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. 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 2014). 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? If actual justification is required with non-citizens, what form should it take and what institutions does it call for? Second, I seek to clarify when non-citizens are entitled to a justification. 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 1997). Hypothetical justification might be interpreted to mean that a procedure of actual justification is unnecessary. By contrast, I suggest that people could not hypothetically accept being denied an actual justification when their human rights are at stake. Denying them an actual justification would violate their freedom and equality, as shown by my intrinsic and instrumental arguments for deliberative justification.

3 I build on Rainer Forst’s important work on the right to justification. Our projects are distinct in three ways. First, some philosophers see Forst as arguing for 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 here unambiguously for a human right to actual justification. Second, we mean different things by the right to justification. He sees it as a right to participate in moral discourse regarding moral norms in general (Forst 2014, 19). Forst makes the compelling argument that this right is needed to make Habermas’ discourse principle a categorical and not a hypothetical 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 (2014, 2) uses an all-affected interests principle, and I propose a different standard for when justification is required, the Human Rights Duty Principle.

4 Recent political theorists have focused much 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 who released untreated sewage into a river in Haiti. 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 challenge the UN’s behavior. 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 examining the morality of the UN’s policy 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, that would scrutinize the peacekeepers’ actions and determine who was responsible. With no independent investigation, the UN denied any responsibility and took six years to apologize (Sengupta 2016). The Haitians also lacked access to procedures of justification in courts that could examine 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 focus 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. 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 other work, I extend this approach from international organizations to more complex cases of justification involving foreign states. I would suggest that state decisions to use force should be reviewed in independent institutions, including the kind Buchanan 2010 importantly proposes.
Questions about justification for non-citizens arise in other international organizations that can violate human rights but lack a notion of citizenship.\textsuperscript{6} 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 (Kron 2011). Should the Ugandan farmers have a human right to challenge the eviction policy by the World Bank and the government? Should they be entitled to an actual justification that would scrutinize the moral reasons for the policy in a public procedure?

In this article, I develop original arguments for a moral human right to a type of actual justification, which I call a \textit{deliberative justification}. Deliberative justification has three distinctive features that distinguish it from other forms of actual justification. First, it enables people to \textit{challenge} 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 contest 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 \textit{independent}. Independent institutions are not under the control of the policymakers being scrutinized. 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. Deliberative justification empowers people to scrutinize policies at two stages: prospectively to prevent rights violations during policy-formation and retrospectively after a

\footnote{International organizations have member states, but they do not have individual citizens. Citizenship, as Habermas (2001) defines it, would require that individuals have standing to be \textit{authors} of the organizational policies that bind them. 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.}
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 (Thompson 1999, Pettit 2010). Others believe that deliberation about international organizations should occur in global civil society outside of formal institutions (Habermas 2001). While these are valuable forms of deliberation, I add that the rights-holders themselves should have access to independent institutions for justification. The human right to deliberative justification is especially important when state governments fail to protect their citizens from international organizations. This failure can occur, even in democratic states, as a result of discrimination (OHCHR 2014). International practice is coming to recognize that individuals need institutions to protect their human rights from their own governments (Frieden, Lake, Schultz 2013). But there are no independent institutions to protect people from international organizations when

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7 Later in this article, I will suggest that another institution for deliberative justification is a democratically accountable government.
8 I use the term “rights-holders” instead of “affected people,” because the latter is associated with the all-affected interests principle, which I criticize.
9 Bohman 2007 has offered valuable 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 and the protection of substantive human rights.
their governments fail to represent them. I argue that individuals should have a human right to deliberative justification to protect themselves 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 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 arguments 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.10 To robustly protect human rights and to respect people as free and equal, policymakers must answer for their decisions in deliberative justification.

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10 Leading epistemic democrats like Hélène Landemore have made convincing instrumental arguments criticizing the *epistemic competence* of expert rule, or its ability to make intelligent decisions (Landemore 2012, 11). My theory is distinctive in that it criticizes the *moral competence* of expert rule (its moral intentions, character, and reasoning), and also develops intrinsic arguments for deliberative justification.
DEFINING HUMAN RIGHTS

On one view of human rights, they are legal rights that are 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 preemptory 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 to deliberative justification, we must make a moral argument 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 (Shue 1996, 29; 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, as opposed to being restricted to only citizens. To establish that a human right to deliberative justification is morally required, what has to be shown is 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 international organizations and governments violating substantive human rights, 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. A substantive human right is an entitlement to be provided vital goods or secured against abusive forms of treatment. Deliberative justification is a procedural moral human right that instrumentally protects substantive human rights. It entitles people to participate in independent institutions to challenge public policies that potentially violate their substantive human rights. I want to emphasize, however, that procedures of justification can also have intrinsic value in expressing respect for the moral equality of persons. I develop both intrinsic and instrumental arguments for a moral human right to deliberative justification.

Deliberative justification has two relations with existing procedural human rights. First, deliberative justification is a broader human right that can contribute to explaining why other procedural human rights are needed. For example, one of the reasons why people have a procedural human right to fair trial (UN General Assembly 1966, art. 14) is that they are entitled to a deliberative justification of their potential imprisonment. A fair trial has the characteristic features of deliberative justification. It enables defendants to challenge the reasons for their imprisonment, and they must be able to participate in the justification procedure. It 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 because 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 instead when they 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 offering 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” (UNGA 1948, art 8) corrects the abuse of citizens by their own government (Morsink 1999, 48-49). A major defect of the present system of human rights, however, 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 correct 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. In addition, the human right to deliberative justification calls for prospective safeguards during policy-formation to prevent rights violations from occurring. The existing human right to a judicial remedy provides the retrospective accountability of courts, which correct past policies. The broader human right to deliberative justification requires, in addition to courts, investigative bodies that provide courts with the facts they need to reach decisions, and institutions for prospective accountability to justify proposed policies.

**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 challenges the practice of rationalization and seeks to replace it 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 only by reasoning 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 often confused with deliberation, but the two differ fundamentally. In consultation, the communication is one-sided or monological. Jürgen Habermas uses the term “monological” to describe a debate that “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 to arguments from the rights-holders. Consultation also lacks independence, because the process is controlled by the policymakers. Unlike mere consultation, deliberative justification requires that

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11 I call strictly private justification procedures where deliberative justification never occurs at any stage. There is a valuable role for some private justification. 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 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.
policymakers answer for their public policies. The rights-holders can participate in a *dialogical* debate, which tests claims about what is justified in moral argument with other persons (Habermas 2001, 57). Deliberative justification is dialogical, because the rights-holders can argue against policies, and the policymakers must listen to and answer their reasons.

In contrast to other forms of debate about public 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, reason-challenging requirement. The rights-holders must be able to contest policies and bring the harms they have experienced 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.\(^\text{12}\) The reason-giving, reason-challenging, 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 individuals 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.

\(^\text{12}\) 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.
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 (Abizadeh 2008; 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.

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 affected to a more significant degree. 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 every decision at all times (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). For example, Japan may make changes to 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 Unlike Nozick, Valentini (2011) believes that policies can be coercive when they foreseeable restrict a person’s freedom. This definition is superior in that it does not require that policies intentionally restrict freedom to be coercive. I suggest that deliberative justification is required
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 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. Human rights 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 1996a, 25 [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 inadequate special moral reasons to depart from what human rights duties normally require. The question I am asking is whether the

when human rights are potentially violated, and the urgent human interests protected by rights include not only freedom, but other interests as well.
adequacy 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 inadequate 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 would be compatible with human rights, on most interpretations, if a government imprisoned a demonstrably guilty murderer.

To clarify the Human Rights Duty Principle, consider an alternative standard that would require deliberative justification when policies *actually* violate human rights duties. Under an actual violation principle, people would be entitled 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, in the absence of a deliberative justification, we may not reliably know if the policy actually violates human rights or is instead compatible with human rights. Second, it seems that people are 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. 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.

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. As I will argue, the moral reasoning of policymakers can be wrong because of their moral biases of partiality, lack of knowledge, and lack of sympathy. This skepticism motivates deliberative justification’s requirement to test claims about special moral reasons in independent and contestatory
institutions. 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, rather than 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? The first, *intrinsic argument from moral agency* is that deliberative justification shows respect for rights-holders as equal moral agents.
One of the conditions for people to be respected as moral agents is that they be regarded as being capable of moral argument about how they and others ought to be treated. When policymakers use strictly private justification, they respect their own moral agency. They are treating 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 do not have the opportunity to challenge policies that potentially violate their human rights. When they are never included in deliberation, the rights-holders are treated as silent and unthinking objects who are unable to offer moral reasons 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.

I build on and broaden Jeremy Waldron’s argument for the rule of law and Rawls’ natural duty of mutual respect to explain why people have an urgent human interest in being respected as equal moral agents. 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 being 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. But his argument is relevant to deliberative theory, because the policies of international organizations can violate 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 because it respects her moral agency, or equal capability to engage in moral argument 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, regardless of their citizenship or shared membership in a basic structure (Rawls 1999, 99). The duty most closely related to deliberative justification is the natural duty of mutual respect. This 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. This is the capacity to understand, propose, and follow fair terms of cooperation with other people.

Rawls describes mutual respect as being shown in two ways that correspond to each of the 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). Our willingness to see the situation of others from their point of view respects their capacity for a
conception of the good. Perhaps 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. The problem with relying on strictly private justification is that it does not show mutual respect for the second moral power of free and equal persons, the 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 proposing fair terms of justice. To respect people’s second moral power, we must be “prepared to give reasons for our actions whenever the interests of others are materially affected” (Rawls 1999, 297). Giving reasons for our actions is the second way of showing mutual respect.

While agreeing with Rawls on the importance of the natural duty of mutual respect, I make two changes to the duty to more fully respect people as free and equal. Rawls believes that the duty of mutual respect is owed to acknowledge people’s sense of justice, or their capacity to debate fair terms of cooperation. A first change to Rawls’ account of mutual respect is to interpret the sense of justice more broadly to mean the capacity to debate moral reasons about how people ought to be treated. This revision is appropriate, because mutual respect is owed to rights-holders, and not just to citizens who share the same scheme of social cooperation (Rawls 1999, 99). But for the duty of mutual respect to be owed to rights-holders, including non-citizens, the sense of justice must refer to the capacity to debate moral reasons, and not just fair terms of cooperation limited to one’s society.

My second revision to Rawls’ duty of mutual respect is 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 or being acquainted with the reasons for policies. However, it would be more consistent with equality of moral powers if the rights-holders were treated as being equally capable of speaking and offering moral reasons.

To more fully respect the rights-holders as free and equal, I give the sense of justice a more active interpretation. People exercise their capacity for a sense of justice not only by listening, but by criticizing the moral reasons that others offer and by proposing moral reasons that they believe are more just. 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, propose, and criticize moral reasons. To respect moral agency, the justification of public policies should be participatory, allowing the rights-holders to contribute moral reasons 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 intrinsic argument focuses on how deliberative justification respects the rights-holders as equal moral agents. My second, instrumental argument is that deliberative justification is owed as a moral human right because it robustly protects substantive human rights from the standard threat of public policies. Without deliberative justification, policymakers can make mistakes in morally evaluating their decisions because of their moral biases.\(^\text{14}\) They can be biased from their lack of sympathy for the people who are subject to their decisions.

\(^{14}\) Christiano 2008 raises insightfully the problem of moral bias. I develop an account of why the moral biases emerge, drawing on social contract theory and the identifiable victim effect.
Policymakers can also lack knowledge about the human rights violations of policies they rarely live under themselves. Policymakers are unlikely to recognize their mistakes on their own because of their partiality, or tendency to assume uncritically that their decisions are morally right. Deliberative justification can more robustly protect human rights by correcting the moral biases of policymakers. In addition, it can correct the moral biases of the public that monitors policymakers. The public may evaluate policies incorrectly, because they are unaware of human rights violations. Deliberative justification can inform the public of rights violations, leading the media, NGOs, and individuals to place greater pressure on policymakers to respect human rights.

In arguing that policymakers may make moral mistakes, I develop a central insight from social contract theorists. These theorists warn that when policymakers are allowed to judge on their own what constitutes a threat to themselves or to others, a predictable set of mistakes emerges due to partiality and other factors that distort judgment. 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). Locke describes how people’s moral reasoning will be biased regarding their own policies: “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).

Locke’s insight is that when policymakers judge for themselves whether they have acted justly, their judgment will be fallible and distorted by their moral biases. Because of these moral biases from acting as judges in their own case, policymakers ignore the harms they inflict on others, they neglect the appropriate precautions to protect the innocent, and they make mistakes in judging whether their policies respect human rights (Locke 1980, 12-13). Policymakers are
more prone to moral bias when their judgment is not subject to correction by rights-holders who are more familiar from local experience with the actual rights violations of public policies.

I argue that the moral biases of policymakers are not simply psychological obstacles that prevent already known and accurate judgments from being applied. Moral bias also has a deeper importance that affects whether the moral judgments are accurate in the first place. Rawls in his discussion of reflective equilibrium raises the problem of how moral biases can lead to mistakes in moral reasoning. He believes that moral reasoning should proceed by mutually adjusting more abstract moral principles and more concrete moral judgments until they cohere or are in “reflective equilibrium.” But if moral principles and judgments conflict, how should we know which ones to modify? Rawls’ answer is that we should place more confidence in “considered judgments.” In those judgments, such as the beliefs that slavery and gender discrimination are wrong, “our moral capacities are most likely to be displayed without distortion” (Rawls 1999, 42). By contrast, non-considered judgments are given “when we stand to gain one way or the other . . . All these judgments are likely to be erroneous or to be influenced by an excessive attention to our own interests” (Rawls 1999, 42).

I suggest that one reason why moral bias can lead to mistaken moral conclusions is because the judgment of policymakers is subject to the moral bias of partiality. Due to their partiality, policymakers are reluctant to admit that their policies are morally wrong. Admitting that their policies actually violate human rights would threaten their public reputation for justice and competence. Left on their own, policymakers may conclude too quickly that their policies respect rights, since it is in their self-interest to deny mistakes. As Locke points out, if policymakers are unjust enough to commit violate rights in the first place, it would be unreasonable to expect that they would be just enough to admit it themselves (Locke 1980, 12).
Deliberation with rights-holders should be held to correct the partiality of policymakers, who believe too hastily, when they are acting as judges in their own cases, that their policies respect human rights.

A second moral bias is lack of sympathy, which arises when the rights-holders are unseen and anonymous. The less we see them, the less their suffering seems urgent to us. 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). Smith believes 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, the policymakers’ lack of sympathy could be corrected. The sympathy and moral sentiments of policymakers would be engaged.

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 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 public policies are violating human rights. I have previously discussed how distance makes policymakers less likely to sympathize with the people who are subject to their policies. Here I point out that distance makes it less likely for policymakers to know how their policies violate human rights. In the Haitian case, UN policymakers may not know about the severity of the cholera epidemic, because they are based in New York, while the disease is killing people overseas. The policymakers may fail to correct this lack of knowledge on their own because of their partiality, especially when the facts expose their mistakes or wrongdoing.

Policymakers can make mistakes in their moral reasoning due to the moral biases of partiality, lack of sympathy, and lack of knowledge. Deliberative justification corrects the moral biases of policymakers and the public, and it engages their moral sympathies. 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, that it can robustly protect their human rights, 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 not be aware 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. Policymakers who are democratic state leaders may lose votes and campaign contributions. The heads of international organizations may be replaced or lose funding from influential donor states. This has occurred in previous reform movements for the World Bank and UN (Weaver 2008). 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 if rights-holders, who are most familiar with the impact of policies, could participate in deliberative justification instead of waiting for others to notice them.

Answering Three Concerns about Deliberative Justification

One potential concern about deliberative justification is that although it formally includes the rights-holders, it might informally marginalize them. Deliberation emphasizes the exchange of reasons, and policymakers might be better at arguing using reasons 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 and human rights officers should be made widely available and subsidized for people
who are subject to public policies.\textsuperscript{15} There is a precedent for this in the UN Office of the High Commissioner for Human Rights (OHCHR). It has a “Rapid Response Unit” to investigate human rights violations in the field. The OHCHR already provides “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 in deliberative justification. Additional institutions could be created if the OHCHR needs to be more independent of the UN.

A second reply is that if deliberation actually enhanced the power of policymakers, we would expect that they would tend to advocate for more deliberative justification as a way of advancing their selfish interests. But this contradicts the actual behavior of policymakers. When they want to escape accountability, policymakers try to make decision-making processes less deliberative. They attempt to avoid moral argument about the justice of their policies. Consider the case of the United Nations Security Council sanctions on Iraq. The United States blocked life-saving child vaccines on the specious grounds that they could be used to produce biological weapons, even though UN arms inspectors had cleared the vaccines as having no military use (Gordon 2006, 83). To push this policy through, the U.S. made the decision-making process in the UN Security Council less deliberative. It excluded Iraqis from presenting arguments in the meetings that decided on the vaccines. If deliberation really privileged policymakers, it would be expected that the U.S. would have advocated for more deliberation. But the exact opposite occurred: the Iraqis asked for deliberation to review the medical imports policy, and the U.S. blocked the vaccines without explanation.

Another 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

\textsuperscript{15} I thank one of my reviewers for making this important suggestion.
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 unchanged, they would fail the policy-revising requirement to ensure that their decisions respect human rights. In addition, deliberative justification can identify policies that violate rights. Deliberative justification morally examines policies in independent institutions, giving voice to the rights-holders and publicizing abuses. Deliberative justification has greater safeguards against legitimating unjust policies compared to current practices, which fail to deliberate with rights-holders, 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 IMPLICATIONS 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 sketch what the right may require in practice. I offer these examples as a starting point, and other institutions may be proposed in the future. Here I outline how deliberative justification would apply to the reform of international organizations. The common theme, though the details may be debated, is that deliberative justification should include at least institutions for prospective accountability to prevent human rights violations, institutions for retrospective accountability to correct violations that have occurred, and institutions to investigate claims of human rights violations.

One institution for deliberative justification should be human rights courts. International organizations currently have “absolute immunity from the jurisdiction of domestic courts,” and are subject to no international court because they possess sovereign immunity (Reinisch 2016). My view implies that the doctrine of sovereign immunity should be revised to allow people to exercise their human right to deliberative justification. They should be able use courts to contest 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 2001). If sovereign immunity is overturned for international organizations, one forum to sue for injunctive relief and compensatory damages would be national courts. But if national courts fail to protect the human rights of the rights-holders, then human rights courts should be established that have jurisdiction over international organizations. This would follow the precedent of international courts, such as the European Court of Human Rights.
Courts are important, but other institutions are also needed for deliberative justification. Courts depend on government agencies to pursue investigations and engage in fact-finding. The rights-holders need a way to trigger an official investigation of human rights violations. An investigation would inform deliberation about public policies by examining whether human rights violations are taking place and who is responsible. I call this second type of institution for democratic accountability *independent accountability 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 independent accountability bodies in an existing institution: the United Nations Human Rights Treaty Bodies. These treaty bodies are committees of experts in international law who 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 (ICCPR). 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 allows individuals to appeal beyond their state when it violates their human rights. When the Treaty Bodies find evidence of human rights violations, they can launch an investigation. However, the current treaty bodies have no jurisdiction over international organizations. A second institution that should be established for deliberative justification would be independent accountability bodies that can perform the role of the Human Rights Treaty Bodies for the World Bank and other international organizations. Institutions that review the UN’s policies would have to be made independent of it.
Since 1993, the World Bank’s Inspection Panel has entitled people who are affected by a Bank policy to submit complaints for the Panel to investigate. This is a step in the right direction. It gives individuals the opportunity to object to a Bank policy when their state fails to protect them. However, the Inspection Panel does not meet the independence requirement of deliberative justification. The Bank’s own Executive Directors appoint the members of the Inspection Panel and must approve any investigations. As an internal accountability process, the Inspection Panel is vulnerable to the partiality of the policymakers who can control or manipulate it. The Inspection Panel also has too limited a mandate. It can only investigate violations of the Bank’s internal operational policies. It cannot investigate human rights violations, since the Bank’s operational policies are largely silent about human rights (Alston 2015). I suggest that independent accountability bodies should be created for the World Bank and other international organizations. Unlike the Inspection Panel, they would be independent, because they would not be funded or staffed by the Bank, and they could investigate human rights violations without the interference of the Bank’s Executive Directors.

The human rights courts and independent accountability 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. Independent accountability bodies should have the power not only to review past policies, but also to 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 consults the affected people. This follows the recommendation of the Office of the High Commissioner for Human Rights, which says that “the rights to
information and to meaningful consultation and participation should be respected at all stages of the process” (OHCHR 2014, 30).

However, the World Bank’s consultation process fails the independence requirement of deliberative justification, because it is controlled by the Bank's own policymakers. The other problem with consultation is that it fails to meet the contestation requirement of deliberative justification. Consultation does not allow the forced eviction policy to be fundamentally challenged. At best, consultation gathers feedback to make changes to implementation, while allowing the policy itself to go uncontested. At worst, consultation gives rights violations a veneer of legitimacy, by allowing policymakers to claim that people have a voice, while denying them the power to contest public policies. Because of the shortcomings of consultation, it should be replaced with independent institutions for deliberative justification that would allow rights-holders to challenge public policies.

Institutions such as independent accountability bodies and courts depend on the justice of the existing laws they apply. A longer-term location for deliberative justification would be in the formation of domestic and international law. Although the issue is beyond the scope of this paper, I believe that fully upholding the human right to deliberative justification requires a human right to democratic accountability. This would allow the formation of law itself to be justified in deliberative reason-giving and contestation among equals. At the domestic level, deliberative justification requires more than just elections, but also rights of freedom of speech, press, and protest for people to morally examine laws, deliberate about them, and contest them. At the global level, steps will need to be taken to democratize international law, as Ronald Dworkin has recommended (Dworkin 2013, 28). What these steps would involve should be the subject of greater research, but they could begin with establishing institutions for deliberative
justification. These institutions would prevent and stop human rights violations, and they would democratize international law by including the voice of the people who are subject to it.

Some writers advocate ambitiously for a world government that would hold international organizations accountable (Held 1995). By contrast, other scholars like Dworkin and Habermas support democratizing international law, but they do not endorse a world government, which would take the distinct step of creating an institution with a global monopoly on legitimate coercion. This article for reasons of scope does not examine the desirability of a world government. But scholars who recommend democratizing international law should support deliberative justification, because it would protect people’s human rights and respect people as moral agents. In addition, by encouraging greater public debate about international policies, deliberative justification would help to build the shared sense of global peoplehood that is a precondition for greater steps to democratize international law. Global peoplehood involves a shared concern about the lives of individuals beyond our own borders. For this concern to develop, we need to deliberate with people to learn about their moral claims, to identify with them, 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 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 using 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 arguments 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.

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