would be hasted.

Therefore, the rise in the number of refugees constitutes a puzzle for normative theory, and liberalism in particular. Part of the answer lies of course in the rise of internal and civil conflicts, which leaves us with two questions. 1) Did the change to a unipolar(or perhaps multipolar) system release inner tension that was better kept in check during the cold war and a bipolar system, and 2) How liberal is the “new world” beneath the surface. Surely, from most liberal points of view peace should be seen as something more than just the absence of war and conflict. And when we have witnessed a stark increase in internal/civil conflicts and a massive increase in the number of refugees – liberalists (and others) need to ask the question not only of why, but more importantly how to approach this also from a theoretical point of view, as well as how this affects the international system. Perhaps, there is less order than the majority of scholars have assumed, or that the “liberal peace”, or better known as the “Democratic Peace Theory” which has its roots back to Kant and Thomas Paine, before gaining some traction around the 1960s until it was really brought to the forefront by Michael Doyle (1983). The gist of the theory is that democratic states do not wage war on other democratic states. That does not mean that they will not defend themselves or be at war with states that are not democratic. Though there are empirical data that supports this, the theory in general says little about what constitutes a (liberal)democracy, and little about internal/civil conflicts. Hence, while there might be an external image of a more peaceful world, seen through the lens of wars between states, the same cannot be said for conflict, civil war and hence the rising number of refugees that follow. The image of a more peaceful world might in some respects have

⁴¹ Although it appears through a large amount of political theory and IR. The phrase, or question is usually attributed to the English School and BULL, H. (1971) *ORDER vs. JUSTICE IN INTERNATIONAL SOCIETY*

been hastened, or at least it needs more qualification. In this thesis I offer a new path towards inclusion of refugees, as well as the (important)bridging exercise needed to get to the 'veil of ignorance'. At this point it will remain imperfect, and perhaps not even the only way. However, I will claim that despite the criticism that can be raised it is a promising path.

Those who insist, when fundamental political questions are at stake, on what they take as true but others do not, seem to others simply to insist on their own beliefs when they have the political power to do so. Of course, those who do insist on their beliefs also insist that their beliefs alone are true: they impose their beliefs because, they say, their beliefs are true and not because they are their beliefs. But this is a claim that all equally could make (Rawls 1993: 61).

Conclusion

This chapter has addressed some of the expected critique of the core theoretical elements presented in chapter 3. To foresee and discuss all possible critique is not possible, but a discussion around what I consider the core elements is not only to highlight potential theoretical challenges, but also because it works as an internal test of the theory presented, and provides the reader with an opportunity to better judge my theoretical approach. The possible policy implications are the subject of the next chapter, and we will return to these and other questions there, but in justifying an approach that might upset some of the systems today, it is necessary to point out that the stability and peacefulness that has been proclaimed, and advocated after the end of the cold war and as a triumphant moment for liberalism, is exaggerated. It is about time that liberals, and others, think anew around central concepts within their theoretical framework. I have provided one possible pathway which is not immune to criticism, but at least contributes towards a new direction within liberalism in a world that would benefit from seeing liberalism and the current 'world order' through a different lens.

5 Policy implementation and consequences⁴²

"An idea starts to be interesting when you get scared of taking it to its logical conclusion." - Nassim
Nicholas Taleb.

As alluded to in the introduction, and throughout the thesis, ideas and normative theory have limited relevance if they cannot be followed through to their logical conclusion. Even if the use of hypotheticals will render a theory open for criticism in terms of its significance, the elimination of as many hypotheticals and aspects of uncertainty as possible will help minimize this aspect, and create a framework that can both inspire and inform new policy. In the following chapter I will argue that my framework has three main advantages, over those found within the liberal debates today. First, the theory makes a useful three-way distinction between the individual (by maintaining the asylum institute), the collective humanitarian (temporary refugees, or those not deemed worthy of inclusion) and long-term refugees (that needs to be addressed through policy measures and might be subject for inclusion as a people). Second, the framework creates a "theoretical bridge" to reach the hypothetical state of the 'veil of ignorance' (ref chapter 3.2 and 4.1), by removing an important hypothetical. Third, and finally, the theory offers a possible path for the inclusion of refugees as a people in a Society of Peoples, effectively giving them a voice, and a place within the international society. The chapter will start with an overview of the current debate, and how my approach can contribute to reframing the policy debate, and not just the theoretical debate within liberalism. This part also seeks to support my claim that normative theory and policy should be seen as working in symbiosis, rather than as two separate fields.

5.1 How refugees are placed in the international (policy)discourse

Refugees exist on the margins of society both within their territory (to the extent that they occupy one), and in terms of an official voice and place within the international system. To the extent that they are recognized they tend to be grouped collectively within the humanitarian sphere; as someone that should be helped (at least normatively), albeit by whom tends to be unclear (Brettell

⁴² So far, I have deliberately avoided specific examples or reference to current situations and countries or regions. This is mainly because I strive towards a general theoretical approach that is not specifically set in time or space or intended to be locked within the current discourse. This chapter will deviate slightly from this self-imposed policy and use some examples as well as refer to scholars who use specific cases in their argument. The aim is to illustrate the usefulness of the approach, rather than to bind it to a specific context. It is worth nothing that these are mere examples to illustrate how the theory could influence the discourse, and not a limitation of the theory itself.

and Hollifield 2015; Betts 2009). In other cases, refugees are seen as a potential security threat, and sometimes even potential terrorists, even if the relationship between the refugees and terrorism remain unclear (Choi and Salehyan 2013; Bove and Böhmelt 2016). Sometimes, these two views can be combined in the sense that the lack of knowledge about the individuals residing in a camp or coming from an area can be seen as both refugees, but also as potential terrorists. Arguably, from a more collective point of view this is a possibility, but at the same time it is clear that most refugees do not pose a security threat, at least in the conventional understanding of the term. In the European perspective the discussion has centred around a potential threat to the welfare systems and social stability, rather than the traditional understanding of a security threat to the state (Karner and Kopytowska 2017).

Another aspect in the discourse is the perceived difference between refugees and migrants. As Kopytowska and Grabowski (2017) argues:

On moral grounds, 'refugees' are perceived as 'deserving' and 'migrants', especially 'economic migrants', as 'not deserving' a compassionate approach. Due to competition in the labour market and scarcity of economic resources (e.g. in Central and Eastern Europe), the latter are also more likely to be considered a threat to the economic security of the state's welfare (2017: 87).

This illustrates the point made in chapter two, and why I deliberately have tried to refrain from certain 'phrases' that embody problematic connotations. This is where theory meets practice and discourse. These connotations are relevant in a policy discourse that is contingent on a specific time and place, while a theory should strive for a more timeless and universal approach to avoid confusion and remain relevant also for future policy developments. The differentiation between 'refugees' and 'migrants' is in this setting connected to a notion of compassion and at least ideally deserving of attention in the case of refugees, while immigrants are seen as individuals looking for a better life and better economic and welfare conditions. The distinction between what can be identified as calling for a humanitarian approach in the case of 'refugees', while immigrants is seen more as a security threat. Here, it is worth noticing that the security threat in Europe, and within the EU is not characterized in the classical "militaristic" understanding of security, but rather in a context of a security over the national welfare state and securing the economy of the nation state. The European security continuum is strongly linked to the social sphere of maintaining institutional and social security (van Munster 2009; Karner and Kopytowska 2017). The immediate relevance for my theory is not the current discourse itself, as it does not alter the theoretical implications. Rather, it illustrates the need of a new approach, and a new framework for policy discourse. The securitization

of the refugee discourse often takes the form as a potential threat to the economies and established welfare-systems, demonstrate the need for liberalism to change its contemporary normative approach. Not because they are not entitled to “defend” some of the peculiarities of the social contract within their own society, but because they also have a larger responsibility in addressing the challenges beyond their own society, and imbedded in this is also the fact that addressing this responsibility is also the best defence for maintain the internal social contract. This is where my theory provides a starting point for altering the discourse, while at the same time maintaining, and defending, that there exists a peculiar bond within the domestic society that takes privilege.

The securitization of migration and refugees, and separation between ‘us and them’, is by no means only a European phenomenon. We also see examples of the same line of thought in various countries and continents whether it be the construction of (or wish to build) of a wall on the border between the U.S. and Mexico, the rise of xenophobia towards migrants from other African countries seeking work in South Africa or the strong border control in Australia, to name a few examples. While the world has witnessed an increased ease of mobility due to modern travel, this situation is coupled with growing socio-economic differences. The strength of some (better of) nation states and the depth of their internal social contract in the form of welfare, services, opportunities has led to a growing tension between citizens and newcomers, and a securitization of both migration in general and refugees in particular (Collier and Betts 2017; Castles et al. 2014).

The increasing restrictions on immigration coupled with the securitization described above, and the increase (mainly) in civil and domestic conflicts in the post-cold war era, have both led to record high numbers of refugees. However, at the same time, the discourse has narrowed such that migration and refugees tend to be framed either in a humanitarian discourse, or as a possible threat to security and stability. We therefore enter a time where the world in one sense is more “global”, at the same time, many “liberal” states are also imposing greater restrictions upon refugees and migrants. As I alluded to earlier, these processes are putting severe pressure upon the contemporary international legal framework governing refugees, and thus also pose major dilemma for liberalism in theory and practice: how far can or should one go in restricting movement, and to what extent can one defend double standards when it comes to restrictions on travel and migration?

The case of selective policies, and securitization, of migration tends to work in favour of rich “western countries”. Furthermore, this begs the question of where to draw the line not only with regard to movement, but also in terms of economic redistribution and fairness. I have argued - that,

normatively, the line should be drawn at the opportunity of self-determination, and not at radical change in terms of borders or economic redistribution. This is based both on the need for a certain 'order', and the notion of justice in the sense that societies have internal arrangements that are built up over time that also include both social benefits and duties, as well as possible internal sanctions, within this contract. This is what defends keeping certain aspects *particular* to the society in question. Some might argue that we need radical change in international politics and that maintaining a right of exclusion limits the possibility of real progress. The argument has been countered earlier on, but it is also pertinent to ask what would *effectively* be most "revolutionary" – a dream that I might accept in the abstract, but which has little possible fulfilment in the real world. Or, an alternative that reframes the debate and enables a new way of thinking and ultimately opens up for giving refugees a voice in international relations. At the same time my theory gives *preference* to the liberal principle of tolerance, over an *absolute* principle of adherence solely to the idea of liberalism, which I have argued would be illiberal. In addition, my theoretical approach makes a significant contribution of separating the individual, the collective humanitarian and the collective refugee aspect – in this sense, it seeks to reframe not only how we talk about liberalism, but also the general discourse when it comes to migration, and refugees, and thus offer a way out from the securitized and humanitarian discourse. Even those that might not agree, or accept, my theoretical framework could benefit from the conceptual distinction to escape the current impasse of the refugee regime.

5.2 Reinvigoration by separation

My framework's separation between the individual (asylum), humanitarian, and long-term refugees addresses an important shortcoming in the current debate. This is partly due to a cosmopolitan idea that does not favour this kind of separation in the first place. The criticism also partly falls on Rawls approach, which does not include the individual right to seek asylum. The approach presented here separates "refugees" in three main categories mentioned above. From a policy perspective this allows us to differentiate the debate around refugees, mainly by separating the long-term cases from what ought to be the humanitarian ones. If today's policy allows for several generations to live and be brought up within a refugee camp, literally existing on the margins not only of international relations, but also of humanity, liberalism needs a different approach to these issues compared with the short term displacement of people. A major point here is to define the boundaries of humanitarianism, which is almost as important as the argument for possible inclusion of refugees. By making the criteria clear and separating the categories. Hence, I make room for new policy developments that sees people according to which group they belong to. I claim that the framework

presented here takes the debate from being two-dimensional – back to where it belongs as three-dimensional. The implications are far reaching for liberalism; both as a theory, as well as for policy. If, just for a moment we allow ourselves to stray slightly from a strictly theoretical debate, this would also help reinvigorate and connect the theoretical side of liberalism, with the political policy side of liberalism.

The right to seek asylum

Unlike both Rawls and cosmopolitans, within the framework presented here, the asylum institute is imperative. Indeed, Rawls (1999) opposes keeping the asylum institute in international relations, which he has been criticized for (Jenkins 2010), meanwhile cosmopolitans rarely discuss it, because in their world it is not needed. In contrast, my theory is built around a conservative liberal approach that also takes into account that the world is likely to remain imperfect, with various kinds of societies. Therefore, maintaining the institute of asylum, in my theory, is crucial. If an individual is persecuted and in danger because of personal beliefs, religion, sexual orientation etc we need to deal with this in a different way than simply saying this is a “refugee”. It should be treated as an *individual* case worthy of consideration. Although the theory stresses sovereignty of each society to a larger degree than most liberal theories, this does not imply that in addition to treating such cases individually, there is also reason to apply diplomatic and political pressure, and hence intervene in such a way. Here, there is both an alternative (trying to avoid the need for asylum), and a general push towards acceptable policies that will eliminate the need to use the asylum institute in the future. Exactly how far this pressure should go will inevitably need to be decided on a case to case basis, but the main point is to safeguard the important liberal institution of *asylum*, and although the theory puts emphasis on tolerance of non-liberal values, this does not equate to a tolerance of behaviour that violates fundamental individual rights. The right to seek asylum must also be followed by an equal moral obligation to consider such an application by other societies.

Arguably, some will raise the question of how far this responsibility goes, and why liberalism should accept decent, but non-liberal societies in the first place. In terms of policy, and reality, we should acknowledge that perceptions and ideas change continuously within liberalism. This is one of the main reasons why one should always favour pluralism over current and fixed main-stream ideas. Historically speaking the idea of universal suffrage is relatively new within liberalism, at least how we know it today. It has been a gradual development and extension based on various criteria, but mainly: sex, occupation, and wealth/property (or a certain class). Similarly, homosexuality remains

far from universally accepted among liberal countries. One could argue that it still is not fully accepted even among the most progressive. Therefore, the question arises should we condemn a society that does not live up to the “latest standards” of liberalism? This pattern of uneven normative change has been a constant throughout international society’s existence: through the development of the UN Human Rights from the beginning and its subsequent additional protocols, to laws in various societies. Even today one finds that what one might take for granted is historically speaking a “brand new” invention in terms of formalized laws within “liberal” societies. Therefore, the emphasis should be on advocating policy change, and treating individual cases in terms of asylum when needed. To disregard both the historical aspect and pretend we live in a perfect world, either from a cosmopolitan viewpoint, or a Rawlsian would be a mistake. As much as the world needs pluralism, and tolerance (within limits), there is no contradiction between that, and at the same time advocating for policy change.

A note on restraining humanitarianism within liberalism

By separating the ‘humanitarian collective’ ground from that of individual cases of asylum and the collective of peoples worthy of consideration for inclusion amongst the Society of Peoples, the theory makes an important distinction that has relevance beyond that of inclusion in the sense that it also clarifies the boundaries of humanitarianism. A category that over time has come to incorporate more and more refugees and migrants have to a large extent all been merged into this category, muddying the term to the point that almost everything is considered as *humanitarian*. This, effectively, reduces individuals and people to objects worthy of compassion, but not to individuals and peoples worthy of their own voice, opinion and place in domestic or international politics (Haddad 2008; Gündoğdu 2015; Brettell and Hollifield 2015; Castles et al. 2014).

The idea here is to separate between those that are exposed to a sudden, but limited displacement or hardship, from other forms of refugees - and thus effectively define an important limitation on the scope of ‘humanitarianism’. This could take the form of natural disasters such as drought, flood and fires or other causes that can be solved locally within a reasonable time-period, but which might require some assistance. However, they do not qualify as what we can call “permanent refugees” and should be able to return to their society of origin. The exact line between what is temporary and what is permanent will vary in practice, and as such the theory does not offer a set definition. Rather we should keep in mind that this will be decided under the ‘veil of ignorance’, securing a fair outcome. Even if we here discuss the idea of a hypothetical state, the mindset can help inform liberal thought of what fairness is, as well as the borders of humanitarianism – and in this case, it is

often the point to reduce the scope of humanitarianism, not out of lack of compassion, but because mere compassion is not enough – and it is in these cases that the framework can help separate thoughts, and cases, as to how the international society should deal with these challenges. The second criteria would be to ascertain if they constitute a ‘people’ worthy of inclusion after the criteria discussed in chapter 3, in which case the responsibility goes way beyond that of ‘humanitarianism’. As such, the theory limits the scope of ‘humanitarianism’ leaving it to the short-term instances discussed above, and for those that do not satisfy the criteria for inclusion amongst the Society of Peoples. The limitation of humanitarianism both narrows the category, and thus make it easier to address with the correct policy measures, but it also lays the foundation for a different approach

Policy measures and the ultimate case of inclusion

The theory also allows for a wider range of measures than the ultimate one of inclusion (which they would also have to qualify for). Although, the main idea here has been to develop a theoretical framework that would open-up the possibility of inclusion, it does not mean that would be the only result. Another benefit from the approach, and the separation between the different categories, is that it clarifies a rather muddy policy area. The clarification coupled with a decision-making process under a ‘veil of ignorance’ would likely also lead to more policy pressure and interference. These could take the form of sanctions, embargos, and various forms of political pressure. This theoretical approach would also enable us to permit more agreements when it comes to foreign policy questions amongst the members of the Society of Peoples. It must be emphasised again, that under this ‘thick veil’ the participants will not know their relative strength and their position in the world beyond the fact that they know that they belong to, and represent, either a decent or liberal people. As such, we can also eliminate, at least theoretically, the gridlocks that often appear in today’s international politics with major powers looking out for their particular interests, and of course the case of veto power that exists within some of today’s organizations. This is a point that has not been stressed earlier in the thesis, as the emphasis has been on laying the theoretical foundation for a possible inclusion, but I see no reason why the same mechanism cannot, and should not, be used to agree and coordinate important foreign policy issues. Of course this opens up a whole new range of possibilities and questions, that we’ll return to briefly in 5.4, but for now it will suffice to say that theoretically this is doable, although it would not, at least in the short term, replace existing

institutions, but rather work as a unifying tool for common policy development amongst decent and liberal societies⁴³.

However, the main point here is that not all will be included as 'peoples', but that the theory also opens up for other measures. Inclusion of a 'people' would be the ultimate tool, and only for those deemed worthy of inclusion based on the criteria discussed in chapter 3. The number of new 'peoples' are likely to be limited as the criteria for a unified voice, and to some extent an internal structure will be quite hard to pass. Nevertheless, I would maintain that some are likely to perform sufficiently well on the criteria, and the display of intent, to be included. Furthermore, this will alter the internal dynamic of the Society of Peoples, and this is perhaps the most crucial point. As soon as inclusion is made possible and the first enter then both the acceptance of a new 'people' it will alter how the Society of Peoples works. This will pose some questions regarding 'sovereignty', which are not insolvable (in fact the number of independent states has grown considerably over a relative short time frame)⁴⁴. More importantly, as soon as a new 'people' enters, it will also both consciously, and sub-consciously, change the mindset of all representatives from various 'peoples'. This is the great advantage of a 'thick veil' as opposed to a 'thin' version.

5.3 A bridge that shortens the distance towards policy development

There are two reasons that justify constructing a theoretical bridge to reach the hypothetical (see 3.2 and 4.1). The first is that it makes the theory more complete as it fills a gap, or a hole, in the logical reasoning – which in itself constitute an important reason. The second reason for not skipping this part in order to reach the hypothetical is connected, but the justification is different; a theory that is inconsistent, or one that has gaps and holes in it, is less likely to be considered as a useful tool by policymakers, think-tanks, and decisionmakers. The further a theory ventures into the abstract the less relevant it becomes as the implications of the results will appear far-fetched and 'strange'. The 'bridge' of course only solves a part of this problem, but by eliminating an unknown, or

⁴³ It cannot replace other international organisations as long as there are societies (states), that do not qualify as decent or liberal, and hence worthy of a place amongst the Society of Peoples.

⁴⁴ If a group of refugees are considered as a 'people' worthy of inclusion, it would in today's reality imply the creation/acceptance of a new state. This will have implications for the dominant international legal framework of sovereignty. Nevertheless, it is not impossible, and should not restrain the theoretical approach. As a side note it is worth keeping in mind that the number of recognized (member)states of the UN has steadily increased. Part of this development is tied with the end of colonization and the subsequent independence, but if we look at the period after the cold war the number of member-states has grown from 159 in 1990 to 193 today. The latest being the inclusion of South-Sudan in 2011 which also goes to show that the traditional borders are not always written in stone ([UN Member-States]).

hypothetical, from the theory it makes it more accessible and relatable. Sometimes, hypotheticals are useful to illustrate a point, or what could, and perhaps should have been in a particular normative setting. However, the use of more than one is likely to cast doubt over the whole theory and its possible relevance, both on a theoretical level, and even more so to its relevance for the real world.

The counter argument could be made that creating an extra step to enter the hypothetical state, both complicates the theory, makes it less accessible and draws attention away from the main point which will always be the outcome of the decisions made under the 'veil of ignorance'. I will emphasise that this is a major misperception, and argue that one of the reasons why these normative theories lack significant break-through outside of academic circles might just be the lack of a coherent theory that follows through on the underlying premises all the way. The fact that this part is generally ignored both by those who employ them, and their critics, suggest a fear of entering this terrain. Instead, liberalists, critics, and political theory in general should be more sceptical towards inconsistency gaps – as that is a major thing that can complicate and devalue any theoretical approach.

5.4 Overall policy influence

The actual overall policy influence of a new theory will inevitably be a matter of some speculation. However, I will maintain that the three main contributing elements of 'separation', 'bridging' and 'inclusion' essentially brings a new theory to the table. The new elements described above would not only make it possible for refugees, under certain circumstances, to be included, it would also reinvigorate, and reform, the way we think about refugees and migration. Furthermore, the theory would also entail possibilities to reach common stands on important foreign policy issues, and how to approach these on a normatively basis. Little attention has been placed on the more general (possible) implications for foreign policy during these deliberations, as the main objective obviously has been to develop, and establish, a path that not only could lead to the inclusion of refugees, but also change the discourse. By changing the discourse, and by making it possible to join, we will not only likely experience the 'snowball effect'. With the altering of how the 'veil' would operate, it is also likely that the possibility of being accepted would serve as an incentive to strive for acceptance and inclusion for groups (or potential 'peoples') of refugees that does not currently meet the criteria, either to be considered as a people, or that they lack the criteria for being considered as decent or liberal. In other words, the theory approaches the challenge from both ends, and permits the possibility of a voice for those refugees deemed worthy. Worth noting is also that the separation

clarifies a general debate about the limitations of humanitarianism. The illiberal aspect of stretching the scope of humanitarianism, although it has gained some traction especially within critical theory, is something liberal theorists and policymakers should pay more attention to.

Regarding using the theory on other issues, I largely agree with Rawls that we can expect outcomes from these deliberations to represent a fair perspective, based on reasonable deliberations between reasonable and fair People. Nevertheless, the creation of a Society of Peoples would create a new block, even if the Society of Peoples should work mainly through a more principle and normative matter, it is likely to cause a return to a sort of normative bipolar system⁴⁵. Although this is primarily in the theoretical ideal world, it would also spill over into policymaking in the real world. It would create a separation between 'us' and 'them'. In this instance there is no competition, or rivalry. The similarity here is more one of affiliation, than dangerously competing ideologies. This is also why it is imperative that the principle of tolerance is upheld, and to avoid a strict adherence to the ever-changing bar of liberalist values as the only possible criteria for inclusion. Another key difference is that the policy coordination that would entail is intended first and foremost as a tool for interaction between the members of the Society of Peoples. This does not imply that questions of relations to non-members would not come up. Rather, this is of a secondary nature as long as they don't aspire to become members, or otherwise are in need of assistance to be able to reach a level where they are free to choose the path of their own development. The point of limiting interference with other societies, and limiting the economic redistribution, will be criticized by those who favour a radical redistribution. I will largely side with Rawls here, arguing that a sudden massive redistribution would be difficult to justify both liberally because the primary society holds a special bond, a social contract, that cannot just be extended without at the same time being broken. Does that mean we currently live in a just world, or that everyone has a sufficient starting point enabling them to choose their own direction of development? The answer is obviously no to both. However, critics of Rawls, and even more so, the expected critique I will face – miss two important aspects: 1) The point of redistribution in the sense that there is a duty to assist other peoples to a level where they can determine their own path. The aspect of self-determination – that a society should choose its own path, does not imply that others cannot seek to influence, and change it, through diplomacy and foreign policy measures. The extended use of foreign policy pressure and even sanctions coupled with a limitation on the scope of humanitarianism goes some way in addressing these issues. 2) The other aspect relates to trade, tariffs, investments, and economic policy in general. Unlike today's

⁴⁵ There is a possibility that the Society of Peoples would become so dominant that we can talk of a domination and a unipolar system. In the short term however, this appears less likely.

system of international trade, one can also assume that this would come up for debate within the Society of Peoples. It is imperative to keep in mind that these societies are not necessarily rich. The Society of Peoples is not a society of the wealthy, but a society of liberal and decent peoples.

A related aspect here is that a society's status as *decent* or *liberal* (or any other category for that matter) is not static. It should be emphasized that the theory assumes mobility both upwards, but theoretically also downwards, in how societies are categorised. Here, there is both an incentive, if policies are applied properly, to advance, not necessarily to liberalism, but to a decent society, and thereby becoming members of the Society of Peoples, but it is also possible that societies might lose their place⁴⁶. To illustrate this, one could imagine that the German society would fulfil the requirement between the world wars, and then subsequently lose it sometime in the 1930s, and then regaining it after WW II. The importance of maintaining mobility within a theoretical framework can hardly be stressed enough.

The other point here is that one can also imagine that the 'veil' can be used to determine common stands on trade policies etc with other societies, and although they are not obligated in the same way towards others, there are two reasons why this would still have an effect. The first is the general benefit of lowering trade barriers on a general level if the long-term goal is to include more societies. The second point is that since the common stance will be developed under a 'thick veil', the positions and policies that are agreed upon will be decided without specific knowledge of the separate actors' interest. The biases that otherwise appear because "stronger societies" have specific interests, will to a large degree disappear. As such, we can envisage that there will be an element of redistribution in the form of fairer terms of trade.

The Society of Peoples would work alongside other international structures that at least in the foreseeable future will operate in a similar way as today. The Society of Peoples would not take over but become an additional tool. I also envisage it as a tool that influences how the members initiate and negotiate policy in other organisations and arenas. As such, I predict an indirect influence here – how strong it will be is likely to be dependent on the topic and the extent of an issue's importance for the members of the Society of Peoples. The question is if individual societies will feel obligated to

⁴⁶ For a discussion on incentives see: Towns A.E. (2012) *Norms and social hierarchies: understanding international policy diffusion "from below"*. and Towns A.E. and Rumelili B. (2017) *Taking the pressure: Unpacking the relation between norms, social hierarchies, and social pressures on states*.

stick to the agreements when venturing “outside of the ‘veil’” and into other arenas where full knowledge is present. This is difficult to answer with certainty, but I argue that there would likely be considerable social pressure to stick with agreements made within the Society of Peoples, even if these decisions are not always in the best interest of the individual societies. Here, we would likely see that commitments reached under a ‘veil’ would come up against domestic concerns that become apparent outside of the ‘veil’. Although, I argue that there will be incentives to stick to previous stands or policy agreements, these could come under such strong domestic pressure that some societies might stray in certain cases. Nevertheless, I predict that the pressure would have a disciplinary, but far from perfect, effect on the members also in other fora. Here, the scope of a Society of Peoples will need to be discussed further, and to what extent this would influence the Society of Peoples. The extent to which the Society of Peoples should be a more general foreign policy tool, also warrants a more detailed analysis than what is possible at this stage – However, to initiate a discourse that also entails a (hypothetical) normative arena provides a new dimension for the development of norms and policy, when it interacts and informs actual policy development. In this sense, these kinds of theories act as a modern version of the ‘Socratic dialogue’.

Part of this we can already see through regional cooperation in various parts of the world, but as I have advocated the *spirit* of the discourse also needs to change. This is where the ‘veil’ and the Society of Peoples come in as a guiding tool. In short it should be three dimensional in two senses; first it should be reinvigorated by separating refugees into three main categories (see 5.2), but it should also be a discourse that takes advantage of the ‘veil of ignorance’ and thus the domestic and the international (under the ‘veil of ignorance’), and the international in large between all societies as the hypothetical state of the ‘veil’ would coexist and inform international policy also beyond the ‘veil’.

Conclusion

This chapter takes the theory from the ideal world to the real world, while at the same time referring to the ideal world, and a hypothetical state. To prevent any confusion on this point, I do not argue that the hypothetical state outlined in this thesis will actually (physically) take place. Rather, when I discuss them side by side, as I have done in this chapter, it is an argument for how I see normative theory influencing thoughts and behaviour of societies, or states, both in their own right, and how they should act in cooperation with others through international organisations. By clarifying what *ought to be* from a liberal standpoint, but also from a decent standpoint, which I have argued in

terms of international interaction would be equal at least in the fundamental instances, the theory creates a framework for interaction where a hypothetical can serve as a guide for actions taken by societies, and at the same time renew the idea of liberalism.

The principle of toleration that has been stressed throughout this thesis - specifically the acceptance of non-liberal societies -, also plays a crucial role in the implementation of policy. If we leave the hypothetical in the background and consider the theory as a tool to inform behaviour and policy, this also has implications for how liberal societies look at themselves, but even more so that the theory states that the inclusion should stretch beyond that of liberalism. Hence, when cooperating, or seeking cooperation, the theory calls for an acceptance for other ways of organising a society as long as it can be considered *decent*. What this implies is that the theory guides us towards inclusion of others, but not of everything, or anyone. As such, from a liberal perspective, policy would become more inclusive and less exclusive and arrogant towards other opinions, or way of life. This is not only a liberal value in itself, but also an approach that has more potential, both because the current 'standards' of liberalism are continuously changing, but also because by involving more, within reason, the impact factor of liberal ideas is likely to increase, as well as the internal symbiosis in developing the future of liberalism. An important aspect here is that liberal arguments on specific policy areas (outside of the scope of the 'veil') can still be advocated independent of who is included hypothetically, as well as in the real world.

The main focus of this chapter has been on the status of refugees and their position in the international system. However, a final note is warranted that the theory is not intended as a tool to effectively treat all refugees equally, or to include all refugees. It is worth emphasising the difference between opening up for a change both in the discourse, and the possibility of altering refugee policy, here understood as groups of individuals that have certain features in common and can be viewed and accepted as an individual people. In sum the implications of the theoretical approach outlined in chapter 3 and the critique in chapter 4, coupled with the discussion of possible policy implications provide ample evidence to claim that a reinvigorated "conservative" liberal approach would be more likely to resonate with both the public as well as policy-makers, and effectively ending up as both more reasonable, approachable, and therefore prove potentially more revolutionary than radical (cosmopolitan)liberalism.

6 Conclusion

“For to be free is not merely to cast off one’s chains, but to live in a way that respects and enhances the freedom of others” – Nelson Mandela

The rising number of refugees, and (civil) conflicts, especially after the end of the cold war and the apparent triumph of liberalism poses a challenge to liberalism both as a theory and as a policy agenda. This thesis contended that Liberalism in theory and practice has hitherto failed to meet the challenge and currently lacks the intellectual resources to do so. Yet, this presents a paradox of sorts: How can it be that liberalism, which has triumphed over other ideologies (at least on the international institutional level), fails to adequately adapt and address the growing issue of refugees? This paradox has been the starting point for this thesis. I then laid out how the problem can be addressed by developing what I have called a “conservative” liberal approach; one that I contend can better inform policymaking by bringing normative liberal theory within touching distance of policy practice.

In so doing, the thesis makes three important contributions to normative liberalism: First, it sketches a theoretical bridge in order to reach the hypothetical state of the ‘veil of ignorance’. This is important as it removes a previous unknown amongst scholars using different versions of the ‘veil’. The devil’s advocate might argue this is a distraction from the real purpose of the theory – to unmask the result of the hypothetical. I have countered, and argued that to shy away from theoretical gaps, might appear convenient, but is counterproductive and risks devaluing the theoretical achievements and thereby their credibility and relevance both of the theory, and its relevance for policy development. Hence, I argue that providing this path, as I do in my theoretical approach is a strength, not a weakness.

Secondly, at the core of my thesis is the theoretical contribution which makes it possible for refugees that satisfy certain criteria to be considered worthy of inclusion as a ‘people’ – one with their own voice and place - amongst the Society of Peoples. This has a multitude of implications: theoretically it would likely alter the dynamics of the Society of Peoples, but more crucial is the change in discourse from mere compassion and humanitarianism – to one of bringing refugees back from the side-line of international relations where they have been placed for far too long.

The crucial conceptual move that underpins my approach's theoretical and practical contribution is what I call "*reinvigoration by separation*". I have made a distinction between: (1) treating refugees on an individual level through the asylum institute, (2) the short term collective (in need of humanitarian assistance), and (3) the long-term collective (refugees who cannot be expected to be able to return, or live, within their society of origin without unacceptable danger or duress). My re-categorization embodies a practical logic that proves useful and thus resonates with the international society. Moreover, it enables logical conclusions to be drawn based on the theoretical approach described. This demonstrates the policy relevance, even for those that are not normally inclined to study theoretical approaches. Indeed, by providing an explicit analysis of concrete policy outcomes, this thesis has also sought to make it easier to convey the importance and the meaningfulness of normative theory

Finally, all normative approaches have a value, even if they deal in the abstract and the hypothetical to a degree where they become utopian. Utopias serve a useful purpose even if they are unreachable: we need something to strive towards: we need normative ends.

The problem, as I have demonstrated within liberalism, is not the utopian elements per se. Rather, it is that this utopian part of the genre has over-dominated the field in the period after Rawls. The distance between utopia and reality has grown to a point where the cosmopolitan dream has become so distant it may scarcely seem worthy pursuing for policymakers and citizens alike. The main challenge then becomes the growing distance between normative theory and policy. Therefore, this thesis has striven towards an approach that makes a distinction between theory and practice, while insisting upon combining the two aspects, and demonstrating how normative theory can influence policy.

During the course of the last half-decade or more, that this topic has been under my forefront and captivated my research and deliberations. In point of fact, I was taken aback that other scholars had neglected to fill the apparent lacuna within normative liberalism. There have been countless more reasons to reconsider the entire normative framework. Liberalism seems to have reached a theoretical and political impasse. The need for a new theoretical approach is clear, preferably one that can also serve as a tool for developing new policy.

Throughout the thesis I posed and addressed the question whether it was possible to address this impasse without compromising the fundamental principles of liberalism. I have proved through this thesis that it is possible. The problem with most of mainstream (cosmopolitan)liberalism today, is not the principles themselves, but how they are ranked. By rearranging the order, my theoretical contribution has demonstrated that a 'collective approach' that gives *tolerance* a more prominent place, which also can be defended from an individual point of view. Hence, my theory is not only more inclusive, it also reframes the theoretical debate by delivering a new and promising path for normative liberal theory. Staying within a 'realistic utopia', acknowledging the imperfections of the world, enables my theory to deliver something that utopian theory can never achieve.

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