

CHARLES BEITZ

Charles Beitz is Professor of Politics and affiliated professor of philosophy and director of the University Center for Human Values at Princeton University. Before moving to Princeton Beitz taught in the political science departments at Swarthmore and Bodin Colleges. He earned his PhD in Politics from Princeton University in 1978, where he studied under Dennis Thompson and Thomas Scanlon, and attended Scanlon's early important seminar on *TJ*.

Beitz is best known in relation to Rawls for his innovative extension and adaptation of ideas from Rawls to the global realm. In his early work *Political Theory and International Relations* (1979, 2nd ed. 1999) Beitz provides the first detailed attempt to work out a "globalized" version of the view presented in *TJ*, and in his recent work on human rights, culminating in the book *The Idea of Human Rights*, Beitz develops what he calls a "practical conception" of human rights, significantly developing and extending ideas drawn from the comparatively sketchy account of human rights presented by Rawls in *LP*.

Although the idea of "globalizing" Rawls's account from *TJ* had already been discussed by Thomas Scanlon and Brian Barry, Beitz, in *Political Theory and International Relations*, provided the first sustained and detailed attempt to work out the view. Beitz there argues that ideas developed by Rawls in *TJ* could and should be applied at the global level, and should not be applied merely within "closed societies". Beitz suggests two ways in which Rawlsian principles could be globalized: first, within an international "Original Position" with states as members; second, in a cosmopolitan Original Position, where all individuals in the world would be represented as individuals.

In the first case, Beitz argues that even if we assume that societies are largely self-sufficient, as he takes Rawls to assume, parties to the second, "global", Original Position would insist on a global resource distribution principle which would function in a way somewhat analogously to how the difference principle works in domestic society. This argument is motivated by the idea that the distribution of resources is both "arbitrary from the moral point of view" and that access to sufficient natural resources is necessary for a society to be successful. In the other case, Beitz argues that there are strong reasons to reject the "self-sufficiency" claim he finds in Rawls, and holds that we should take individuals as the subjects of a truly global Original Position. (Beitz has consistently rejected the idea that toleration of states, nations, or "peoples" should have any priority over the pressing claims of individuals.) A global Original Position leads, Beitz claims, to a global difference principle, one ultimately addressed to individuals, though states might still play an important intermediary role. In *LP*, Rawls rejected both of these challenges to his view, arguing that global resource distribution was not of primary moral or practical importance, and further developing his arguments as to why the difference principle is inappropriate on the global level. Despite Rawls's reservations, however, Beitz's work has been and remains deeply influential in the developing global justice literature.

Beitz has recently taken on certain aspects of Rawls's account of human rights, as set out in *LP*, and used them to develop a distinct "Practical Conception" of human rights, grounded in the idea of "public reason" and based on the role that human rights play in the discursive interactions among relevant participants. This approach, contrasted by Beitz with "naturalistic" and "agreement" approaches, offers another potentially fruitful extension of Rawls's ideas in the global realm.

H.L.A. HART

H.L.A. Hart (1907-1992) was lecturer in philosophy, Professor of Jurisprudence (1952-69), and Principal of Brasenose College, Oxford. His writings range widely over legal theory, and touch on many important areas in political philosophy as well. He is widely credited with reestablishing analytic jurisprudence as an important area of study with his book *The Concept of Law* (CL). Hart's importance for Rawls falls into three main areas. First, though his influence on the young Rawls, who spent the 1952-53 academic year at Oxford on a Fulbright, shortly after having finished his dissertation at Princeton University. Rawls attended Hart's lectures on the philosophy of law, and was greatly influenced by them. (See Freeman, *Rawls*, 3) (As the influence of this time is diffuse rather than specific, I shall not specifically further discuss it.) Secondly, Rawls attributes many important ideas in *A Theory of Justice* to Hart. Finally, and most substantively, Hart's criticism of Rawls's First Principle of Justice, as presented in *A Theory of Justice*, lead Rawls to significantly revise and clarify it in his later works. In turn, Rawls's influence on Hart is apparent in Hart's work at many places, perhaps most clearly in Hart's work on punishment, where his program of distinguishing the justificatory aim of punishment from the proper distributive principle has clear parallels with, and draws on, Rawls's discussion of punishment in his early paper, "Two Concepts of Rules". (See Hart, "Prolegomenon to the Principles of Punishment", in his *Punishment and Responsibility: Essays in the Philosophy of Law*, esp. pp. 8-13.) The remainder of this entry details Hart's clearest and most important points of influence on Rawls.

Hart's influence on Rawls is felt at several points in *A Theory of Justice* (and the papers leading up to it) where Rawls makes use of ideas developed by Hart. These include the important distinction between concepts and conceptions (*TJ*, 5, *CL*, 2nd ed. 160-63. Note that Rawls consistently cites the 1st edition of CL, and that the pagination is slightly different in the 2nd, now more common edition, making cross-referencing somewhat more difficult. I cite the 2nd edition); the distinction between obligations arising under a fair legal and social system and "natural obligations" (*TJ*, 96-7, Hart, "Are There any Natural Rights?", "Legal and Moral Obligations"); the rule of law and "natural justice" (*TJ* 210, *CL* 2nd ed. 160, 206); the role of punishment in a just state (*TJ*, 277, *CL*, 2nd ed. 39); and the "circumstances of justice" (*TJ*, 109, *CL*, 2nd ed. 193-200). Finally, though this point lacks specific textual support, we might see Rawls in *TJ* as adapting and modifying Hart's notion of the "internal point of view" towards law. (*CL*, 2nd ed. 89) On Hart's account, only officials must take up the internal point of view towards law. (*CL*, 2nd ed. 116-7) We might understand one aspect of Rawls's project as working out how, in a democracy, all citizens are "officials" in the relevant sense, and then trying to work out what the rule of recognition would be for such a society. The extent of Rawls's debt to Hart is not completely clear in any of these cases, and in some, perhaps most notably in the case of the "circumstances of justice", other influences, such as Hume, are also prominent and arguably more important. That being the case, Hart's influence on Rawls is apparent and important in many places leading up to and culminating in *A Theory of Justice*.

The most important and far reaching influence of Hart on Rawls, however, stems from Hart's criticism of Rawls's first principle of justice and the account of liberty found in it. In his paper,

“Rawls on Liberty and its Priority”, (Hereafter RLP, in Daniels, ed., *Reading Rawls*, 230-52) Hart notes what Rawls came to accept as fundamental difficulties in his original presentation of the first principle of justice and the argument for its priority. Hart here notes that Rawls’s presentation of the First Principle of Justice in (the first edition of) *A Theory of Justice* has two significant problems. As presented at the time, the first principle read, “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” (*TJ* Original Edition 302). Hart points out, first, that the idea of the “extent” of a system of basic liberties is difficult, if not impossible, to make sense of in all but the least interesting and unimportant cases. (RLP 233-9) Defending a choice between systems of liberties on the basis of it providing the “most extensive” total system is therefore not feasible. Hart also argues that the motivation of the parties in the original position to give the strong priority to the basic liberties that they do is not clear enough to do the work Rawls requires of it. (RLP 240-44)

Rawls recast the First Principle in order to meet these objections, first in the foreign language editions of *A Theory of Justice* (changes later incorporated in the revised edition, see *TJ*, xii), and more fully and satisfactorily in *Political Liberalism*. The First Principle now reads, “Each person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme for all.” (*PL* 291) This eliminates the problematic idea of measuring the “greatest extent” of liberties and clarifies that Rawls is interested in a scheme of basic liberties, not “liberty” as a distinctive value. (RLP 234-7) Finally, Rawls, in *Political Liberalism*, clarifies that account of the priority of the basic liberties in light of Hart’s criticism, showing it to rest on a liberal political conception of the person as a free and equal citizen. (*PL* 296) The basic liberties are then specified not according to the “rational advantage” of the parties in the original position, but rather by what is necessary for the development of the two moral powers. (*PL* 302) Here we see how Hart’s criticism of certain aspects of *A Theory of Justice* played an important role in the development of Rawls’s views into the form found in *Political Liberalism*.

SOVEREIGNTY

“Sovereignty” is not a topic or term that Rawls spends significant time on. (It barely appears in his extensive indexes.) But it, along with the closely related ideas of a sovereign and sovereign powers, are important to understanding several aspects of his work. Part of the *The Law of Peoples*, the stability of Justice as Fairness, and Rawls’s connection to others in the social contract tradition, are intimately related to his views on sovereignty and sovereign power. While these topics seem disparate, they have a close connection through the idea of sovereignty. Seeing this helps show the over-all unity of Rawls’s thought.

The modern notion of sovereignty and of sovereign powers developed in the 16th and 17th centuries in the works of such thinkers as Jean Bodin in *Les six livres de la republique*, (the most relevant sections reprinted as *On Sovereignty*), Hugo Grotius, in *The Rights of War and Peace*, and Thomas Hobbes, in *Leviathan* and other writings. These works were developed against the background of the wars of religion in Europe and the concurrent emergence of the modern state. The theories of sovereignty that developed provide answers to two problems that remain central

to Rawls's works: how to secure the stability of a political order so that members of the society may flourish, and the proper relationship between distinct societies. The first of these questions has been central to Rawls since *TJ*, where Rawls provides an answer via the "congruence" argument. A new answer to this question is given in *PL*. Though rarely noted, Rawls's position is intimately tied to a theory of sovereignty, in that part of his goal is to show how the problem of stability may be solved without either a unified, unlimited sovereign or a slide into anarchist or minimal state views.

In the "traditional" views of sovereignty offered by Hobbes and Bodin, the purpose of the sovereign is to ensure the stability of the political order. Hobbes and Bodin both faced divided societies, torn apart by civil war, split loyalties, and religious persecution. Though Hobbes's view is better known to philosophers, Bodin's is perhaps the more influential statement of the "classic" or "traditional" view. On this account, a sovereign, has the power of appointing magistrates, making and repealing laws, of making war, of hearing appeals, and the power of life and death. The sovereign is one whose power is not limited by any early laws as to its reach, function, or duration. Though the sovereign is bound by the power of God and ought to follow the laws of nature, he cannot be subject to anyone else, for if he were, he would not be sovereign, and therefore could not provide the needed stability. Even binding the sovereign by his own laws would make him unable to provide the needed stability. This view of sovereignty leads not only to a domestically unbounded sovereign, but also to the traditional approach to the sovereignty of states in international relations. On the traditional view, states reserved the right to fight wars to advance their interests, as they saw them. As Rawls notes, this idea is worked out most systematically by Clausewitz in his *On War* (*LP* 25-6), but this follows from, and is explicit in, the traditional notion of sovereignty as formulated by Bodin and Hobbes. If a sovereign lacked the power to declare war, on the traditional account, this could only be because he (and so the state) was subject to some other power. But then, either this other power would be sovereign, or else sovereignty would be divided, and so unable to provide the requisite stability. The idea of a binding international law is therefore rejected by views such as Bodin's and Hobbes's, as incompatible with their solution to the pressing problem of stability.

Although the full importance of stability in Rawls's work only come to the fore in *PL*, it plays an important role throughout his work, and the answer the gives to the problem in *PL* has a close, if not always appreciated, connection to his rethinking of the idea of sovereignty in *LP*. Rawls recognizes that the problem of stability has an "uninteresting Hobbesian answer" (*PL* 391, fn. 27) but this answer is unacceptable for a society of free and equal democratic citizens. Whether such a society may be stable without an unlimited sovereign, and so "stable for the right reasons", is the burden of the last third of *TJ* and of much of *PL*. Here is not the place to review Rawls's account of stability. Rawls recognizes the role of a sovereign in enforcing laws, and so ensuring reciprocity among citizens- thereby solving one aspect of the "assurance problem"- but argues, in *TJ*, that the relationship of friendship and mutual trust based on a public sense of justice could form a partial alternative to the unlimited sovereign found in the traditional views of Bodin and Hobbes. (*TJ* 497) This view is further modified in *PL* to take more explicit note of the problem posed by a plurality of comprehensive moral and political conceptions, with the idea of an "overlapping consensus" of reasonable views taking the place of a single public conception of justice. Rawls therefore maintains the goal of providing a stable basis for society without depending on the unified, unlimited sovereign of the traditional view.

Rawls's most explicit treatment of sovereignty is in *LP*. Here Rawls is explicit that "peoples", the subject of the Law of Peoples, lack some of the traditional powers of sovereignty. (*LP* 25) For reasons already given, peoples reject the "internal" aspects of traditional, unlimited sovereignty. A corollary of this is a rejection of the right to go to war to promote state interests. This right is part of the unlimited nature of the traditional view- no external power, and so no international law, could limit a sovereign if the supposed sovereign was to be sovereign in fact. But, once we reject the idea that unlimited sovereignty is required to solve the problem of stability, we must ask why traditional "external" sovereignty should be accepted. In *LHMP* Rawls considers Hegel's argument that states need traditional sovereignty, including the right to go to war to promote state interests, if they are to be recognized as equal individuals. (*LHMP* 361) This claim is connected to the idea, accepted by Hegel, that the anarchic nature of international relations will, with great certainty, lead to war. Rawls, however, argues that both aspects of the argument are mistaken.

Rawls rejects states as the subjects of international relations and justice, replacing them with "peoples" – a population organized in a political way that gives them a moral character of their own. The nature of the sovereignty held by peoples arises from the Law of Peoples itself, and is limited to what peoples would agree to in the appropriate circumstance. (*LP* 27) The interest of peoples are limited by considerations of reasonableness, and include only territorial integrity, security and safety of citizens, preservation of political institutions, and the liberty and culture of civil society. (*LP* 29) (Rawls makes this point most explicitly in relation to liberal peoples, but it is clear that non-aggressiveness, accepting war only in the case of self-defense, and an ability to accept fair terms of cooperation are features of "descent societies" as well.) (*LP* 88) Rawls follows Kant in holding that such peoples will not be war-like, thereby rejecting the other aspect of Hegel's argument for traditional sovereignty. (*LP* 54, *LHMP* 361-2) The interests noted above, however, are significant and justify a large degree of independence for peoples. Intervention into the internal affairs of a society can only be justified in the case of grave human rights violations. (*LP* 79-80) We see, then, how Rawls's revisionary answer to the stability problem leads him to greatly revise the traditional notion of sovereignty, while still maintaining certain aspects of it in a recognizable form.

CITIZEN

In *TJ*, the idea or role of a citizen, as opposed to that of a "moral person", does not play a major role. The term does not appear in the index, and though it appears in the book several times, it is not a fundamental idea. This is not to say it is of no importance at all to the early Rawls. In particular, the idea of a citizen as setting an important role that people have appears on several occasions, including the idea of the "representative citizen", who is used as a standard for evaluating the basic liberties, (*TJ* 179, 211), and in the idea of "equal citizenship", which is used as one of the relevant social positions in evaluating the two principles of justice. (*TJ* 82) Important as these uses of the idea of a citizen are, however, they are not central to the argument and do not come in for sustained analysis in *TJ*.

All of this changes when we turn from *TJ* to *PL*. With the development of a political, as opposed to comprehensive, liberalism, Rawls moves the idea of a citizen to the center of his analysis. In fact, one of the best ways to understand the development from *TJ* to *PL* is to focus on Rawls's

shift from the idea of “free and equal persons” in *TJ* to the idea of “free and equal citizens” in *PL*. The increasing importance and centrality of the idea of a citizen in *PL* is both central to and indicative of the move to political liberalism. In *TJ* Rawls had envisioned a “well-ordered society” as one made up of people who see themselves as “free and equal moral persons” who not only take themselves to be sources of moral claims on others, but also “conceive of themselves as free persons who can revise and alter their final ends and who give priority to preserving their liberty in this respect.” (*TJ* 475) As Rawls came to realize, this conception of the person was not one that everyone in a democratic society could accept. The move from the comprehensive liberalism of *TJ* to the political liberalism of *PL* is mirrored and expressed in the shift from the focus on a particular understanding of persons as “free and equal” and with particular higher-order values in the former, to the focus on “equal citizens” in the latter, where this is understood to be a thorough-going political conception of a person, not dependent on any underlying comprehensive understanding.

Many of the attributes that Rawls attributes, in *TJ*, to “persons” are attributed to “citizens” in *PL*, making the distinction somewhat subtle. It is, nonetheless, fundamental. To say that a “person” is one who conceives of herself as “free and equal” and able to “revise and alter her final ends” is to attribute a particular and controversial view about the nature of persons and what is most important to them to the subjects of political philosophy. This is, arguably, a Kantian conception of the person, one that is rejected by some religious views and some more conservative conceptions of the good. In *PL* Rawls describes citizens as conceiving of themselves as “free” and as “independent from and not identified with any particular... conception with its scheme of final ends.” (*PL* 30) This seems similar to the conception of a person in *TJ*, but, as this is now cast in terms of a “political” conception, one limited to the “domain of the political”, there is an important difference. The shift in focus from “persons” to “citizens” frees Rawls from an unreasonable commitment to a particular conception of the person. Free and equal citizens may have many diverse conceptions of the good and of the person, and yet maintain a shared political conception of justice.

If the conception of citizens in Political Liberalism is not a metaphysical or controversial philosophical one, as the conception of the person was in *TJ*, where does it come from, and why would it be acceptable to people with diverse and incompatible comprehensive conceptions of the good? It is found in the nature of a democratic society, one where members accept a “duty of civility” and apply a “criterion of reciprocity” to each other, and only insist on terms to govern their relationships that each could accept. (*LP&IPRR* 135-6) This democratic and political conception of a citizen does not require accepting any particular comprehensive conception of the good, but only a willingness to cooperate with others in a democratic society on fair terms, a recognition of reasonable pluralism, and the “burdens of judgment” that come with this recognition. (*PL* 54-8)

Finally, in *LP* Rawls explains how the idea of free and equal citizenship is only made complete and secure in the context of an effective Law of Peoples. (*LP* 10) We see here an implication of Rawls’s account in *LP* that is often missed by critics- the nature of peoples, at least for the liberal states that first formulate the Law of Peoples. The Law of Peoples is made by representatives of liberal peoples. (*LP* 23) “Peoples” are not states, as traditionally understood, because they lack certain of the traditional powers of sovereignty. But they are also not, as some have thought, nations, but rather the collective body of citizens, where this is understood in the political sense

discussed above. (*LP* 23) A nation would be, essentially, the equivalent of a particular conception of the person at the level of the law of peoples. But Peoples, as understood by Rawls, are essentially political bodies, and liberal peoples are the collective manifestation of liberal, free and equal democratic citizens. (*LP* 23) This shows how the idea of a citizen becomes central to Rawls in *PL* and plays a deeply important, though often missed, role in *LP* as well.