



## Theory of Justice's Principles For A Just and Equitable Global Order

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**Abstract:** This article is part of a literature research in the field of international legal philosophy, which aims to discuss the application of John Rawls' thought in the context of international law. The presentation begins by describing the meaning of justice as a moral and ethical concept according to philosophers and John Rawls' position in it. The discussion is carried out on Rawls's 'A Theory of Justice', followed by 'The Law of Peoples' and its relation to international law. The essence of this article is to discuss justice (in Rawls' perspective) as a key principle in international law to create a just global order. The author explores Rawls' views on justice, peace, and governance. Rawls' theory of justice as fairness provides a valuable lens to analyse global issues. Rawls argues that just institutions should be based on principles that promote peace, stability, and the well-being of all nations. By adhering to these principles, international law can promote a more just and equitable global order.

**Keywords:** Theory of justice; John Rawls; Fairness; Justice; International law

### INTRODUCTION

Justice is a moral and ethical concept yet an obligation for decision-makers and global leaders<sup>1</sup>. Justice balances State and individual relationships, individual rights, and collective good<sup>2</sup>. The problem is how can justice become the guiding principle in international law to provide an equitable global order.

The discussion of the concept of justice has evolved with the development of civilization and ideas about law and the legal system. From ancient philosophers such as Plato and Aristotle to Immanuel Kant, John Stuart Mill, and John Rawls<sup>3</sup>.

In his work "The Republic", Plato is concerned with the nature of justice, both in the individual and in society. He argues that justice is an essential virtue for a well-functioning society. Aristotle, Plato's student, also argued about justice. He distinguished between distributive justice (fairness in the distribution of resources) and corrective justice (fairness in the redress of wrongs).<sup>4</sup>

<sup>1</sup> See: Scholl, J.A., et al 2023; Joseph, 2020, p.67; Ackerly, 2018, p. 5-7; Amstutz, 2013, p. 1-2.

<sup>2</sup> Bergquist, 2021, p. 6-7; Etzioni, 2018, p.

<sup>3</sup> Leontsini, 2015, p. 27; Varden, 2015, p. 213; Follesdal, 2015, p. 311;

<sup>4</sup> See: Gordon, 2024.

John Stuart Mill argued that just actions promote the greatest happiness for many people<sup>5</sup>. Immanuel Kant believed that justice is based on universal moral principles, such as the categorical imperative, which requires individuals to act in a way they would want everyone else to act.<sup>6</sup> These are just a few of the many philosophers who have contributed to helping us understand justice. Their ideas are being debated and discussed today as we strive to create more just and equitable societies, as the world faces the challenges of war, global conflict, poverty in many countries, and humanitarian crises. John Rawls' theory of justice as fairness, particularly the concept of the original position, provides a valuable lens through which to analyze these interconnected issues. This paper is an initial effort to conduct literature research in the field of international legal philosophy, which aims to discuss the application of certain legal philosophies (John Rawls' thoughts) in the context of international law.

## DISCUSSION

### Overview of Rawls' Theory of Justice

The concept of justice has been at the center of philosophers' attention since ancient times. Philosophers made significant contributions in formulating this concept with different approaches and emphases.

Plato saw justice as harmony in the individual soul and society. For Plato, justice is realized when each individual performs a role appropriate to his or her social class. Meanwhile, Aristotle developed a concept of justice that distinguishes between "distributive justice" and "commutative justice", which describes the difference between justice in the public interest and individual interests. In addition, Aristotle linked it to morals, as a necessity for a harmonious society. In this regard, in my view, Immanuel Kant provided a more formal approach to justice, which he saw as a universal moral law, based on human reason and applicable to all people without exception.

Meanwhile, another modern philosopher was John Stuart Mill of the utilitarian school. Mill argued that a just action maximizes happiness for the greatest number of people to achieve the general welfare. Rawls, who disagrees with utilitarianism, offers a theory of justice that was highly influential in the 20th century. He proposes that we imagine ourselves in the 'original position' behind a 'curtain of ignorance' where we do not know our social position or capabilities. In this state, we would choose the principles of justice that are most just for everyone.

In the thoughts of the figures above, we can identify a shift from the metaphysical to politics and law, and the focus was shifting from individuals to society. This shift from natural law (Plato and Aristotle) to positive law (Kant and Rawls) is in line with the development of societies that have become more complex in their various activities and the strengthening of judicial institutions and other adjudication both nationally and internationally (such as the International Court of Justice and other institutions such as arbitration). The development of Rawls' thinking shows that his concept of justice has also shifted from formal justice to material justice.

The next section will explain in more depth Rawls' thinking on justice and fairness, as well as "justice as fairness". Among modern philosophers, John Rawls' "A Theory of Justice" is a seminal work in contemporary political philosophy that influences the legal system of the countries and eventually the international law<sup>7</sup>. He proposes a theory of justice based on the idea of, a "veil of ignorance," in which individuals choose principles of justice without knowing their position in society. This notion idealizes an attempt to rid oneself of biases that

<sup>5</sup> See: Brink, 2022.

<sup>6</sup> Rosen, 1996, p. 8-9.

<sup>7</sup> Sim, 2007, p. i-ii.

affect fair decision-making. Such an image can be found in the statue of the goddess of justice who holds a sword and scales but closes her eyes. Justice and fairness are urgently needed in the new world order with today's highly dynamic geopolitical conditions.

As explained by Sim, John Rawls achieved worldwide recognition as a leading political and moral philosopher with his famous 1971 work, *A Theory of Justice*, and its 1999 revision; As described by Sim, Rawls' "Justice as fairness" is a theory that can guide a constitutional democratic society in the expression of a variety of ideas such as being impartial, moral, rational, and liberal. A constitutionally democratic society is characterized by the rule of law, respect for human rights, and freedom of expression, which are global concerns and solidarities today. A criticism of Rawls is his lack of explicit engagement with the problem of racial discrimination in the United States. However, Rawls speaks on the level of values that apply to discrimination in its various forms and respect for human rights.

Sim's study explained that Rawls pioneered the concept of "justice as fairness" by combining the two Aristotelian concepts of justice and fairness into one theory, and by declaring that justice as fairness must be the primary concern and "first virtue" of social institutions<sup>8</sup>, in the sense that institutions, in the sense that a society is just if and only if it provides for and guarantees the fundamental basic rights, freedoms, opportunities, and self-respect to each of its members equally and fairly.<sup>9</sup> This kind of idea colors the global rejection of unilateral acts of one state invading another state, such as the UN General Assembly's stance on Russia's invasion of Ukraine. As described by Sim, Rawls provided important values for democracy and human rights through his most influential work *A Theory of Justice* (1971)<sup>10</sup>. "A Theory of Justice",

"...has had a profound impact on moral and political philosophy since its publication. He proposes "justice as fairness," as an alternative to the utilitarian theory. Rawls considers utilitarianism a threat to basic human rights because it initiates and justifies actions that provide the greatest benefits for the majority of the people while ignoring the plight of the minority. This neglect of the minority will ultimately bring about instability as members of the minority resort to desperate means to have their needs met."<sup>11</sup>

Rawls' works focus on fairness and equality and aim to create a just society through fair principles, his focus on the minority also shows the morality aspect of his theory of justice. His foundational work is "A Theory of Justice" (1971), "Political Liberalism" (1993) which is an expansion on justice principles, and "The Law of Peoples" (1993).

Since 1958 Rawls explained that the two principles of justice had been defined as follows<sup>12</sup>:

1. Each person has an equal right to a fully adequate scheme of equal basic liberties compatible with a similar scheme of liberties for all.
2. Social and economic inequalities are to satisfy two conditions. First, they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society.

<sup>8</sup> See: Rawls, 1958, p. 164-165.

<sup>9</sup> Sim, *ibid.*

<sup>10</sup> Sim, p. 9.

<sup>11</sup> Sim, *ibid*; Rawls, 1958, p. 164.

<sup>12</sup> Rawls 1971, p. 53 as quoted by Premchand, 2017 p. 2; Rawls, 1982, p. 5; in Rawls's 1971 work he used the words: "each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme for others" (Rawls, 1971, p. 53). See also: Rawls, 1958, p. 165-166.

At the first principle, Rawls discusses the principle of equal liberty. According to this principle, Rawls described that each person has an equal right to the most extensive basic liberties.<sup>13</sup> The principle of equal liberty guarantees fundamental rights, namely freedom of thought and liberty of conscience; the political liberties and freedom of association, as well as the freedoms specified by the liberty and integrity of the person; and finally, the rights and liberties covered by the rule of law.<sup>14</sup> Those two principles, according to Rawls, "...express justice as a complex of three ideas: liberty, equality, and reward for services contributing to the common good."<sup>15</sup> It is also important to note, that the term "person" in Rawls's works is to be construed variously depending on the circumstances, sometime it could be a human being, but in other contexts, it could refer to nations, provinces, and others.<sup>16</sup>

At the second principle, Rawls introduced the "difference principle" that social and economic inequalities must be for the benefit of the least advantaged.<sup>17</sup> If inequalities improve the situation of the poorest, the difference principle justifies them.<sup>18</sup>

Rawls discussed the starting point of his view in his work titled The Original Position and Veil of Ignorance. According to Rawls, the original position is a hypothetical scenario where individuals, behind a veil of ignorance, choose principles of justice to govern their society.<sup>19</sup> According to Freeman, "the original position is designed to be a fair and impartial point of view that is to be adopted in our reasoning about fundamental principles of justice"<sup>20</sup> and one is to imagine him or herself "...in the position of free and equal persons who jointly agree upon and commit themselves to principles of social and political justice for a well-ordered democratic society...."<sup>21</sup>

According to this concept, decision-making behind a veil of ignorance ensures impartiality. Imagine designing a society without knowing your social status Premchand defines it as bias removal. The ignorance against the prejudice. According to Premchand:

"In order to arrive at a just system of social distribution that is also fair and in which everyone cooperates with each other and is assumed to act justly, one must first remove all biases in order to arrive at a common consensus on the good of society."<sup>22</sup>

Premchand continues "Thus the Original Position assumes a veil of ignorance in which one is unaware of what one's social status, income, religion or natural endowments might be when making one's decision."<sup>23</sup> This thought ensures that the chosen principles are fair and impartial, reflecting the interests of all members of society.

### **Overview of Rawls' "The Law of Peoples" and International Law.**

John Rawls offered a profound perspective on justice, peace, and governance within the framework of international law<sup>24</sup>. Wenar described that "with the theories of legitimacy and

<sup>13</sup> Rawls, 1982, p. 5.

<sup>14</sup> Rawls, 1982, p.5; Rawls elaborated it as "political liberty, freedom of speech and assembly, liberty of conscience and freedom of thought, freedom from oppression, right to hold personal property" (Rawls, 1971, p. 53 as cited by Premchand).

<sup>15</sup> Rawls, 1958, p. 165-166.

<sup>16</sup> Rawls, *ibid.*

<sup>17</sup> Rawls, 1982, p. 5.

<sup>18</sup> Rawls, 1958, p. 167-168.

<sup>19</sup> Freeman, 2023, paragraph 1.

<sup>20</sup> Freeman, *ibid.*

<sup>21</sup> Freeman, *ibid.*

<sup>22</sup> Premchand, 2017, p. 2.

<sup>23</sup> Premchand, *ibid.*

<sup>24</sup> Reidy, 2004, p. 291-292.

justice for a self-contained liberal society completed, Rawls then extends his approach to international relations with the next in his sequence of theories: the law of peoples.”<sup>25</sup>

In his work “The Law of Peoples”, Rawls described his ideas that “By the law of peoples I mean a political conception of right and justice that applies to the principles and norms of international law and practices.”<sup>26</sup> Rawls explained that “the phrase “the law of peoples” derives from the traditional *ius gentium*,<sup>27</sup> and the way he uses it “is closest to its meaning in the phrase *ius gentium intra se*. In this meaning it refers to what the laws of all peoples had in common”.<sup>28</sup>

The *ius gentium* which is the root of “the idea of international law”<sup>29</sup>, “...was articulated for the first time by the classical Greek and Roman philosophers and jurists.... closely linked to the *ius naturale* in the ‘Institutes’ of the Roman jurist Gaius (130-180)”<sup>30</sup>. Gaius defined the *ius gentium*, by elaborating that “...the law which natural reason establishes among all men is observed by all peoples alike, and is called *ius gentium* because it is the law observed by all men.”<sup>31</sup> According to Samuel, “Gaius’s distinction between *ius natural* and *ius gentium* lies in the notion that the *origins* of this law lie in human reason while *ius gentium* represents its *application*.”<sup>32</sup>

Our world today is increasingly globally connected through advances in communication and transportation, international economic law, for example, is no longer seen as separate from other sectors of governance, but rather is closely linked given that the economic interests of states can influence international law and world geopolitics. International law regulates relations between states in various aspects of life.<sup>33</sup> As explained by Klabber, international law is not just the law “that deals with war and peace, or with genocide and human rights; it also encompasses rules on trade, on the protection of the environment, on shipping, and on the protection of refugees... the existence of international relations, of whatever kind, entails the existence of international law.”<sup>34</sup>

In the author’s view, the birth of international economic law or international trade law is not just an economic law matter, it is even part of the interests of world peace. According to the author, the experience of two world wars shows that the absence of international public law in the trade sector or economics sector has become a driver of conflict between countries. In 1929, for example, a global recession caused widespread poverty in the world, continuing in the 1940s which caused Germany and Japan to carry out military invasions to have living space (Germany: *lebensraum*). A strong sense of injustice resulting from the dominance of a particular country prompted other countries to retaliate economically and militarily, which sparked the First World War and the Second World War. The “*Lebensraum*” view was rejected by the world, because of its cruel impact on humanity, weakens democracy which is replaced by dictatorship, destroys the legal order, and eliminates justice. In the 1990s, the birth of the World Trade Organization created a global balance and shared prosperity. This is where Rawls’ views become very relevant.

What is the motivation of Rawls to continue his work through “The Law of Peoples”? Rawls’ motivation to continue his work in The Law of Peoples is linked to the violent conflicts between groups and between states, and the emergence of authoritarianism in certain countries at the expense of human rights. Even in the 20th century, for example, we

<sup>25</sup> Wenar, 2021, section 5.

<sup>26</sup> Rawls, 1993, p. 36.

<sup>27</sup> Rawls, *ibid*, footnote 1.

<sup>28</sup> Rawls, *ibid*.

<sup>29</sup> Samuel, paragraph 1.

<sup>30</sup> Samuel, *ibid*.

<sup>31</sup> Samuel, *ibid*.

<sup>32</sup> Samuel, *ibid*.

<sup>33</sup> Klabbers, 2021, p. 3.

<sup>34</sup> Klabbers, *ibid*.

encounter cases of genocide, in terms of ethnic cleansing in certain countries (e.g. Rwanda, Srebrenica Camp, etc.). His perspective is very relevant to the global concern about human rights violations and the obstruction of democracy that can be found in some parts of the world. Rawls elaborates on it as cited by Wenar:

Two main ideas motivate the Law of Peoples. One is that the great evils of human history—unjust war and oppression, religious persecution, and the denial of liberty of conscience, starvation, and poverty, not to mention genocide and mass murder—follow from political injustice, with its own cruelties and callousness... The other main idea, obviously connected with the first, is that, once the gravest forms of political injustice are eliminated by following just (or at least decent) social policies and establishing just (or at least decent) basic institutions, these great evils will eventually disappear.<sup>35</sup>

This is in line with Kant's opinion about the challenges faced by states competing with each of their interest.<sup>36</sup>

Wenar elaborates that much of Rawls's presentation of the law of peoples "parallels the presentations of political liberalism and justice as fairness. As a liberal society has a basic structure of institutions so, Rawls says, there is an international basic structure."<sup>37</sup> The rules of this basic structure are coercively enforced (for example, Wenar mentioned that "Iraq's invasion of Kuwait in 1990 was coercively reversed by a coalition of other countries"<sup>38</sup>). Wenar noted that:

"The principles that should regulate this international basic structure thus require justification. The justification of these principles must accommodate the fact that there is even more pluralism in worldviews among contemporary societies than there is within a single liberal society."<sup>39</sup>

In my opinion, one of the pluralistic situations mentioned by Wenar above manifested in the competing national interests versus global welfare (e.g., sovereignty issues). For example, in the clash between the United States and the world on the issue of global warming and climate change. President Trump as a figure who is skeptical of the issue of climate change views that the economic interests of the United States are the top priority, so international policies must support the economic interests of the United States. That is why President Trump in his first term (2017-2021) declared to withdraw from various international agreements related to climate change including the Paris Agreement on climate,<sup>40</sup> making the United States the first country to withdraw from the Paris Agreement<sup>41</sup>. Although it has been restored by President Biden, Trump's victory in the 2024 election is predicted to again pull the United States out of agreements that are considered detrimental to the economic position of the United States<sup>42</sup>.

Another example in the author's opinion is the invasion of Russia into Ukraine. The international community raises concern about the invasion of Russia into Ukraine. President Putin asserted his geopolitical ambitions as listed by Hill as to redraw Europe's post-Cold War security architecture, resist the further eastward expansion of the North Atlantic Treaty Organisation (NATO), restore Russia's strategic depth, and reclaim its strategic influence around its western borders.<sup>43</sup>

<sup>35</sup> Rawls, 1993, p. 6-7, as cited by Wenar, 2021, section 5.

<sup>36</sup> Wenar, 2021, section 5.

<sup>37</sup> Wenar, *ibid.*

<sup>38</sup> Wenar, *ibid.*

<sup>39</sup> Rawls, 1993, p. 33, p. 62, p. 114-115, p. 122-123, as cited by Wenar, *ibid.*

<sup>40</sup> Lempriere, 2024, paragraph 3-5.

<sup>41</sup> McGrath, 2020.

<sup>42</sup> Lempriere, *ibid.*

<sup>43</sup> Hill, 2023.

Rawls provided eight guiding principles for ordering the international basic structure:<sup>44</sup>

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples. In my opinion, this principle guarantees basic freedoms for all individuals and states.
2. Peoples are to observe treaties and undertakings. In my perspective, this principle is similar to the *pacta sunt servanda* principle.
3. Peoples are equal and are parties to the agreements that bind them. In my opinion, this is the fair equality principle.
4. Peoples are to observe the duty of nonintervention (except to address grave violations of human rights). (In the author's view, the way the United Nations took action against Iraq's invasion of Kuwait was an example of this principle).
5. Peoples have a right of self-defense, but no right to instigate war for reasons other than self-defense. (This is in the author's opinion similar to the situation of Ukraine's self-defense responses against the invasion of Russia).
6. Peoples are to honor human rights. (In the author's view, Rawls' principle could be developed more into the duty of the state to promote human rights).
7. Peoples are to observe certain specified restrictions in the conduct of war. (Rawls's emphasis on justice and fairness can be applied to the ethics of war. His principles could be used to evaluate the justness of war, the proportionality of force, and the treatment of prisoners of war<sup>45</sup>).
8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent them from having a just or decent political and social regime. (In the author's opinion, this is an expansion into the international sphere of Rawls' difference principle that applied to domestic context philosophy).

It is in the view of the author that by adhering to the principles above, international law can foster a more just and equitable global order. This would involve promoting human rights, addressing the issues of inequality and injustice, and working towards a peaceful and cooperative international community. Rawls also leaves room for various organizations, such as idealized versions of a United Nations, a World Trade Organization, and a World Bank, that might help societies improve their political and economic coordination.<sup>46</sup>

Rawls's concept of democracy and political liberalism requires just institutions which should be established on principles that promote peace, stability, and the well-being of all nations<sup>47</sup>. Rawls' theory of justice as fairness in its international context is set out in *The Law of Peoples*<sup>48</sup>, by preserving peace and stability, should be seen as the better philosophical basis (compared to the utilitarianism democracy) to support global modern democracy as a system that promotes the basic liberty and equality of the people as a whole, not only the majority but also the minority.<sup>49</sup>

In various multilateral frameworks, especially those related to human development, we can find traces of John Rawls' philosophy, especially in programs to achieve social development goals. Rawls' principle of justice as fairness opens up opportunities for the establishment of an international legal framework that balances individual freedom and social

<sup>44</sup> Rawls, 1993, p. 37 as cited by Wenar, 2021, sub-section 5.1.

<sup>45</sup> Amstutz compares the direct attack by the Al-Qaeda terrorist group on the United States with the response of the United States government in the form of the declaration of the "War on Terror" whose implementation raises various other issues including human rights violations (see: Amstutz, p. 2).

<sup>46</sup> See: Wenar, 2021, section 5.

<sup>47</sup> See: Wenar, *ibid.*

<sup>48</sup> Förster, 2012, p. 12-13: "... The Law of Peoples has to be read, understood and interpreted on the basis of The Theory of Justice and Political Liberalism" (p. 13).

<sup>49</sup> Sim, 2007, p. 6-7.

equality so that the resolution of global problems is not only peaceful but also equitable and fair.

### Criticisms of Rawls

The influence of Rawls' thinking was so great that legal philosophers from the critical school then presented a study that discussed it in depth, presented questions, and conveyed criticism of Rawls' thinking in *A Theory of Justice*<sup>50</sup>. There are many questions about how suitable the concept of the "Original position" is for selecting and justifying principles of justice<sup>51</sup>. Not to mention the issue of Rawls's "neutrality", which for his critics is whether there is neutrality that can guarantee the existence of an "Original position" that is free of bias as idealized by Rawls<sup>52</sup>. Criticisms of Rawls center on several issues that developed contextually in the 20th century, especially the issue of structural justice and the problem of differences in identity.

One other challenge to global justice is Cultural Differences. Interpretations of what justice means in different cultures are often challenged by differences between individualistic and community approaches. In some countries, the community approach is still preferred, so individual rights have not been prioritized, and individual rights are even considered a Western influence. Countries are formed through different historical experiences. For some countries with strong cultural differences, the conflict between these cultural differences sometimes affects the interpretation and implementation of justice values and norms. Experience has shown that this makes it challenging for human rights to be universally applied, and in some cases, human rights policies are difficult to implement due to cultural differences.

Another challenge to global justice is Economic Disparities. There are several efforts to address the wealth gaps, especially through the different but fair treatment between the developed, developing, and least developed countries, especially through GATT and WTO. However, this is not enough. Global economic systems perpetuate inequality. The experience during Covid19 pandemic proved that economic imbalance among countries had reached a level of injustice situation, as a few countries could access the vaccine while others had to wait while witnessing the falling of victims.

Although there are criticisms of Rawls' thinking, as an influential political and legal philosopher today, his thinking has made an important contribution to strengthening justice in society both domestically and internationally. As Richardson states, "Despite these criticisms, many areas of Rawls's theory of justice remain coherent and if implemented would have many benefits for society."<sup>53</sup>

## CONCLUSION

This article started with the question, how can justice become the guiding principle in international law to provide an equitable global order? This paper is part of literature research in the field of international legal philosophy, which aims to discuss the application of John Rawls' thoughts on justice in the realm of international law.

Rawls introduced two principles of justice, which stated that each person has an equal right to a fully adequate scheme of equal basic liberties compatible with a similar scheme of liberties for all. Secondly, social and economic inequalities are to satisfy two conditions. First, they must be attached to offices and positions open to all under conditions of fair

<sup>50</sup> See: Daniels, 1989.

<sup>51</sup> Daniels, 1989, p. xiv.

<sup>52</sup> Daniels (Ibid) quoting Nagel in the same book.

<sup>53</sup> Richardson, 2020, h. 8.

equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society.

Rawls' works focus on fairness and equality and aim to create a just society through fair principles. His foundational work is "A Theory of Justice" (1971), "Political Liberalism" (1993) which is an expansion on justice principles, and "The Law of Peoples" (1993).

Rawls started with the concept of the point of view named The Original Position and Veil of Ignorance. According to Rawls, the original position is a hypothetical scenario where individuals, behind a veil of ignorance, choose principles of justice to govern their society.<sup>54</sup>

John Rawls offered a profound perspective on justice, peace, and governance within the framework of international law, he introduced eight principles that function as the guiding principle in the international law sphere. Rawls' philosophy endorses the issue of human rights and democracy.

In my Conclusion, John Rawls' philosophy supports a more democratic and human rights-supportive framework for international rule-making. Rawls' thinking supports a more humane global framework to bridge the disparities between countries in the world, especially developed countries, developing countries, and economically disadvantaged countries. Criticisms of Rawls center on several issues such as the issue of structural justice and the problem of differences in identity.

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<sup>54</sup> Freeman, 2023, paragraph 1.

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