

Defense of Rawls: A Reply to Brock

Abstract

Cosmopolitans like Gillian Brock, Charles Beitz, and Thomas Pogge argue that the principles of justice selected and arranged in lexical priority in Rawls' first original position would—and should for the same reasons as in the first—also be selected in Rawls' second original position. After all, the argument goes, what reasons other than morally arbitrary ones do we have for selecting a second set of principles? A different, though undoubtedly related, point of contention is the cosmopolitan charge that Rawls fails to consider the unfavorable conditions that owe themselves to global factors. Perhaps there was a time when interconnectedness and interdependency between states was not a factor, but in the current global order, this is certainly not the case. While this paper will address other related cosmopolitan concerns mentioned in Brock's work, it is these two points that are perhaps the two biggest threats to the Rawlsian project and, as such, it is these two points that will be the primary focus of this paper.

Keywords: *Cosmopolitan, Brock, Rawls, Principles of Justice, Original Position*

Along with Charles Beitz and Thomas Pogge, cosmopolitan Gillian Brock is professedly Rawlsian in sympathies when it comes to the theory of domestic justice Rawls advances in his landmark 1971 work *A Theory of Justice* (hereafter *TJ*). So it was much to the disappointment of Brock and other Rawlsian cosmopolitans¹ to find out upon the release of Rawls' book on international justice, *The Law of Peoples* (hereafter *LP*), that Rawls failed to extend his principles of domestic justice to a global level. Especially troubling to cosmopolitans was Rawls' failure to extend his "difference principle"² to a global level. The general complaint is that if Rawls is truly committed to the outcome of delegates deliberating—under conditions of impartiality, in the hypothetical position—behind an appropriate veil of ignorance on a domestic level, then consistency would require, for reasons I will explain below, that the deliberation process behind a second veil on an international level would yield support for a *global* difference principle.

In what follows, I hope to defend Rawls against this charge of inconsistency between his earlier work on domestic justice and his later work on international justice. As I hope to show below, when Rawls shifts the discussion of justice from a domestic to an international level, contrary to these cosmopolitan criticisms, Rawls stays consistent with his prior liberal commitments.

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¹ What have come to be known as "Rawlsian cosmopolitans" support Rawls' theory of domestic justice. The types of claims advanced by these particular cosmopolitans are not against Rawls' principles of domestic justice, nor against his approach, but rather they are against Rawls' failure to extend these same principles to a global level.

² Rawls' "difference principle", also known as the "maximin" principle of welfare economics, states that economic inequalities are to be permitted when and only when these inequalities work to the maximum benefit of the least well-off members of society.

While a number of complaints have emerged in the wake of *LP*, the one I wish to focus on in this paper is the complaint that has been perhaps the greatest source of cosmopolitan lament: Rawls is inconsistent, in the sense that Rawls' domestic theory is decidedly egalitarian while his international theory is anything but. The first part of this paper outlines this very complaint, as presented in Gillian Brock's *Global Justice*.³ The second part of this paper argues that the Rawlsian project, correctly understood, is not as vulnerable to this central cosmopolitan criticism as Brock seems to suggest. I begin by offering what I take to be a fundamental, though perhaps often overlooked, key to understanding the Rawlsian project: a peoples'⁴ capacity for self-sufficiency. Ultimately, it is my intention to argue that this difference between peoples and individual citizens, working in tandem with the interests behind assigning lexical priority to the liberty principle, is sufficient for reconciling what Brock sees as an inconsistency between Rawls' global and domestic justice. In what follows, I hope to demonstrate that it is precisely *by* different principles being selected—namely without a global difference principle—that Rawls is consistent.

CENTRAL OBJECTIONS TO RAWLS' *THE LAW OF PEOPLES*

Against Rawls, Gillian Brock's *Global Justice* presents the criticism at the forefront of cosmopolitan concerns: Rawls is tolerant of the type of economic injustices at the global level that Rawls is intolerant of at the domestic. Rather than extend his egalitarian difference principle

³ Gillian Brock, *Global Justice: A Cosmopolitan Account* (Oxford: Oxford University Press, 2009).

⁴ By a "peoples", Rawls roughly means a society. For the distinction between peoples and states, see *LP* pp 23-30.

to a global level, Rawls introduces a less demanding “duty of assistance.”⁵ Rawls’ duty of assistance has fallen largely on unsympathetic ears. The general complaint is that duty of assistance allows for inequalities that are not to the benefit of the *globally* least well-off, which is something that his domestic level difference principle does not permit.

Cosmopolitans argue that if structuring a global *Society of Peoples* behind an appropriate veil of ignorance (a veil which deprives us knowledge not of the world itself, but of our place in it), then factors such as place of birth and state boundaries are also arbitrary from a moral point of view. Just as the distribution of benefits and burdens should not be based on one’s sex, race, inherited status, or endowment of natural talents, it also should not be based on endowment of natural resources. In short, whatever reasons we had for accepting a domestic difference principle we also have for accepting a global one, given that place of birth is yet another arbitrary factor.

Brock and fellow cosmopolitans maintain that just as sex, race, and natural talents are morally arbitrary, so is place of birth. As the argument goes, if we accept place of birth to be just one more in a long line of contingencies, then consistency would require that the principles selected would be those which work to the maximum advantage of the globally least well-off. That is to say, a global difference principle would be selected. Of all the misgivings voiced about *LP*, it is this principle that concerns cosmopolitans the most, and it is this principle that is the primary focus of this paper: the endorsement at the international level of principle 2a, the *difference principle* (or, what is known as the “maximin” principle of welfare economics).

⁵ According to Rawls, all that a self-governing peoples owe to others is a duty of assistance, a duty to “assist burdened societies to become full members of the Society of Peoples and to be able to determine the path of their own future for themselves” (*LP*, pg 119).

In short, Brock's basic point is that Rawls' exchange of a difference principle for a less ambitious *duty of assistance*⁶ falls short of his domestic egalitarianism, and is thereby inconsistent with his prior commitments. I will argue that this is not the case—in the sense that the interests being secured in *LP* are consistent with Rawls' earlier commitments. Likewise, with respect to earlier commitments, Rawls' *LP* both rests on and further develops as an answer to the “stability question” his idea of an “overlapping consensus”, originally mentioned—albeit by name only once—in *TJ* and further developed in post-*TJ* works. I will discuss this only as it relates to my main argument.

CENTRAL TO UNDERSTANDING RAWLSIAN INTERNATIONAL JUSTICE

Before going on to my main argument, one important piece of groundwork is necessary. It is here that we will look at how Rawls' theory of international justice rests on an assumption of the self-sufficiency of states.⁷ Understanding the implications and motivations behind one of the eight global principles delegates would choose when deliberating is central, though perhaps often overlooked, to understanding the Rawlsian project—or at least to appreciating its consistency. Brock's criticisms, and the survey of the defenses of Rawls offered in her work, do not mention the motivations behind this: “*Peoples are free and independent, and their freedom and*

⁶ There are two (main) readings of duty of assistance in the literature: one “humanitarian” (See for example Tan, *Justice without Borders* pp. 20-23), the other “sufficientarian” (See for example Lea Ypi, *Global Justice and Avant-Garde Political Agency* pp. 89-116). For reasons that will become clearer later on, it seems Rawls' work is more aligned with the latter, especially given Rawls himself stated rather explicitly that the duty of assistance has a “target and cutoff point” (*LP*, pg. 119) and that it served a specific purpose, which will also make more sense as we go on. According to Rawls, all that a self-governing peoples owe to others (rather than a global difference principle) is a duty of assistance, a duty to “assist burdened societies to become full members of the Society of Peoples and to be able to determine the path of their own future for themselves” (*LP*, pg 119).

⁷ David A. Reidy (2004) emphasizes the importance of this for Rawls' international justice, and provides a much more detailed account, though he puts it to different purposes. I owe much to him here.

independence are to be respected by other peoples.”⁸ There is of course a lot that can be said about this, but what matters for our purposes here is simply how Rawls’ *LP* is informed by his convictions about the self-sufficiency of states.⁹

By considering the motivation behind this we can understand Rawls’ *LP* as a continuation of his earlier work, and better appreciate its coherence. It is not that Rawls abandons earlier commitments from *TJ*, rather it is that Rawls is acknowledging that a *peoples* can live independently of other *peoples* in a way that individuals on a domestic level never could. That is to say, peoples have the capacity to be self-sufficient in a way that on a domestic level individuals do not.¹⁰ Also, a peoples can, despite its current standing, *become* self-sustaining and live independently of other peoples in a way that individuals on a domestic level cannot.¹¹

This difference between peoples and individual citizens is significant to Rawls’ project. And it is this difference, I want to argue, that in tandem with the point I discuss below (the interests behind assigning lexical priority to the *liberty principle*—roughly defined as *equal citizenship*) explains why a different set of principles would be chosen, namely without a (global) difference principle. It is not that Rawls changes his position, but rather it is that Rawls—and delegates in the hypothetical position—acknowledge a significant difference between peoples and individual persons.

⁸ Rawls, John. *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999) pg. 37.

⁹ This is stated perhaps most explicitly on pages 106-109, *LP*.

¹⁰ Rawls states this perhaps most explicitly later on in *LP* when saying “Surely there is a point at which a peoples’ basic needs (estimated in primary goods) are fulfilled and a *people* can stand on its own [italics mine].” (*LP*, pg. 119).

¹¹ For both similarities and differences between how peoples and individual citizens see themselves as free and equal with “highest-order interests” in self-determination, see *LP* pg. 32-38.

Brock provides a generous survey of the popular defenses of Rawls just before her criticisms. These defenses by and large are based on the misunderstanding critics have concerning the purpose of Rawls' work. These more-or-less turn on the idea that Rawls' *LP* asks a less ambitious question: how should liberal peoples interact with non-liberal peoples. In short, they have as their starting point the idea that Rawls' *LP* was primarily concerned with defining a *realistic utopia*.¹² On the other hand, Joseph Heath's point is that, "Just as Rawls' primary objective in *Theory of Justice* was to argue against utilitarianism, in the *Law of Peoples* it is to dislodge realism." I owe much to all of these accounts (especially Heath's), but mine differs from theirs in that it relies heavily on this difference between peoples and individual citizens.

DEFENSE AGAINST THE CHARGE OF INCONSISTENCY

Hopefully having explained the relevant difference to Rawls between peoples and individuals, we are now in a better position to see Rawls' refusal to globalize the difference principle as consistent with *TJ*. My defense here rests on something that Rawls stays committed to since his earliest work: the interests behind assigning lexical priority to the liberty principle,¹³ the priority of self-respect.

Rawls' duty of assistance has been criticized as objectionably modest for the reasons I have given above. Indeed, cosmopolitans are right to say the demands of duty of assistance are

¹² With respect to consistency, it is from this that flows the most common lines of defense in the literature: Rawls' *realistic utopia* requires (global) "overlapping consensus". (Which is well-founded given there exists an even broader range of irreconcilable "comprehensive" beliefs worldwide than that found within a single state.) Rawls is taking seriously the *fact of reasonable pluralism* among peoples, analogous with his political conception at the domestic level. These defenses however, even by their own admission, align Rawls' *LP* closer to *PL*. See, for example Leif Wenar, "The Unity of Rawls' Work", (2004), and Stephen Macedo, "What Self-governing Peoples Owe to One Another: Universalism, Diversity, and the Law of People", (2004).

¹³ Again, the liberty principle can be roughly defined as *equal citizenship*.

far from that of Rawls' domestic difference principle.¹⁴ Duty of assistance allows for inequalities and the distribution of natural resources and talents that Rawls is intolerant of in *TJ*. But we are told very little about this in the domestic situation. Rawls' duty of assistance does, however, build on groundwork laid earlier in *TJ*.

While *TJ* primarily concerned itself with domestic justice, Rawls does mention in passing the "natural duties" owed between states, in a sense anticipating the duty of assistance he would later develop in his account of international justice.¹⁵ But beyond this, little is said in the way of what exactly this natural duty would mean for the international situation. Even Rawls' first work on international justice, "The Law of Peoples" (1993)—an earlier paper by the same name as the book—makes no mention of a duty of assistance. It is not until we get to *LP* that Rawls puts forward the duty of assistance. While duty of assistance does in fact allow for inequalities that the difference principle does not, by selecting this different set of principles (again our focus being on the difference principle), Rawls is protecting the interests behind them rather than the principles themselves.

Let us first consider the domestic situation. Simply put, according to Rawls, individuals' wealth and their status in the social hierarchy cannot be guaranteed equal for any length of time. If one's self-respect is tied to these things, knowledge of one's subordinate ranking in a society can be a threat to one's self-respect.¹⁶ While roles or statuses in a society cannot be guaranteed

¹⁴ For a compelling case that the duty of assistance's demands are greater than is often supposed, see David Reidy (2007) "A Just Global Economy: In Defense of Rawls".

¹⁵ *TJ*, pp 98-99

¹⁶ Rawls argues that "perhaps the most important primary good is that of self-respect" (*TJ*, sec. 67). Rawls goes on to say that without self-respect people will doubt their own worth and their ability to carry out their life goals. Rawls argues in both *TJ* and *PL* for the importance of self-respect:

equal (even if all were to have the same starting point), citizenship can. As such, Rawls' thought is that equal citizenship can play the role of securing self-respect in a way that equalizing one's wealth or status (via difference principle) in a social hierarchy never could. It is for this reason of providing a secure *basis for self-respect* that Rawls gives lexical priority to the liberty principle on a domestic level.¹⁷ For the purpose of securing self-respect, the liberty principle is given lexical priority, and the difference principle comes only after, and never at the expense of, the liberty principle. Rawls' two domestic principles are as follows:

First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others [*the liberty principle*].

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage [*the difference principle*], and (b) attached to positions and offices open to all [*the fair equality of opportunity principle*].¹⁸

By lexically ranking the liberty principle on the domestic level, Rawls shows his commitment to the primacy of self-respect over a difference principle. Rawls was also clear that not only was the difference principle to come second to the liberty principle, but that it was also intended to serve

The importance of self-respect is that it provides a secure sense of our own value, a firm conviction that our determinate conception of the good is worth carrying out. Without self-respect nothing may seem worth doing, and if some things have value for us, we lack the will to pursue them. Thus, the parties give weight to how well principles of justice support self-respect... (PL, p. 318).

Emphasizing the importance of self-respect on a domestic level, Rawls gives lexical priority to the liberty principle over a difference principle and argues that the Priority of Liberty serves as "the basis for self-respect" (TJ, sec. 39).¹⁷ Note that priority is not given to *full* liberty, but *equal* liberty (e.g., not *full* liberty of conscience, but *equal* liberty of conscience).

¹⁸ TJ, p. 60, (1971). Rawls puts forth the full and final version of these principles in the second edition of TJ (1999):
First: Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.
Second: Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantage, consistent with the just savings principle, and (b) attached to positions open to all under conditions of fair equality of opportunity.

as further support for it. Rawls in no uncertain terms expressed his commitment to the priority of self-respect over a difference principle domestically.

While Rawls does not lexically rank his principles of international justice, we can nonetheless see a problem of consistency if the same principles were to be selected. Let us now consider the international situation. Just as with the domestic case, representatives of decent peoples behind the veil are deprived the knowledge not of the world itself, but of their place in it. Representatives know nothing of the strength, size, or relative level of development of their territory, nor do they have knowledge of its economic strengths or resources. Rawls believes this second original position would yield at least eight principles:

- (1) Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
- (2) Peoples are to observe treaties and undertakings.
- (3) Peoples are equal and parties to the agreements that bind them.
- (4) Peoples are to observe a duty of non-intervention.
- (5) Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense.
- (6) Peoples are to honor human rights.
- (7) Peoples are to observe certain specified restrictions in their conduct of war.
- (8) Peoples have a duty to assist other people living under unfavorable conditions that prevent their having a just or decent political and social regime.¹⁹

While these are not lexically ranked, we still know something about Rawls' priority in the international case. In the domestic case, Rawls gives priority to self-respect over a difference principle, as evidenced by his lexical ordering, and while Rawls does not lexically rank his

¹⁹ *LP*, p. 37

international principles, he still gives priority to (collective) self-respect over a (global) difference principle. We know this because of his reasons for rejecting it: a global difference principle is a threat to a peoples' self-determination insofar as it requires global institutions.

Consistent with the spirit of *TJ*, in *LP* Rawls argues that a peoples' self-respect cannot be tied to its wealth. Rawls argues that a peoples' "wealth lies elsewhere; in their political and cultural traditions... and in their capacity for political and economic organization."²⁰ In other words, their collective self-respect is in some sense tied to their meaningful political projects. As two sides of the same coin, collective self-respect is tied also to the international recognition of a peoples' cultural tradition and its meaningful way of life. So both a peoples' way of life and the international recognition thereof is what collective self-respect is tied to.

A global difference principle is a threat to a peoples' self-determination in a way that a duty of assistance is not. While cosmopolitans see duty of assistance as objectionably minimalist, (indeed, they are right to say it is far from Rawls' domestic egalitarianism), duty of assistance is not demanding enough to be a threat to a peoples' meaningful political projects and ways of life. This is so because duty of assistance does not require the type of (global) institutions that the difference principle requires at a domestic level. Rawls says almost nothing about the demands of the duty of assistance, instead focusing on what the duty of assistance is intended to achieve.

²⁰ Rawls, "The Law of Peoples," in *On Human Rights: The Oxford Amnesty Lectures*, ed. (1993), pp. 76-77. Here is an extended version of this quote: "Moreover, the problem is often not the lack of natural resources. Many societies with unfavorable conditions don't lack for resources. Well-ordered societies can get on with very little; their wealth lies elsewhere; in their political and cultural traditions, in their human capital and knowledge, and in their capacity for political and economic organization. Rather the problem is commonly the nature of the public political culture and the religious and philosophical traditions that underlie its institutions. The great social evils in the poorer societies are likely to be oppressive government and corrupt elites... Perhaps there is no society anywhere in the world whose people, were they reasonably and rationally governed, could not have a decent and worthwhile life."

The purpose of the duty of assistance is to help burdened societies that otherwise do not enjoy the benefits of international social cooperation in the Society of Peoples to *become* self-sufficient. As I said in the previous section, a peoples can be self-sufficient in a way that individual citizens cannot. As Rawls famously says, the aim of the duty of assistance has both a “target” and a “cut-off point”.²¹

Once burdened societies are brought to a level of subsistence via the duty of assistance, not only is no further assistance required, but rather, according to Rawls, any further assistance is prohibited as overtly paternalistic and as an imposition of an ideal of justice that may run counter to a peoples’ right of collective self-determination. Given that a peoples’ self-respect is tied to its collective self-determination, selecting a global difference principle would violate earlier commitments to the priority and importance of self-respect. As such, contrary to cosmopolitan criticisms, consistency requires a different set of principles (namely without a global difference principle) be selected if Rawls is to stay true to his prior convictions.

Acceptance on one level and rejection on another shows how both acceptance and rejection are attempts to secure the same end: the self-respect of a peoples on the international level and the self-respect of individuals on a domestic level. The acceptance of one and rejection of the other owes itself to the substantive differences mentioned above between the domestic and international situation, in tandem with the interests behind his order of lexical ranking. Put another way, Rawls is securing the interests behind the principle rather than the principle itself.

CONCLUSION

²¹ For Rawls’ emphasis on the importance of a “target and a cut-off point” for international distributive justice, see *LP* pp. 115-19.

Once burdened societies are brought to a level of subsistence, not only is no further assistance required, but rather, according to Rawls, any further assistance is prohibited as an imposition of an ideal that may run counter to a peoples' right of collective self-determination. This, of course, may or may not be true in itself, but rather my point for mentioning this is to show that Rawls is in fact staying true to his prior intuitions. Cosmopolitans such as Brock who accept Rawls' domestic justice while rejecting his international justice are forced to confront Rawls' consistency, and then the onus is on them to give a more substantial explanation for how they themselves are not inconsistent.

In this paper, I have argued that the consistency of Rawls' domestic and international justice is not as threatened as Brock seems to suggest. I have done this by showing how two pieces of Rawls' project work together: (1) the difference between peoples and individual citizens, and (2) the interests behind assigning lexical priority to the liberty principle. I have also argued, following others, that appreciating a richer sense of consistency can be accomplished by viewing Rawls' rejection of a global difference principle, particularly its exchange for a "good enough" duty of assistance, as a continuation of his concern with overlapping consensus.

One way to interpret the above could be to say that the cosmopolitan attempt to globalize the difference principle is unnecessary at best—given that Rawls' duty of assistance obviates the need for a global difference principle—and misguided at worst—given the differences to Rawls between domestic and global conditions. Another way to interpret this could be to say that Rawls has loosened his strictures too much for the sake of securing an (international) overlapping consensus, for the sake of defining a realistic utopia, with the cost being a less distributively just global order than Rawls allows for domestically. I have hinted at these as possible

interpretations, but I have not taken up the more difficult task of claiming one over the other(s), nor would I know how I could begin to do so. But either way that this is taken, what we cannot say is that Rawls is inconsistent for rejecting at the international level what seemed to mean so much to him at the domestic.