A core principle of liberal political theory is that citizens are owed a justification for public policies. But are non-citizens owed a justification for policies when their human rights are at stake? In this article, I explain what type of justification is owed to non-citizens, and I propose a principle for when policies must be justified. I argue that non-citizens have a moral human right to an actual, deliberative justification. Unlike other approaches, deliberative justification enables non-citizens to participate in justification procedures, it empowers them to contest public policies, and it is held in independent institutions. Since a concern about non-citizen justification is that there is no compelling standard for when policies must be justified, I propose a Human Rights Duty Principle. It improves upon the coercion, democratic origin, and all-affected interests principles for when justification is required.
A Human Right to Deliberative Justification

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Abstract: A core principle of liberal political theory is that citizens are owed a justification for public policies. But are non-citizens owed a justification for policies when their human rights are at stake? In this article, I explain what type of justification is owed to non-citizens, and I propose a principle for when policies must be justified. I argue that non-citizens have a moral human right to an actual, deliberative justification. Unlike other approaches, deliberative justification enables non-citizens to participate in justification procedures, it empowers them to contest public policies, and it is held in independent institutions. Since a concern about non-citizen justification is that there is no compelling standard for when policies must be justified, I propose a Human Rights Duty Principle. It improves upon the coercion, democratic origin, and all-affected interests principles for when justification is required.

Keywords: Justification, human rights, deliberative democracy, all-affected interests principle, moral agency, human rights duty principle.
A core principle of liberal political theory is that citizens are owed a justification for public policies (Macedo 1990; Kant 1996; Rawls 2005, 137). A justification is a procedure that critically examines whether the moral reasons for a policy are sufficient to make it morally permissible.\(^1\) Although political theorists have focused on citizens, an emerging literature is beginning to address whether non-citizens are owed a justification for public policies (Bohman 2007; Pettit 2010; Forst 2011). In this article, I contribute to the literature on justification by answering two important questions. First, what type of justification are non-citizens entitled to claim? Is it a hypothetical or actual justification?\(^2\) If actual justification is required with non-citizens, what form should it take and what institutions does it call for?\(^3\) Second, I seek to clarify when non-citizens are entitled to a justification.\(^4\) Is the standard when they are affected by a policy, when they are coerced, or when their human rights are at stake?

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\(^1\) I use “policies” to refer in brief to public policies, laws, and actions. Policymakers are the officials in international organizations or states with the power to change policies.

\(^2\) A hypothetical justification tests the sufficiency of moral reasons by considering if they can be “reasonably accepted,” or accepted consistent with people’s freedom and equality (Kant 1996, 296 [8:297]; Rawls 2005, xliv; Larmore 1996). Hypothetical justification might be interpreted to mean that an actual justification is unnecessary (Kolodny 2014, 205). By contrast, I suggest that people could not hypothetically accept being denied an actual justification when their human rights are at stake. My intrinsic and instrumental arguments for deliberative justification show that denying people an actual justification would violate their freedom and equality.

\(^3\) Rainer Forst has contributed influential work on the right to justification. Our projects are distinct in three ways. First, some philosophers see Forst as supporting a right to hypothetical justification, requiring that norms be general and reciprocal (Pettit 2012, 143). Others think that there is an ambiguity about whether “Forst makes actual discourse fundamental (like Habermas) or not (like Scanlon)” (Flynn 2015, 802-803). I argue for a human right to a type of actual justification. Second, we mean different things by the right to justification. He sees it as a right to participate in moral discourse regarding any moral norms, including both non-political and political norms (Forst 2011, 19). Forst makes the compelling and accurate argument that this right is needed to make Habermas’s discourse principle a categorical imperative (Forst 2015, 823). I focus on arguing for a human right to contestatory, independent, and participatory institutions of justification in public policy. Third, Forst (2011, 2) uses an all-affected interests principle, and I propose a Human Rights Duty Principle for when justification is required.

\(^4\) Recent political theorists have focused attention on “public justification” (Rawls 2005). Public justification limits the types of reasons that can be used to support policies. While I am
These questions are becoming increasingly urgent, as international organizations and states can violate the human rights of non-citizens. Consider a case involving United Nations peacekeepers in Haiti. The peacekeepers released untreated sewage into a river. The resulting cholera epidemic killed 10,000 people and sickened more than 700,000 Haitians (New York Times, 2014). Yet the people whose lives and health were at stake had no procedures of actual justification to critically examine the UN’s actions. Procedures of actual justification were missing both prospectively in the formation of the UN’s peacekeeping policy and retrospectively after the human rights to life and health had been violated. For example, the Haitians could not participate in evaluating the UN’s policy prospectively, as it was being formed, to make sure that it had safeguards against disease. Once the epidemic began, the Haitians had no access to an investigative institution, independent of the UN Secretariat, that would scrutinize the peacekeepers’ actions retrospectively and determine who was responsible. With no independent investigation, the UN Secretariat, which controls peacekeeping, denied any responsibility and took six years to apologize (Sengupta 2016). The Haitians also lacked access to procedures of justification in courts where they could challenge the UN’s policies. The UN, like other international organizations, has sovereign immunity, exempting it from both international and national courts (Ghazi 2005; Reinisch 2016). Lawyers representing the cholera victims tried to sue the United Nations, but the United States Court of Appeals for the Second Circuit ruled that the UN is legally immune as an international organization (Katz 2016).

sympathetic to public justification, its emphasis on the type of moral reasons has left unexplored whether an actual justification is required as a human right, and who is entitled to a justification.

5 I focus this article primarily on cases applying the human right to deliberative justification to international organizations, such as the World Bank and IMF. In my book manuscript, The Right to Democratic Accountability, I extend this approach from international organizations to more complex cases of justification involving foreign states. I suggest that state decisions to use force should be reviewed in independent institutions, including the kind that Allen Buchanan and Robert Keohane propose (Buchanan 2010).
Questions about justification for non-citizens arise in other international organizations that can violate human rights but lack a notion of citizenship. For example, the World Bank in 2011 financed and promoted a project in Uganda that forcibly evicted 20,000 farmers from their ancestral land. The World Bank gave the farmers’ land to a multinational company (Easterly 2013, 3-6). Should the Ugandan farmers have a human right to an actual justification to challenge the eviction policy by the World Bank and the government? By an actual justification, I mean a public procedure that morally scrutinizes policies.

In this article, I develop original arguments for a moral human right to a type of actual justification, which I call a deliberative justification. Deliberative justification has three distinctive features that distinguish it from other forms of actual justification. First, it enables people to contest public policies. It is not enough for people to be merely consulted, or given the chance to offer feedback on a policy that cannot be changed. Consultative mechanisms, which are widely used in international organizations, are insufficient. Instead, people must be able to challenge policies in a way that leads to human rights violations being prevented or stopped.

Second, deliberative justification requires the procedure be held in institutions that are independent, or not under the control of the policymakers being scrutinized. This independence requirement differs from many consultative institutions, like the World Bank’s Inspection Panel, where investigations are subject to approval by the organization they should be monitoring. The independence and contestation of deliberative justification allow it to evaluate policies with fewer moral biases compared to consultative mechanisms that are controlled by policymakers.

6 International organizations have member states, but they lack individual citizens. As Habermas defines citizenship, drawing on Kant, it would require that individuals have standing to be authors of the policies that bind them (Habermas 2001: 71, 101, 112). On my view, recognizing a human right to deliberative justification would be the first step towards international organizations treating individuals less like subjects and more as democratic citizens.
Deliberative justification empowers people to scrutinize policies at two stages: prospectively to prevent rights violations during policy-formation and retrospectively after a policy has violated human rights. Institutions for deliberative justification include, but are not limited to, independent accountability bodies, investigative bodies, and courts. These institutions enable people to protect their substantive human rights, such as their rights to life, health, and non-discrimination. I call the people who are owed deliberative justification, and whose human rights are at stake in public policies, the *rights-holders.*

The third distinctive feature of deliberative justification is that it enables rights-holders to *participate* in justification. Although some deliberative democrats believe that the policies of international organizations should be justified, they often see deliberation as taking place through state governments that represent the interests of their citizens in international organizations (Pettit 2010). Others believe that deliberation about international organizations should occur in global civil society outside of formal institutions (Habermas 2001). While these are important forms of deliberation, I add that the rights-holders themselves, including non-citizens, should have access to independent institutions for justification. The human right to deliberative justification gives people recourse when their state fails to protect them from international organizations, foreign states, or the domestic government. This failure can occur, even in

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7 I use the term “rights-holders” rather than “affected people,” because the latter is associated with the all-affected interests principle, while I propose a different, Human Rights Duty Principle.
8 Bohman 2007 has offered important work on deliberation beyond the nation-state. Our projects are original in that he supports a non-hierarchical, transnational democracy based on the republican ideal of freedom as non-domination. I develop an account of a procedural human right to deliberative justification based on the ideals of mutual respect for people’s moral agency and the protection of substantive human rights.
9 By “non-citizens,” I focus on people who are impacted by the policies of international organizations, though they lack voting rights in those organizations. The Human Rights Duty Principle explains which non-citizens have a right to deliberative justification. There are more complex cases of non-citizens regarding people who are impacted by the policies of foreign states, but for reasons of space, I address these cases in my other work. See *supra* note 5.
democratic states, as a result of discrimination or negligence (OHCHR 2014). International practice is coming to recognize that individuals need to be able to participate in institutions to protect their human rights from their own governments. However, there are no independent institutions to protect people from international organizations when their government fails to represent them. To correct this problem, I argue for a human right to deliberative justification to protect people from powerful or negligent international organizations and states.

Recognizing that deliberative justification is owed as a moral human right has significant implications. It means that international organizations and states have the duty to create institutions to protect it. They also have the duty to integrate the human right into international and national law. Recognizing a moral human right to deliberative justification has the further significance that it is owed to all human beings, including non-citizens, who can exercise it when a policy potentially violates their other human rights.

I begin by defining human rights and distinguishing deliberative justification from other views. I then propose a Human Rights Duty Principle that specifies when public policies must be deliberatively justified. This principle provides a standard that improves on the widely-used coercion, democratic origin, and all-affected interests principles. Next, I offer original intrinsic and instrumental arguments for the moral human right to deliberative justification. My intrinsic moral agency argument is that deliberative justification is required to respect people as free and equal moral agents who can make moral claims about how they ought to be treated. My instrumental moral bias argument explains how deliberative justification can robustly protect other human rights by correcting the partiality, lack of knowledge, and lack of sympathy of policymakers and the public. To robustly protect human rights and to respect people as free and equal, policymakers must answer for their decisions in deliberative justification.
DEFINING HUMAN RIGHTS

One view of human rights is that they are legal rights given by positive international law. Determining whether there is a human right to deliberative justification would involve showing that it is already present either in the text of international treaties or in jus cogens, the preeminent norms recognized by the international community. While this is a valid use of the term “human right,” I focus instead on human rights understood as moral rights. To establish that there is a moral human right, we must show that the right ought to be recognized both domestically and internationally. The claim that a good is owed as a moral human right means that there is a strong set of moral reasons for states, international organizations, and the international community to recognize a legal human right to that good (Christiano 2011, 144). These groups should create institutions and establish a legal human right to protect the moral human right. I understand the right to deliberative justification as being a moral human right.

Not all moral rights, however, qualify as human rights. I concentrate on human rights as a subset of moral rights that are owed to all human beings and that protect urgent human interests from standard threats (Beitz 2009, 11; Buchanan 2010, 5). Standard threats are predictable dangers to urgent human interests. Protecting urgent human interests makes the moral right important enough to be owed as a human right, instead of being restricted only to citizens. To establish that a human right to deliberative justification is morally required, it has to be shown that it secures an urgent human interest against a standard threat.

I argue that the human right to deliberative justification protects against the standard threat of powerful or negligent international organizations and governments violating our urgent human interest in our substantive human rights. A substantive human right is an entitlement to be provided vital goods or secured against abusive forms of treatment, such as the rights to
health, subsistence, physical integrity, and non-discrimination. A procedural human right entitles people to a set of institutions to make or review decisions. Deliberative justification is a procedural moral human right that instrumentally protects our substantive human rights. Deliberative justification protects substantive human rights by giving rights-holders access to independent institutions that critically scrutinize public policies. I want to emphasize, however, that procedures of justification can also have intrinsic value in meeting our urgent human interest in being respected as equal moral persons. I develop both intrinsic and instrumental arguments for the moral human right to deliberative justification.

Deliberative justification has two relations with existing procedural human rights. First, deliberative justification is a more fundamental human right that can form the basis of other procedural human rights. For example, one of the reasons why people have a procedural human right to fair trial is that they are entitled to a deliberative justification of their potential imprisonment. A fair trial should have the characteristic features of deliberative justification. It should enable defendants to challenge the reasons for their imprisonment, and they must be able to participate in the justification procedure. A fair trial should also take place in an independent institution, such as a court that is not controlled by the police. Similarly, one reason why people have a procedural human right to a judicial remedy is that they are entitled to a deliberative justification that scrutinizes abuses by state authorities. While the human right to a fair trial applies when people are charged with a crime, the human right to a judicial remedy applies when people are the victims of crimes by the state. People should have recourse to the justification procedure of a court to challenge state abuses.

The second relation with existing procedural human rights is that deliberative justification can go beyond them in having additional requirements. Currently recognized rights
do not fully realize the human right to deliberative justification, because they do not go far enough to justify public policies. For example, the human right to a judicial remedy “by the competent national tribunals” corrects the abuse of citizens by their own government (UNGA 1948, article 8). However, a major defect of the present system of human rights is that it does not extend to international organizations. Philip Alston, the UN Special Rapporteur on extreme poverty and human rights, notes that “for most purposes, the World Bank is currently a human rights-free zone” (Alston 2015, 2). To address this problem, the human right to deliberative justification requires justificatory procedures not only for citizens, but also for non-citizens who are subject to international organizations and foreign governments.

It is important to emphasize that deliberative justification calls for more than courts and the human right to a judicial remedy. Courts are largely retrospective, correcting past policies that have violated human rights. In addition to courts, the human right to deliberative justification also requires prospective safeguards during policy-formation to prevent rights violations from occurring. For example, this can involve independent accountability bodies that deliberate with the people whose human rights are at stake. These bodies would determine whether human rights violations will occur and they would seek to prevent those violations. The broader human right to deliberative justification also requires investigative bodies where rights-holders and others can report abuses, triggering an investigation to examine whether rights violations have taken place, who is responsible, and how policies should be changed to protect rights. Courts rely on investigative bodies to find the facts they need to reach decisions.10

10 I thank one of my reviewers for helpfully asking about the grounding relation between deliberative justification and democracy. I view deliberative justification as a more fundamental right that is the basis of other procedural rights, including democracy. Democracy is a form of deliberative justification applied to the formation of the laws and the selection of representatives. Deliberative justification requires that democratic elections meet the requirements of being
Institutions for deliberative justification must be independent, meaning that they can conduct investigations, accountability hearings, judicial proceedings, and other forms of deliberative justification without the interference of the international organization or government being scrutinized. One way to increase independence is to ensure that the justificatory institutions are not subject to the approval of an international organization. Another way to increase independence is to prevent an international organization from hiring or firing investigators, judges, or officials in justificatory institutions. As Alexander Hamilton writes in Federalist No. 68, officials are more independent of an organization if they do not depend on it for their “continuance in office” (Hamilton, Madison, Jay 2003, 332). Justificatory institutions are also more independent if they are not funded by the organization they scrutinize.

One of the distinctive features of deliberative justification is that it gives rights-holders recourse to independent institutions that critically examine the policies of international organizations. It might be asked why it is not enough to allow people to sue their state in a domestic court? The thought is that if a state does not represent the interests of its people in an international organization, the state can be sued in a domestic court. The first response is that states and domestic courts can fail to protect people due to discrimination or corruption. This is more likely with the type of client states that borrow money from international organizations. These client states tend to have less developed rule of law systems and domestic courts. There is contestatory (allowing opposition parties, dissent, and protest), independent (the elections are not rigged by the government they are holding accountable), and participatory (people are not improperly excluded from voting). I discuss independent accountability bodies, investigative bodies, and courts because my focus is on international organizations. The conditions do not yet exist to hold elections for a world government, as there is currently no global demos. However, deliberative justification can contribute to the formation of a global demos, which is needed for further democratization. In my book manuscript, The Right to Democratic Accountability, I use the human rights to deliberative justification and non-discrimination to argue for a human right to democratic accountability.
a need for rights-holders to have recourse when a domestic court does not protect them or when states discriminate. For example, states often discriminate against minorities, who are the main victims of forced eviction in World Bank projects (OHCHR 2014). Independent institutions for deliberative justification protect rights-holders when states and domestic courts fail. Second, international organizations need to be held accountable for their contribution to human rights violations, even if other actors, such as states, are involved. International organizations have a responsibility to deliberatively justify their policies when they potentially violate human rights.

**WHAT IS DISTINCTIVE ABOUT DELIBERATIVE JUSTIFICATION**

Deliberative justification provides an alternative to three common forms of argument about public policies: rationalization, strictly private justification, and consultation. These other forms of argument exclude people from challenging policies and fail to protect their human rights. Rationalization is the practice of policymakers deploying arguments in a purely strategic fashion to win public support, while lacking the aim of respecting rights. Policymakers who rationalize are closed-minded and not responsive to moral reasons about their policies. They are more likely to get away with rationalization if the public hears only their side and the rights-holders have no voice. Policymakers then face little public pressure to respond to criticism.

The human right to deliberative justification seeks to replace rationalization with a more critical debate. What is missing from rationalization is a normative commitment to respect human rights, and a willingness to test whether policies actually respect rights. These two requirements on their own, however, are not yet deliberative. In strictly private justification, policymakers are committed to respecting human rights, but they morally evaluate their policies
by reasoning only among themselves, and they never deliberate with rights-holders. Unlike strictly private justification, deliberative justification calls for justification procedures that include the people whose human rights are at stake in public policies.

Besides rationalization and strictly private justification, a third form of debate is consultation. In consultation, policymakers gather feedback from the rights-holders without answering to them. Mere consultation is frequently confused with deliberation, but the two differ fundamentally. Consultation is a form of one-sided or “monological” communication, which “considers privately” what is morally justified “from individually isolated perspectives” (Habermas 2001, 57). Consultation is monological in that the policymakers receive feedback, but they have no duty to respond publicly to arguments from the rights-holders. Unlike mere consultation, deliberative justification enables rights-holders to participate in a *dialogical* debate, which tests claims about what is justified in public moral argument with other people (Habermas 2001, 57). Deliberative justification is dialogical, because the rights-holders can publicly argue against policies, and the policymakers must listen to and answer their moral claims.

In contrast to other forms of debate about policies, deliberative justification includes three requirements to protect human rights. First, it has a reason-giving requirement that policymakers provide moral reasons in a good faith attempt to show that their policies are supported by sufficient moral reasons. However, since the policymakers’ reasons can be mistaken, deliberative justification has a second, contestatory requirement. The rights-holders

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11 In *strictly* private justification, deliberative justification with rights-holders never occurs. By contrast, there is a valuable role for private justification at the appropriate stages of policy-formation. For example, policymakers may be more willing to revise their views in a private setting (Steiner 2012, 129). My view is that although decisions can be debated at earlier stages in private settings among officials, those decisions should be reviewable and open to challenge at latter stages of policy formation and policymaking in institutions of deliberative justification. On this idea of sequencing deliberation, see Goodin 2005 and Steiner 2012, 131-133. I thank a reviewer for offering this important insight.
must be able to challenge policies and bring the harms they have experienced or will likely experience to public attention. The deliberation should take place in independent institutions to ensure that people are properly heard, with the help of lawyers or human rights advocates if needed. Following this moral argument, deliberative justification has a third, policy-revising requirement that policymakers change policies if necessary to respect human rights.12

The reason-giving, contestatory, and policy-revising requirements of deliberative justification empower the rights-holders to defend their human rights in independent institutions. These institutions allow the media, non-governmental organizations (NGOs), and leaders in other organizations or states to follow the deliberation, subjecting policymakers to the glare of publicity. Unlike mere consultation, deliberative justification critically reviews policies with the rights-holders participating in a public, dialogical procedure. Other people and groups can observe the deliberation and pressure policymakers into respecting human rights.

THE HUMAN RIGHTS DUTY PRINCIPLE

What is the proper standard to determine when deliberative justification should be held? There are three influential theories for when justification is required: the coercion, democratic origin, and all-affected interests principles. The all-affected interests principle entitles people to participate in a decision when it affects their interests (Goodin 2007). This principle is appealing, since it does not seem that a person can enjoy autonomy, or control over her own life, if others are free to affect her interests without her having any say.

12 I add the clause “if necessary,” because people do not have a veto in deliberative justification. For example, the defendant in a fair trial cannot veto his punishment if he is found guilty. But if a fair trial finds that the government is mistaken, the government must revise its decision in light of the deliberation, and free the defendant. A fair trial is one institution for deliberative justification, but there are other institutions as well.
While the all-affected interests principle has strong merits, it faces three difficulties. First, a person may have a greater claim to participate in a decision if she is more significantly affected. The all-affected interests principle does not seem to capture this distinction, since on some interpretations it includes everyone who is affected, no matter how marginally. A second difficulty is that it might be unworkable to implement. Our interests are affected by acts, omissions, and possible decisions about what might be included on an agenda. Since any decision could have affected our interests, we would be entitled to participate in all decisions (Goodin 2007, 56). However, limitations of time and attention would make it impossible for people to participate in every single decision in the world. Yet the principle of all-affected interests does not explain who should have priority in participating, and which interests are more significant. A third difficulty is that there are decisions where interests are affected, but people have no right to participate in making that decision (Caney 2005, 159). To illustrate this, I suggest the following example: suppose that Japan changes its educational system, increasing the productivity of Japanese workers. The workers’ productivity lowers the cost of cars in the United States, affecting American citizens. Yet it does not seem that Americans are entitled to a justification for Japan’s educational policy. The all-affected interests principle cannot explain why there might be cases where a decision affects other people, but they do not have a human right to demand a justification for it in a public institution.

These objections show that the all-affected interests principle must be modified. One alternative is a coercion standard (Larmore 1996, 152). States and international organizations would be required to deliberatively justify their coercive acts. A coercion standard would require justification only when people were coerced, and not when their interests were affected in less drastic ways. While this would make it more workable than the all-affected interests
principle, the coercion standard would have the disadvantage of being too restrictive. It does not require justification in cases where it should be needed, because acts must be intentional to qualify as being coercive on widely-used definitions of coercion. For instance, Robert Nozick defines coercion as occurring when person A intends to stop person B from committing an act, and A issues a threat to B. The threat then imposes a cost on B if she commits the act, and the threat is one of the reasons for B not acting (Nozick 1969). For coercion to occur, a person or institution must intend to stop a person from acting, and there must be a communicated threat.

Yet there are cases when a policy can potentially violate human rights and should be deliberatively justified, even though the policy does not communicate a threat. Consider the United Nations case in Haiti. UN peacekeepers interfered directly, though unintentionally, with the human right to health by exposing people to cholera. Yet the UN was not communicating a threat or intending to stop the Haitians from acting in any particular way. Since the coercion standard cannot explain why policies are in need of justification when they unintentionally violate human rights, it is too restrictive.13

The challenge is to find a more precise standard than the all-affected interests principle, while requiring the justification of unintentional human rights violations. I argue that the cases that are importantly in need of justification are when international organizations and states are in danger of violating human rights. This priority is based on how human rights protect urgent human interests against standard threats. I call this standard for when justification is required the

13 Unlike Nozick, Laura Valentini (2011) believes that policies can be coercive when they foreseeably restrict a person’s freedom. Valentini’s definition is superior because it does not require that policies intentionally restrict freedom to be coercive. I suggest that deliberative justification is required when human rights are potentially violated, and the urgent interests protected by rights include not only freedom, but other interests as well.
Human Rights Duty Principle: international organizations and states should subject a policy or action to deliberative justification when it potentially violates their human rights duties.

I suggest that policies or decisions potentially violate human rights duties when international organizations and states take actions that would be normally prohibited by their human rights duties. These duties prohibit certain actions, whether or not they are intentional. For example, they normally prohibit evicting a person from her home. However, states and international organizations may claim that they have special moral reasons to depart from what human rights duties normally require. Even strong defenders of rights, like Rawls and Kant, acknowledge that there are cases when there are sufficient moral reasons to take an action that is normally prohibited by a human rights duty (Rawls 2005, 294; Kant 1996, 134 [6:231]). For example, a state might claim that it should be allowed to evict a person, because of the need to build a hydroelectric dam.

These departures from normal human rights duties, however, pose a danger to rights. The danger is that the international organization or state can be mistaken. The evictions can be racially biased, carried out violently, or result in homelessness after compensation is denied (OHCHR 2014). In these cases, policymakers have mistaken special moral reasons to depart from what human rights duties normally require. The question I am asking is whether the sufficiency of special moral reasons should be evaluated by the policymakers themselves using strictly private justification, or by independent and contestatory institutions in deliberative justification.

It is important to distinguish here between a potential versus an actual human rights violation. A potential human rights violation is identified by a type of action that an international organization or state is taking. It is taking an action that would be normally
prohibited by human rights duties. The human rights duty principle requires that potential human rights violations be reviewed in deliberative justification. Deliberative justification evaluates the sufficiency of the special moral reasons that policymakers claim. It seeks to determine whether the policy actually violates human rights. If policymakers have mistaken special moral reasons for their action, they would actually violate human rights. This would be the case if they racially discriminated in forced eviction. However, if policymakers have sufficient special moral reasons for their action, that action would be compatible with human rights. For instance, it may be compatible with human rights if the government exercised eminent domain to build a levee that protects a community from flooding, provided it treated minorities fairly, compensated property owners promptly, and did not cause homelessness.

To clarify the Human Rights Duty Principle, consider an alternative standard that would require deliberative justification when policies actually violate human rights duties. An actual violation principle would entitle people to a deliberative justification if and only if the policy actually violates their human rights. An actual violation principle would be misguided for two reasons. First, without deliberative justification, we may not reliably know if the policy actually violates human rights or is instead compatible with human rights. Second, people can be entitled to a justification even when the decision is compatible with human rights. For instance, a defendant may be videotaped committing a crime, yet it seems that a fair trial is required before imprisoning a guilty person. The Human Rights Duty Principle avoids these problems by making potential human rights violations the trigger for requiring deliberative justification.

I bracket, for reasons of space, the question of which special moral reasons are sufficient, all things considered. But to clarify the idea of special moral reasons, it is worth describing the types of reasons that policymakers commonly claim, though they may be mistaken. First, they
claim that the right might be forfeited. A right is forfeited when it is involuntarily relinquished by a person’s wrongdoing. A second special moral reason is that a human right might be waived or voluntarily surrendered. Justification might be required if there is a question about whether the waiver was really voluntary, or whether the right should be subject to being waived. A third type of special moral reason is more controversial. Infringement theorists believe that a right can be overridden by other rights. According to infringement theorists, when rights conflict one right can prevail over another right (Thomson 1990; Feinberg 1980). Unlike infringement theorists, specificationists believe in a fourth type of special moral reason, that human right might include conditions that qualify it. Specificationists regard rights as not conflicting, once they are “specified” or given qualifying conditions that limit where they apply (Steiner 1994, 86-101; Wellman 1994).

It should be emphasized, however, that deliberative justification is skeptical of policymakers’ claims about special moral reasons to depart from what human rights duties normally require. Deliberative justification responds to the standard threat of international organizations and states abusing their power or neglecting their duties. This skepticism motivates deliberative justification’s requirement to test claims about special moral reasons in independent and contestatory institutions where the rights-holders can participate. Institutions for deliberative justification, such as independent accountability bodies, investigative bodies, and courts, would allow people to challenge policies that potentially violate their human rights.

A final alternative to the human rights duty principle is the view that justification is needed only in democratic decisions. This “democratic origin” view requires decisions to be justified when they are democratically enacted in the name of citizens (Rawls 2005, 137). This standard for justification focuses on the democratic origin of policies, not on the impact of
policies on rights-holders. Although the democratic origin view might be one of the reasons why coercion must be justified, it should not be sole reason why coercion or other potential human rights violations must be justified. The problem, as Abizadeh points out, is that if only existing democracies were required to justify coercion, then a government would be free to coerce without justification once it ended democracy (Abizadeh 2007, 352). To avoid this implication, the human rights duty principle focuses not on the origin of policies, but on their impact on people. Public policies trigger the requirement to hold deliberative justification because they have the impact of potentially violating human rights. Unlike the democratic origin claim, the human rights duty principle shows that deliberative justification is owed to non-citizens, and not just to citizens in already democratic states.

**THE INTRINSIC ARGUMENT FROM MORAL AGENCY**

It might be asked why *deliberative* justification is required under the Human Rights Duty Principle. Why should people be entitled to participate in justificatory procedures to challenge public policies when their human rights are at stake? My first, *intrinsic argument from moral agency* is that allowing rights-holders to participate in deliberative justification shows respect for them as equal moral agents. One of the conditions for people to be respected as moral agents is that they be regarded as capable of moral argument about their treatment or actions. When policymakers use strictly private justification, they respect their own moral agency. They regard themselves as capable of moral argument about the justice of their policies. However, the equal moral agency of the rights-holders is disrespected if they are denied the opportunity to challenge policies that potentially violate their human rights. When they are completely excluded from deliberation, the rights-holders are regarded as silent and unthinking objects who are unable to offer moral reasons or claims regarding their own treatment. One of the reasons for deliberative
justification being owed as a moral human right is that it upholds the urgent human interest in being respected as an equal moral agent.

To explain why people have an urgent human interest in being respected as equal moral agents, I build on Jeremy Waldron’s argument for the rule of law and John Rawls’ natural duty of mutual respect. Waldron seeks to describe why there is an intrinsic value to allowing defendants to participate in judicial trials. The value is intrinsic because it is based on the respect participation shows the defendant. To recognize the intrinsic value of participation, consider the following case: a tribunal of judges decides the guilt or innocence of a defendant, who is prohibited from challenging any of the arguments brought against her. What value is disrespected when she is excluded? The person is disrespected because she is regarded as an unreasoning object, whose treatment can be decided while ignoring her own point of view. As Waldron writes, “applying a norm to a human individual is not like deciding what to do about a rabid animal or a dilapidated house. It involves paying attention to a point of view and respecting the personality of the entity one is dealing with” (Waldron 2011, 14).

Waldron’s subject is the right of defendants to participate in their trials as part of the rule of law. He does not discuss whether people have a more general human right to have public policies deliberatively justified. However, his argument is relevant to deliberative theory, because people have a point of view not only in their own trials, but also when public policies potentially violate their human rights. The intrinsic argument I propose takes the idea of persons having their own point of view, and develops it in a public policy context. I argue that the reason why a person’s point of view should be listened to is that it respects her equal moral agency, or capacity to make moral claims about how she ought to be treated.
The idea of moral agency can be further developed by turning to Rawls’ argument that persons are owed a *natural duty of mutual respect.* A natural duty is a moral duty that human beings owe to all other persons, including non-citizens (Rawls 1999, 99). The natural duty of mutual respect is the obligation “to show a person the respect which is due to him as a moral being, that is, as a being with a sense of justice and a conception of the good” (Rawls 1999, 297). People are free and equal moral beings in having two moral powers. The first is a capacity for a conception of the good, which allows people to pursue a view of what makes their lives meaningful. The other moral power that makes people free and equal is their capacity for a sense of justice, or the ability to understand and follow fair terms of cooperation with other people.

Rawls describes mutual respect as being shown in two ways that correspond to each of these moral powers. The first way is “our willingness to see the situation of others from their point of view, from the perspective of their conception of their good” (Rawls 1999, 297). It might be thought, however, that we can mutually respect persons in this way without giving reasons for our actions. We could reason about how we ought to treat people, given our imagined view of their perspective. I argue that the problem with this form of strictly private justification is that it does not show mutual respect for the second moral power of free and equal persons, their capacity for a sense of justice. By never speaking with people when their human rights are at stake, we do not treat them as capable of understanding fair terms of justice. To mutually respect people’s sense of justice, we must be “prepared to give reasons for our actions whenever the interests of others are materially affected” (Rawls 1999, 297).

While agreeing with Rawls on the importance of the natural duty of mutual respect, I change this duty to give the sense of justice a more *active* interpretation. When Rawls looks at the sense of justice, the role of other people is passive. People “should be acquainted with the
relevant facts which explain the restrictions” that we impose on them (Rawls 1999, 297 [emphasis added]). Although Rawls does allow for the active exercise of the sense of justice in rights of democratic participation, such as in voting, he has a more passive view of the sense of justice in the natural duty of mutual respect. The rights-holders are merely listening to the reasons for policies. However, it would be more consistent with equality of moral powers if the rights-holders were regarded as being equally capable of speaking and offering moral reasons.

I argue that people exercise their capacity for a sense of justice not only by listening, but by criticizing the moral reasons that others propose and by advancing their own moral claims. I call this active sense of justice moral agency. People are free and equal in that they possess moral agency, or the ability to understand, criticize, and contribute moral reasons. To respect moral agency, the justification of public policies should be participatory, allowing the rights-holders to make moral claims in deliberation that scrutinizes the justice of policies. The intrinsic argument for deliberative justification is that for people to be respected as equal moral agents, one of the necessary conditions is that deliberative justification must be held when their human rights are at stake.

THE INSTRUMENTAL ARGUMENT THAT DELIBERATIVE JUSTIFICATION CORRECTS MORAL BIAS

My second, instrumental argument is that deliberative justification is owed as a moral human right because it protects substantive human rights from the standard threat of public policies. Deliberative democrats, including Bernard Manin, have explained how deliberation is crucial to shaping preferences and making decisions more informed (Manin 1987, 349). Epistemic democrats have made instrumental arguments showing how deliberation leads to more intelligent decisions (Landemore 2017; Landemore 2012, 11). My moral bias instrumental argument is distinctive in that it explains how deliberation improves the moral competence of
policymakers (their moral motivation, sentiments, and reasoning). In the absence of deliberation, the moral competence of policymakers is distorted by factors that I call moral biases. These are not simply psychological obstacles that prevent already accurate judgments from being applied. I suggest that the moral biases have a deeper importance, affecting whether moral judgments are accurate in the first place. Deliberative justification can protect human rights by correcting the moral biases of policymakers, resulting in policies that are guided by more sound moral reasoning and greater sympathy for rights-holders. In addition, deliberative justification can correct the moral biases of the public, leading the media, NGOs, and leaders from other international organizations and states to place greater pressure on policymakers to respect human rights.

The first moral bias is partiality, or the tendency of policymakers to refuse to acknowledge their own wrongdoing. My account of the moral bias of partiality develops further a central insight from social contract theorists. These theorists warn that when policymakers are allowed to judge on their own what constitutes a threat, they will make a predictable set of moral mistakes. Being the judges in their own case, policymakers may use excessive violence, target the wrong people, and hurt innocent bystanders. At the same time, they will overlook their own transgressions and ignore the harms they have inflicted on others (Nozick 1974, 11). John Locke describes how people’s moral reasoning will be biased regarding their policies when he writes: “men being partial to themselves, passion and revenge is very apt to carry them too far, and with too much heat, in their own cases; as well as negligence, and unconcernedness, to make them too remiss in other men’s” (Locke 1980, 66). To correct the moral bias of partiality, I argue that public policies should be critically reviewed in deliberative justification with the rights-holders.

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14 Christiano 2008 raises perceptively the problem of moral bias. Here I develop an account of why the moral biases emerge, drawing on social contract theory and the identifiable victim effect.
A second moral bias is lack of sympathy, or the reduced moral concern and fellow-feeling for unseen and anonymous people. Adam Smith describes this lack of sympathy in his *Theory of Moral Sentiments*. Smith writes that if a person were “to lose his little finger to—morrow, he would not sleep to—night; but, provided he never saw them, he will snore with the most profound security over the ruin of a hundred millions of his brethren. . . .” (Smith 1984, 136 [emphasis added]). Smith shows that when a person is close enough for us to witness her pain and fear, we feel sympathy for her and are motivated to help immediately. But when the person is unseen, she becomes an abstraction, less interesting to us than a “paltry misfortune” of our own (Smith 1984, 136). However, if policymakers had to meet and deliberate with the rights-holders, this lack of sympathy could be corrected. Deliberative justification would engage the sympathy and moral sentiments of policymakers and the public.

Reduced social distance promotes sympathy, because of the identifiable victim effect. This effect, confirmed by empirical research by Iris Bohnet and Bruno Frey, is that “human sympathy differs reliably toward actual ‘identified’ victims on the one hand, and more abstractly ‘statistical’ victims on the other” (Bohnet and Frey 1999, 337). An important result of the identifiable victim effect is that “society is willing to spend far more money to save the lives of identifiable victims than to save statistical victims” (Jenni and Loewenstein 1997, 236). A more unfortunate result is that policymakers are less likely to be motivated to save the lives of people they never meet. I suggest that without deliberative justification, the rights-holders are statistical victims who are abstract to policymakers. But if policymakers were to engage in deliberative justification, the rights-holders would become visible, identifiable human beings. Policymakers, as well as the public, would be more careful in treating people who are identifiable and sympathetic instead of being distant and unseen.
Partiality and lack of sympathy reinforce a third moral bias – lack of knowledge about how policies are violating human rights. Policymakers may lack knowledge of rights violations because they do not directly experience the policies they impose on others. In the Haitian case, UN policymakers may overlook the severity of the cholera epidemic, because they are based in New York, while the disease is killing people overseas. Policymakers may fail to correct this lack of knowledge on their own because of their partiality, especially when the facts expose their wrongdoing. Deliberative justification with the rights-holders, who are most familiar with the harms of policies, can correct the lack of knowledge of policymakers and the public.

The moral biases of partiality, lack of sympathy, and lack of knowledge lead policymakers to make mistakes in their moral reasoning. Deliberative justification engages the moral sympathies of policymakers and the public, and corrects their moral biases. Once their moral biases are corrected, policymakers can revise their policies, and the public can place greater pressure on them to respect human rights. I call this reason for deliberative justification with rights-holders the instrumental argument from correcting moral bias.

If the policymakers are reluctant to admit errors, however, why would deliberative justification change anything? The answer is that deliberative justification alters the reputational cost for policymakers of violating human rights. Without deliberation, the public may be unaware that policymakers are violating human rights. Any admission by policymakers that they are violating rights would cost them political support. Deliberative justification changes the policymakers’ incentives by informing the wider public about human rights violations. Once the public is informed about the rights violations, policymakers would suffer a reputational cost if they did not admit what the public already knows. The public can demand changes to policies to respect rights, and the policymakers would lose support if they did not respond. The heads of
international organizations may be replaced, named and shamed, or lose funding from influential donor states. This has occurred in previous reform movements for the World Bank and UN. For example, the release of an investigative report by Philip Alston, the UN Special Rapporteur, increased public pressure on the United Nations, leading it to apologize for the cholera outbreak in Haiti. The UN then approved a compensation plan for the victims in 2016, six years after the outbreak in 2010 (Sengupta 2016). However, the public would find out about rights violations more quickly and more reliably if rights-holders could participate in deliberative justification instead of waiting for years until others noticed them. The participation of rights-holders in independent, contestatory institutions distinguishes deliberative justification from other forms of actual justification.

**Answering Concerns about Deliberative Justification**

One potential concern about deliberative justification is that although it formally includes the rights-holders, it might informally marginalize them. Policymakers might be better at deliberating than ordinary people (Sanders 1997). Deliberation would then marginalize the rights-holders’ concerns. One reply to this objection is that the rights-holders’ deliberative capacity, or their effectiveness in moral argument, can be enhanced with the help of lawyers or human rights advocates, who are professionally trained in argumentation. To secure the human right to deliberative justification, lawyers, investigators, and human rights field workers should be subsidized and made more widely available.¹⁵ There is a precedent for this in the UN Office of the High Commissioner for Human Rights (OHCHR). To investigate rights violations, it has a “Rapid Response Unit” with “884 human rights officers serving in 15 UN peace missions” (OHCHR 2011, 11). It could expand its field presence to support the participation of rights-holders.

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¹⁵ I thank one of my reviewers for making this valuable suggestion.
holders in deliberative justification. Additional institutions could be created if the OHCHR needs to be made more independent of the UN Secretariat. A further reply is that if deliberation actually enhanced the power of policymakers, we would expect that they would advocate for more deliberative justification to advance their selfish interests. But this contradicts the actual behavior of policymakers. When they want to escape accountability, policymakers attempt to avoid public moral argument about the justice of their policies. For example, the U.S. made UN Security Council decisions more secretive when it blocked Iraq from importing medicine (Gordon 2010).

A second objection to deliberative justification is that it might legitimate policies that violate human rights. Would a decision that violates human rights become morally acceptable if policymakers gave reasons for it and left the decision unchanged? This objection overlooks the policy-revising requirement of deliberative justification. If policymakers left a policy that actually violates rights unaltered, they would fail the policy-revising requirement to change their policies to respect human rights. In addition, deliberative justification can identify policies that violate rights by enabling the rights-holders to publicize abuses. Deliberative justification has greater safeguards against legitimating unjust policies compared to current practices, which lack independent institutions and rely excessively on policymakers policing themselves.

A third concern is that it may be preferable to oppose deeply unjust organizations, rather than calling on them to deliberatively justify their policies. For instance, it may have been better to resist the apartheid regime in South Africa rather than participating in courts that were controlled by the racist government. In response, it should be recognized that deliberative justification has a proper range of application. With extremely unjust states or organizations, which lack even minimal legitimacy, it would be appropriate to seek their overthrow.
Deliberative justification applies instead to cases where organizations or states are sufficiently legitimate that they should be reformed and not disbanded entirely. An additional reply is that deliberative justification does not include all instances of moral argument in courts or other institutions. The human right to deliberative justification requires that the institutions holding it be independent and respect substantive human rights. Courts that are racially biased or manipulated by the government would violate these requirements of deliberative justification.

**THE INSTITUTIONS OF A HUMAN RIGHT TO DELIBERATIVE JUSTIFICATION**

The core of this paper has focused on the normative argument for a moral human right to deliberative justification. In this section, I outline what the right may require in practice, using the example of how deliberative justification would apply to the reform of international organizations. These suggested institutions are a starting point to make the human right to deliberative justification more concrete; other institutions may be proposed in the future to further fulfill the right.

One institution for deliberative justification should be *human rights courts*. International organizations currently possess sovereign immunity, a legal doctrine that gives them “absolute immunity from the jurisdiction of domestic courts” and international courts (Reinisch 2016). My view implies that the doctrine of sovereign immunity should be altered to allow people to exercise their human right to deliberative justification. They should be empowered to use courts to challenge the policies of international organizations by suing for injunctive relief and monetary damages. Injunctive relief is a court order for the organization or government to stop the action that is violating human rights. Compensatory damages are monetary awards that deter future rights violations, and compensate people for the harms they have suffered (Chemerinsky
Human rights courts should be established that have jurisdiction over international organizations. This would follow the model of the European Court of Human Rights.

Courts depend on other institutions to pursue investigations and engage in fact-finding. The rights-holders need a way to trigger an official investigation of human rights violations. I call this second type of institution for deliberative justification investigative bodies. They would enable people to report human rights violations and trigger an official investigation if their complaints have sufficient merit. There is a precedent for investigative bodies in an existing institution: the United Nations Human Rights Treaty Bodies. These treaty bodies are committees of experts in international law who receive petitions and monitor state compliance with human rights treaties (Beitz 2009, 33-35). For example, the Human Rights Committee is the treaty body that monitors state compliance with the International Covenant on Civil and Political Rights.

The UN treaty bodies offer a right of individual petition for individuals or groups to report claims of human rights violations. Jeffry Frieden, David Lake, and Kenneth Schultz describe the right of individual petition as “one of the most important developments in international human rights law” (Frieden, Lake, and Schultz 2013, 484). The right of individual petition is significant because it gives recourse to individuals to appeal beyond their state when it violates their human rights. When the Treaty Bodies find evidence of rights violations, they can launch an investigation. However, the current treaty bodies have no jurisdiction over international organizations. I suggest that investigative bodies should be established to perform the role of the Human Rights Treaty Bodies for international organizations.

The human rights courts and investigative bodies can provide retrospective accountability, meaning that they can examine rights violations that have already taken place. This can lead to corrective measures being taken or compensation being provided. In addition,
prospective accountability is needed, or a way to prevent rights violations from occurring in the first place. I call this third type of institution for deliberative justification independent accountability bodies. They would deliberate about proposed policies with the rights-holders to prevent abuses. The World Bank has begun to recognize the need for the prospective review of policies. Before forced evictions, the Bank now engages in consultation. For example, in a Vietnamese dam project, the World Bank held multiple local meetings with nearly 500 people in the communities that were going to be forcibly evicted (World Bank 2011, 24). As a result of these consultations, the Bank changed its resettlement plan, which it funded and organized, to ensure the communities would be moved together, instead of being separated.

However, the World Bank’s internal consultation process fails the independence requirement of deliberative justification, because it is controlled by the Bank's policymakers. The other problem with consultation is that it fails the contestation requirement of deliberative justification. Consultation does not allow the forced eviction policy to be fundamentally challenged. For example, the fact that forced eviction would occur could not be changed in the Vietnamese case, and there was no human rights-based challenge to the fact that almost all the forcibly evicted people were ethnic minorities (World Bank 2011, xiii). Consultation should be replaced with what I call independent accountability bodies that are external to the World Bank. They would hold local meetings to deliberate with the people who would be impacted by a policy to determine whether human rights violations would occur. There are several institutional possibilities for what could happen next. The independent accountability body could make a public recommendation and report, it could require the World Bank to make changes to respect human rights, or it could stop the abusive policy. Another possibility is that it could refer the case, along with its report, to a human rights court for further action. Independent accountability
bodies, investigative bodies, and human rights courts would be independent, in that they would not be funded, staffed, or subject to the approval of the international organizations they monitor.

The purpose of institutions for deliberative justification is to respect people as moral agents and to protect their human rights. A potential concern is whether these institutions are democratic and accountable. While they are not directly elected, they could be held accountable if they are created by an international treaty or by a resolution of the UN General Assembly. The treaty or resolution could establish oversight mechanisms for the justificatory institutions, modelled on how existing national courts, international courts, and human rights treaty bodies are held accountable. For example, ombudsmen in Sweden, a judicial council in Canada, and judicial commissions in the United States have been used successfully to investigate misconduct by judges, while maintaining the independence of the judiciary (Koskinen 1999).

Democracy is a range property on which it is possible to make advances. Although it is not yet possible for justificatory institutions to be elected, since there is no world government, institutions for deliberative justification would be part of a larger system of accountability that would enhance the democratic quality of international organizations in three ways. First, an important democratic value is the inclusion of people who are subject to policies (Gutmann and Thompson 2004, 9). Deliberative justification includes rights-holders by empowering them to participate in justificatory institutions where they can challenge public policies. Second, another important democratic value is the protection of human rights (Keohane, Macedo, Moravcsik 2009, 7). Many human rights are needed either as preconditions to participate democratically, like the human right to health, or as constitutive of meaningful democratic participation, such as rights to freedom of speech, press, and dissent. Deliberative justification advances democracy in international organizations by instrumentally protecting other human rights.
A third way that deliberative justification democratizes international organizations is by building the conditions, including the existence of a global demos, needed for greater democratic reforms. Some theorists have argued ambitiously for an elected world government (Held 1995). Others support reforms democratizing international law, but not a world government (Dworkin 2013, 28; Pettit 2010; Bohman 2007; Habermas 2001; Kant 1996: 311-352). For reasons of scope, this article does not examine the desirability of a world government versus other arrangements. But by encouraging greater public debate about international policies, deliberative justification, starting in independent accountability bodies and courts, would help to build a global demos. This sense of global peoplehood is a precondition for more demanding forms of deliberative justification, including steps towards greater democracy of any type. Global peoplehood involves a shared concern about the lives of individuals beyond our own borders. This shared concern motivates the sacrifices needed to sustain democracy. For this concern to develop globally, we should deliberate with people to learn about their moral claims and to increase our commitment to their human rights.

**Conclusion**

It is often thought that citizens are owed a justification for public policies. But are non-citizens owed a justification for policies when their human rights are at stake? In this article, I have offered a theory to explain what type of justification is owed to non-citizens. Against these views that limit justification to only citizens, I have argued for a moral human right to deliberative justification that should be extended to non-citizens. Deliberative justification empowers people to challenge policies by participating in independent and contestatory institutions for deliberation. I have defended a Human Rights Duty Principle for when justification is required as an alternative to three influential views: the all-affected interests,
coercion, and democratic origin principles. The Human Rights Duty Principle requires deliberative justification when policies take actions that potentially violate human rights.

I have offered an original set of arguments for why deliberative justification is owed as a moral human right. Deliberative justification protects urgent human interests against the standard threat of powerful or negligent international organizations and states. My intrinsic, moral agency argument is that deliberative justification is required to respect people as equal moral agents who have the capacity to understand and make moral claims about their treatment. My instrumental, moral bias argument shows that deliberative justification robustly protects substantive human rights by correcting the mistaken moral judgments of policymakers. The moral biases of partiality, lack of knowledge, and lack of sympathy can lead policymakers to make unjust decisions. Deliberative justification with rights-holders can correct these moral biases. The moral agency and moral bias arguments establish that deliberative justification must not be restricted to citizens, but it is owed as a moral human right that must be internationally recognized and extended to non-citizens.

ACKNOWLEDGEMENTS

This article was presented at the Fellows’ seminar at the University Center for Human Values at Princeton University and the American Political Science Association Annual Meeting. I thank Chuck Beitz, Mark Blyth, Corey Bretschneider, Emilee Booth Chapman, Desmond Jagmohan, Sharon Krause, Melissa Lane, Steve Macedo, Alison McQueen, Sankar Muthu, Alan Patten, Philip Pettit, Lucia Rafanelli, John Tomasi, Alec Walen, Ian Walling, and Theodora Welch for their valuable comments. I am grateful to Lisa Ellis for her excellent editing and the journal’s reviewers for their constructive insights. Chuck Beitz, Melissa Lane, and Annie Stilz generously made possible the writing of this article at the University Center for Human Values and the
Program in Values and Public Life. Finally, I owe very special thanks to Annie Stilz and Dennis Thompson for their inspiring conversation and detailed commentary on two previous drafts.

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