

Critical Notice

JOHN RAWLS, *The Law of Peoples: With the 'Idea of Public Reason Revisited'*.
Cambridge, MA: Harvard University Press 1999. Pp. vii + 199.¹

I

Taking their inspiration from John Rawls's *A Theory of Justice*, liberals like Charles Beitz and Thomas Pogge have argued that Rawls's arguments for social and economic equality should apply also to the global context.² Just as Rawls considers a person's race, gender, talents, wealth and other natural and social particularities about her to be 'arbitrary from a moral point of view,'³ so too, they argue, are factors like a person's nationality and citizenship morally arbitrary. And as the effects of these contingencies on a person's life chances in the domestic sphere are to be

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2 John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press 1971). Charles Beitz, *Political Theory and International Relations*, 2nd ed. (Princeton: Princeton University Press 1999); Thomas Pogge, *Realizing Rawls* (Ithaca: Cornell University Press 1989).

3 Rawls, *Theory of Justice*, 15

nullified by certain distributive principles of justice, so too should the effects of global contingencies be mitigated by certain global distributive principles. Thus, Rawls's two principles of justice — in particular the second principle governing social and economic equality — should apply between individuals *across* societies and not just within a single society.⁴

But in his own extended commentary on international relations, Rawls explicitly rejects the concept of global distributive justice. This view was first presented in his essay 'The Law of Peoples,' and is further developed in his latest book of the same title.⁵ In this critical notice, I wish to evaluate Rawls's reasons for rejecting the idea of global distributive justice. An important contrast between Rawls's Law of Peoples and the views of liberals like Beitz and Pogge, as we will see, is that the former is avowedly non-cosmopolitan. I will argue, however, that a *liberal* Law of Peoples ought to endorse the cosmopolitan ideal.

To see better where the dispute between Rawls and the proponents of cosmopolitan justice lies, let me provide a very quick overview of Rawls's international project. The fundamental aim of *The Law of Peoples* is to examine how the content of a theory of international justice 'might be developed out of a liberal idea of justice similar to, but more general than, the idea [of] *justice as fairness*' (3).⁶ This 'globalizing' project proceeds in three stages. The first stage extends the 'social contract idea to the society of liberal peoples' (4-5). This first stage allows us to identify the international principles that would be agreed to by representatives

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- 4 To recall, the two principles are: 1) Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others; 2) Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged, consistent with the just savings principles, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity (*Theory of Justice*, 302). Principle 2(a) is labelled the difference principle.
- 5 Rawls, 'The Law of Peoples' in *On Human Rights*, Stephen Shute and Susan Hurley, eds. (New York: Basic Books 1993), 41-82, 220-30; and *The Law of Peoples* (Cambridge, MA: Harvard University Press 1999). References to *The Law of Peoples* will be subsequently noted in parenthesis in the text.
- 6 One issue I will leave aside in this discussion is Rawls's assumption that peoples are more or less coextensive with states as these are currently demarcated, as his remarks on 38-9 suggest. But for the purpose of consistency, I will use 'peoples' or 'societies' (interchangeably as Rawls does) instead of 'states.' To be sure, Rawls took pains to dissociate peoples from states; but his main intention here is to distinguish peoples from 'political states as traditionally conceived' (25) in the realist tradition, i.e., as political entities motivated primarily by self-interests and power, rather than to question existing political boundaries (39; see 25-8).

of liberal societies at a global original position.⁷ Among the principles affirmed here include the duty of humanitarian assistance (37).⁸

The second stage, which concerns one of the central themes of *The Law of Peoples*, aims to show how and why representatives of certain *nonliberal* but well-ordered societies would also endorse the same set of principles. These are nonliberal societies in that they do not endorse the standard range of liberal democratic rights, like the freedom of expression and association, religious equality, the right to equal political participation, and so on. That is, individuals in nonliberal societies are 'not regarded as free and equal citizens, nor as separate individuals deserving equal representation' (71; see 71-5). Yet these societies honor *basic* human rights (e.g., right to life and security, and subsistence) and are respectful of other peoples (64-7) as required by the Law of Peoples. Consequently, these nonliberal 'decent peoples,' as Rawls calls them, qualify as 'societies in good standing,' and are, therefore, to be tolerated by liberal societies. This means that liberal societies are 'to recognize these nonliberal societies as equal participating members in good standing of the Society of Peoples,' and not just 'refrain from exercising political sanctions — military, economic, or diplomatic — to make a people change

7 The original position, as we may recall, is 'a device of representation' where representatives of rational but reasonable individuals deliberate on the appropriate principles of justice for the basic structure of their society. To ensure that this hypothetical deliberation is fair and equal, parties to the original position go behind a 'veil of ignorance.' That is, they are asked to imagine that they do not know their actual status and station in society; their talents and conceptions of the good; nor the wealth and the extent of their territory and its population in the case of the global original position (32-3). In this way, no one party could insist on terms biased in her favor according to her own social standing. See *Theory of Justice*, 17ff. An important difference in the global original position is that the parties to the deliberation are representatives of *peoples* rather than of individuals. The significance of this anti-individualist shift will be discussed in due course.

8 The eight principles (abridged) are:

- 1) Peoples are free and independent.
- 2) Peoples are to observe treaties.
- 3) Peoples are equal and are parties to the agreements binding on them.
- 4) Peoples have a duty of non-intervention.
- 5) Peoples have the right of self-defense, but not the right to wage war other than for self-defense.
- 6) Peoples are to honor human rights.
- 7) Peoples are to observe justice in war.
- 8) Peoples have a duty to assist peoples lacking the resources to sustain just regimes.

These principles are not exhaustive and more may be added (37).

its ways' (59). Nonliberal peoples are tolerated as a matter of liberal principle, and not merely accommodated on account of practicality.

This last point is important. The Law of Peoples wants to achieve a global stability with respect to justice, and not a stability as a *modus vivendi* (i.e., a stability as a balance of forces) (12-13; 44-5). The two-stage procedure described above is thus crucial to Rawls's project because it attempts to show that the global principles proposed by liberal peoples are also principles that can be independently adopted by decent nonliberal peoples; that it is not the case that liberal peoples have tailored their global principles specifically in view of accommodating nonliberal peoples or existing global institutional arrangements. Whether Rawls succeeds in meeting his stated goal is a question we will take up below.

These two stages complete the ideal theory part of the Law of Peoples. The aim of ideal theory is to identify the principles that should govern the relationship between societies with the requisite political and economic conditions to be well-ordered and to comply with the Law of Peoples. In this ideal condition, the goals of justice and stability for the right reasons between societies can be achieved.

But how about societies without the economic resources to support well-ordered institutions, or societies that blatantly refuse to comply with the principles of the Law of Peoples? These difficulties stemming from 'the highly nonideal conditions of our world with its great injustices and widespread social evils' (89) is the concern of the third stage of Rawls's project. The nonideal theory aspect of the Law of Peoples thus addresses (i) the problem of noncompliance, as when 'outlaw' societies 'refuse to comply with a reasonable Law of Peoples' (90), and (ii) the problem of unfavorable conditions, where 'burdened' societies lack the basic resources to become well-ordered. A complete Law of Peoples has to confront these nonideal cases, and offer guidance on how well-ordered peoples may defend themselves against outlaw regimes and help bring on reform within these regimes in the long run (92-3); and how they may assist burdened societies and help bring them 'into the Society of well-ordered Peoples' (106).

From his discussions concerning burdened societies and his proposal of a duty of assistance, it is clear that Rawls does not advocate an isolationist foreign policy which holds the fate of these societies to be a matter of indifference for liberal and decent peoples. He maintains that better-off societies have a duty of humanitarian assistance towards burdened societies in order to help them achieve the requisite level of economic and social development to become well-ordered. Yet Rawls also stresses that this duty of humanitarian assistance is distinct from, and does not entail, a duty of distributive justice. So while a duty of humanitarian assistance is required by the Law of Peoples as part of its nonideal theory, a distributive principle has no place at all here.

II Humanitarian Duty and Duty of Justice

Why does Rawls reject the concept of global distributive justice? He gives us two main arguments, as I see it. The first is that since a duty of humanitarian assistance is already required by the Law of Peoples as part of nonideal theory, global principles of distributive justice would be redundant. The other is that global distributive principles, moreover, would have unacceptable results. I will explain and assess these arguments in turn.⁹

Consider the redundancy argument. In our nonideal world, with its gross injustices, vast inequality and abject poverty, the Law of Peoples, as we have seen, recognizes that 'well-ordered peoples have a *duty* to assist burdened societies,' to bring them into the Society of well-ordered peoples (ibid., 106). Yet, the argument goes, these 'goals of attaining liberal or decent institutions, securing human rights, and meeting basic needs ... are [sufficiently] covered by the duty of assistance' (ibid., 116). Thus a global distributive principle serves no additional purpose in this regard.

But this argument misses one important difference between duties of *humanity* and duties of *justice*, a difference that is more than semantic. If we concede that rich countries have *only* a duty of humanity to poorer countries, we are conceding also that the *existing* baseline resource and wealth distribution is a just one, that the global basic institutions organized around and legitimizing the prevailing allocation of wealth and resources are acceptable. Duties to assist each other, on this account, are duties that take place within a just institutional framework. In other words, duties of humanity speak to how states should interact with one another, and while certain institutional mechanisms may be required to facilitate some of this interaction, the global basic structure (e.g., the norms governing the allocation and ownership of resources and wealth), within which such interactions occur, is taken as a given. By contrast, duties of justice speak directly to the basic structure; justice is concerned with the *baseline* distribution of wealth and resources, and the basic institutions and principles that legitimize and rationalize this distribution. To put it perspicuously, while duties of humanity aim to *redistribute* wealth, duties of justice aim to identify what counts as a *just distribution* in the first place. The aim of justice, properly speaking, is not to transfer wealth as such (i.e., by taking them from their *rightful* owners and reallocating them to others), but rather to establish the criteria of

9 This section is adapted from Chap. 7 of my *Tolerance, Diversity, and Global Justice* (University Park, PA: Penn State University Press 2000).

rightful ownership, to redefine 'what justly belongs to a country.'¹⁰ Duties of justice, then, would call on us to reconceive our present global basic structure; whereas duties of humanity take this to be more or less sound, and only exhort countries to do more *within* this given framework. One could say with Brian Barry that justice is prior to humanity in that 'We cannot sensibly talk about humanity unless we have a baseline set by justice. To talk about what I ought, as matter of humanity, to do with what is mine makes no sense until we have established what is mine in the first place' (Barry, 249).

Hence the long-term aims of humanity and justice are quite distinct, but not just in their objective or duration, as Rawls notes, but also in their subject. The former calls for greater humanitarianism between countries *within an existing institutional framework*, whereas the latter calls for a critical evaluation of *that* framework. This is an important difference. As many egalitarians have long argued, the root cause of global poverty and inequality lies with our global arrangements and institutions, and so to seriously tackle global poverty would require reforming these institutions and arrangements.¹¹

Moreover, this difference in focus has important and more immediate consequences for foreign policy. If foreign aid is considered a matter of humanity, it could be subject to conditions imposed by donor countries (it is *their* resources they are giving up, after all, on this view). But if we treat foreign aid as a matter of justice, it would not be vulnerable to such demands in principle, for any resource transfer is, on this view, strictly speaking, not a redistribution in the sense of taking something from its rightful owner and giving it to the more needy, but a correction of an initial unjust distribution. Thus treating global inequality as a matter of humanity, as Barry points out, obscures the basic point, 'that if some share of resources is justly owed to a country, then it is (even before it

10 Brian Barry, 'Humanity and Justice in Global Perspective,' in *Ethics, Economics and the Law*, J. Roland Pennock and John W. Chapman, eds. (New York: New York University Press 1982) 219-52, at 248. See also Pogge, *Realizing Rawls*, 16-17, 68-70.

11 I will not argue for this point here, but see, for some examples, Frank Cunningham, 'Democracy, Socialism, and the Globe,' in *The Real World of Democracy Revisited* (Atlantic Highlands, NJ: Humanities Press 1994) 137-54, at 143-5; Kai Nielsen, 'Global Justice, Capitalism and the Third World,' in *Justice and Economic Distribution*, 2nd ed. John Arthur and William H. Shaw, eds. (Englewood, NJ: Prentice Hall 1991) 228-41, at 229-32; Onora O'Neill, *Faces of Hunger: An Essay on Poverty, Development and Justice* (London: George Allen and Unwin 1986); Pogge, 'Economic Justice and National Borders,' *ReVision* 22.2 (1999) 27-34; and Henry Shue, *Basic Rights: Subsistence, Affluence and US Foreign Policy*, 2nd ed. (Princeton: Princeton University Press 1996).

has been actually transferred) as much that country's as it is now normally thought that what a country normally produces belongs to that country.¹²

So it makes an immense difference whether wealth redistribution between countries is conceived as a matter of humanity or justice. Far from being superfluous, treating duties between countries as a matter of justice highlights for us the proper locus of our concern (i.e., institutions and their underlying norms) and reminds us that the crucial issue is ultimately the question of rightful ownership rather than that of humanitarian contribution. Even if we were to confine ourselves to the nonideal case of burdened societies, it makes an important normative difference whether we think we are assisting only out of humanitarian concern, or whether we are assisting because we recognize the fact of prevailing injustices in our global arrangement.

None of the above denies that humanitarian assistance is important as well. But as long as humanitarianism takes place within the present global arrangement, it serves only to treat the symptoms of injustice rather than tackle the underlying cause of it. Humanitarian assistance applies as long as there are burdened societies, but principles of justice would push us to assess the framework within which such assistance is being rendered.

It is a familiar fact that Rawls's domestic egalitarianism is directed at the basic *institutions* of society; his second principle provides liberals with a basis against which to assess and critique these institutions, and to reject institutional arrangements which perpetuate and legitimize inequality of opportunity between citizens. So it seems that to be consistent with his basic philosophical ideals, Rawls too should hold up the basic structure of the Society of peoples against his principles of justice, instead of taking that as a given.

So Rawls clearly is aware of the important differences between humanitarian duties and duties of justice. His supposition seems, then, to be that the global distribution of resources and wealth is not an issue of justice. The present global distribution of wealth and resources is taken

12 Barry, 248. Of course this does not mean that we are never in a position to withhold that which rightly belongs to another — recall Plato's example of not returning a dagger to its rightful owner who has gone mad (*The Republic* 331c). Barry notes that it is as acceptable to withhold resources justly owed to a country that is violating basic human rights or spending vast quantities of money on arms, as it is 'to refuse to pay debts to it or to freeze its asset' (Barry, 248). And certainly such disincentives could be used as a tool for human rights reform, if properly applied. The crucial point here is that treating inequality as a matter of *justice* shifts the burden of proof away from 'recipient' countries and onto the 'donor' country.

to be an acceptable starting point for him, and not as arbitrary as some of his own followers have thought. But why does Rawls think this?

An examination of Rawls's second argument for rejecting global distributive principles may shed some light on this question. Rawls's belief here is that global distributive principles, unlike domestic distributive principles, would have unacceptable results. As he tells us, a duty of humanitarian assistance is a 'principle of *transition* ... [it] holds [only] until all societies have achieved just liberal or decent basic institutions. [It is] defined by a target beyond which [it] no longer hold[s]' (*Law of Peoples*, 118). That is, the duty of assistance is satisfied once all societies have attained the basic developmental level sufficient for establishing and maintaining decent institutions. By contrast, distributive 'principles do not have a defined goal, aim, or cut-off point, beyond which aid may cease' (*ibid.*, 106). So while a duty of humanity would work towards improving the situation of societies 'burdened' by unfavorable circumstances, such assistance is not required as part of ideal theory in which all societies are assumed to have attained the basic developmental level requisite for a decent society. A principle of distributive justice, on the other hand, is an integral part of ideal theory, and so would apply as long as there are inequalities between societies, even 'after the duty of assistance is fully satisfied' (*ibid.*, 117).

But, and here is the crux of the argument, this would have unacceptable results, argues Rawls, for we would then not be able to discriminate between societies which through foresight and prudence have increased their wealth, from societies which through neglect and imprudence have squandered theirs (*ibid.*, 117); or societies which have managed to curb their population growth and are therefore better able to optimize their resources, from societies which have neglected to control their population and hence are worse-off as a result (*ibid.*, 117-18). A global egalitarian principle would insist, in both of these cases, that resources be transferred from the wealthier societies to the poorer ones, even though both may have started with an equal amount of wealth and resources. And this is unacceptable for it would involve penalizing some societies for their sound domestic policies in order to compensate other societies for their careless policies.

In short, while a duty of assistance is in force only within nonideal theory and would cease once no peoples are so burdened as to be unable to establish well-ordered institutions, a distributive principle falls under ideal theory and continues to apply as long as inequality between different societies persists. And it is this fact — that distributive principles would insist on redistribution as long as there is inequality between peoples *no matter what the cause of this inequality* — that Rawls takes exception to.

Implicit in Rawls's argument here, evidently, is the distinction between inequality as a result of choice and inequality due to circumstance. Just as a domestic distributive scheme ought not to compensate individuals for their poor choices by taking from those who have made good choices, neither, too, ought a global scheme to compensate societies for their poor governance by penalizing other societies for their good governance. The aim of distributive justice is to compensate persons for inequality due to circumstance outside their control and not to subsidize them for their (poor) choices.¹³ It appears, then, that Rawls thinks that in the global context, inequality in circumstance is sufficiently redressed by the duty of humanity. A distributive principle, on the other hand, would be insensitive to the choice/circumstance distinction; it would treat citizens of well-managed economies *unfairly* by transferring their gains to citizens of poorly-managed economies continuously as long as global inequality remains.

One crucial premise of this argument is that the reasons for a country's failure to adopt sound social and economic policies are largely internal, and hence *freely* adopted by governments of worse-off countries. Rawls draws attention to various domestic factors that determine a society's economic and social performance, including its political culture and virtues (including here a respect for basic human rights), its civic society and 'its members' probity and industriousness' and its population policy (108-11). Yet this premise, which Thomas Pogge has labelled 'explanatory nationalism,' is highly questionable as a matter of fact.¹⁴ Explanatory nationalism 'present[s] poverty as a set of national phenomena explicable mainly as a result of bad domestic policies and institutions that stifle (or fail to stimulate) national economic growth and engender national economic injustice' (ibid., 497). But, as Pogge notes, this explanation 'leave[s] open important questions, such as why national factors (institutions, officials, policies, culture, natural environment, level of technical and economic development) have *these* effects rather than others' by ignoring the causal effects of global factors (e.g., trade practices, consumption patterns of affluent countries, international law, etc.) on a nation's domestic policies and their outcomes (ibid., 498-9).

But even if we were to accept explanatory nationalism, it is not so obvious that global distributive principles would violate the choice/cir-

13 See Kymlicka, *Contemporary Political Philosophy* (New York: Oxford University Press 1990), 73-6.

14 Pogge, 'The Bounds of Nationalism,' in *Rethinking Nationalism*, Jocelyne Couture, Kai Nielsen, and Michel Seymour, eds. (Calgary: University of Calgary Press 1998) 463-504, at 497-502.

cumstance distinction. As Charles Beitz points out, the domestic equivalent to the case of citizens faring poorly due to the bad policies of their own governments is not that of an individual having to bear the consequences of *her own* bad choices, but, rather, more like that of children who have to suffer for the poor choices of their parents. And in such a case, we would not say that 'the offspring are responsible for their own condition ... [and] considerations about responsibility do not diminish the weight of the ethical concern about the well-being of the offspring.'¹⁵ Similarly, *individual* citizens of poor countries need not have freely consented to their countries' policies — indeed, they likely would not have had the option if they belong to hierarchical and nondemocratic societies, or if these were policies implemented before their time (as the case might well be, given the intergenerational implications of social policies like population control). Thus their disadvantages are due more to circumstance than choice, albeit circumstances of the *society* that they happen to find themselves in, and distributive principles that aim to compensate individuals for these disadvantages cannot be said to offend against the choice/circumstance distinction. If justice is *individual* choice-sensitive and circumstance-insensitive, then one cannot accept that global distributive principles neglect this distinction.

The problem, then, with Rawls's second argument is that while the choice-circumstance distinction is applied *individualistically* in the domestic case, it is applied communally (to a people as one entity) in the global context. Citizens of disadvantaged countries are *collectively* held accountable for their country's unsound domestic policies, even when a majority of them had no part in the making of these policies. And this is clearly inconsistent with Rawls's own moral individualism.¹⁶ On Rawls's own reasoning, a person born into a society with poor population control and economic policies cannot be said to deserve her fate any more than another born into more favorable circumstances deserves her. These are mere accidents of birth, and are as morally arbitrary as is being born into wealth or poverty in the domestic context.

15 Beitz, 'Social and Cosmopolitan Liberalism,' 527. My argument here follows closely Beitz's discussion on 526-8.

16 Recall: 'We want to account for the social values, for the intrinsic good of institutional, community, and associative activities, by a conception of justice that in its theoretical basis is individualistic. For reasons of clarity among others, we do not want to rely on an undefined concept of community, or to suppose that society is an organic whole with a life of its own distinct from and superior to that of all its members in their relations with one another' (*A Theory of Justice*, 264).

We may put the above point in a somewhat different way: while Rawls's moral individualism sets firm limits on the extent to which collective decision may affect individual well-being in his domestic conception of justice, there seems to be no similar limitations in his international theory. Collective national-decisions are regulated and constrained by principles of justice that take the individual to be the basic reference point in the domestic context; yet in moving to the international context, the same restriction no longer applies.¹⁷

It is true that questions of inefficiency and waste do arise when channeling resources to poorly planned economies (so we may have to think carefully how we are to tackle these problems efficiently and with minimum waste); but this does not undermine what justice as a matter principle demands.¹⁸ Distributive principles are still in force; how they are to be affected or realized is a separate question, a question of policy or strategy, and it is only at this level that a country's domestic policy becomes a relevant factor of consideration.¹⁹

III Liberalism and Cosmopolitan Justice

The aim of my above argument is not to show that Rawls's Law of Peoples is objectionable because it is not sufficiently individualistic — that would be no objection for one of Rawls's propositions is that the basic units of the Law of Peoples are peoples or societies, and not individuals. My point, rather, is that the choice/circumstance distinction I take to be implicit in

17 This was suggested to me by Will Kymlicka.

18 See Beitz, 'Social and Cosmopolitan Liberalism,' 528; also Pogge, 'An Egalitarian Law of Peoples,' *Philosophy and Public Affairs* 23/3 (1994): 195-224, 202-5.

19 It might be pointed out that in Rawls's view (if not in all defensible conceptions of justice), efficiency is one of the factors (even if it is not among the most fundamental) to be taken into consideration when deliberating about justice, and so my claim that we can separate efficiency from principle is mistaken. But this objection commits a category mistake by conflating two different accounts of efficiency. To explain: a complete presentation of a theory of justice has to first (a) *identify* a set of principles that fulfills, *inter alia*, some stipulated efficiency criterion (e.g., that it does not stunt individual incentive or ambition); then, it has to (b) ask how we can most efficiently *realize* these principles. The former poses a *conceptual* question, the latter, a *strategic* one. Both these efficiency considerations are, of course, highly relevant to the pursuit of justice; but the former bears *directly* on what our principles should look like, the latter does not. So, unless one wishes to assert that corrupt third-world governments and wastage in cross-border resource transfers are inevitable facts of our world, there is no reason why such contingent and alterable facts alone should compel us to reconceive what justice requires.

Rawls's argument (i.e., that global distributive principles would have unacceptable results) makes sense only when applied individualistically, but not when it is applied to a society as a whole.

At any rate, Rawls explicitly retracts the individualism that informs his domestic theory of justice. As he contrasts the Law of Peoples with what he calls the cosmopolitan view: 'The ultimate concern of a cosmopolitan view is the well-being of individuals and not the justice of societies.... What is important to the Law of Peoples is the justice and stability for the right reasons of liberal and decent societies' (119-20).

Rawls's rejection of cosmopolitanism, to my mind, reveals a fundamental shift in his political philosophy. Starting from purportedly liberal individualistic grounds, Rawls arrives at an international theory that is more aligned with those of 'communitarians,' like David Miller and Michael Walzer, who have very different philosophical starting points.²⁰ Compare, for example, Rawls's opposition to global distributive justice with Miller's: 'To respect the self-determination of other nations also involves treating them as responsible for decisions they may make about resource use, economic growth, environmental protection, and so forth' (Miller, 108).

Why does Rawls reject the cosmopolitan ideal in his international theory? After all, the cosmopolitan view seems to be more consistent with his famous phrase that individuals are 'self-originating sources of valid claims.'²¹ And, as mentioned, Rawls's own followers have long argued that the cosmopolitan view follows naturally from Rawls's own fundamental commitments.²²

20 David Miller, *On Nationality* (Oxford: Oxford University Press 1995), esp. Chaps 3 and 4; and Michael Walzer, *Spheres of Justice* (New York: Basic Books 1983), and Walzer, 'The Moral Standing of States: A Response to Four Critics,' *Philosophy and Public Affairs* 9.3 (1980) 209-29. See also other 'communitarians' like Michael Sandel, *Democracy's Discontent* (Cambridge, MA: Harvard University Press 1996), 338ff; and Alasdair MacIntyre, 'Is Patriotism a Virtue?' *The Lindley Lectures*. Dept. of Philosophy, University of Kansas 1984.

21 Rawls, 'Kantian Constructivism in Moral Theory,' *Journal of Philosophy* 77 (1980) 515-72, at 543

22 Thus Pogge: 'Taken seriously, Rawls's conception of justice will make the life prospects of the globally least advantaged the primary standard for assessing our social institutions' ('Rawls and Global Justice,' *The Canadian Journal of Philosophy* 18.2 [1988] 227-56, at 233); and Beitz: 'It seems obvious that an international difference principle applies to persons in the sense that it is the globally least advantaged representative person (or group of persons) whose position is to be maximized' (*Political Theory and International Relations*, 152).

Rawls's reason for this shift from his *domestic individualism* to his *international communitarianism* is that a Law of Peoples founded on the ideal of individuals as free and equal would make the basis of that Law 'too narrow.'²³ In other words, to insist on an international theory of justice premised on the cosmopolitan ideal that individuals are ultimate, is to propose a conception of justice that nonliberal societies could *reasonably* object to. It would amount in effect 'to saying that all persons are to have the equal liberal rights of citizens in a constitutional democracy ... that only a liberal democratic society can be acceptable' (82-3). And this, Rawls says, 'would fail to express due toleration for other acceptable ways (if such as there are, as I assume) of ordering society' (59). It is for this reason that Rawls rejects the proposal that there be a single global original position procedure where individuals are represented, and opts instead for a two-stage procedure in which only representatives of societies are convened at the second global stage (82-3; 30-5). A global original position would have to assume that all individuals 'have the equal liberal rights of citizens in a constitutional democracy' (82), and this we should not do.

This toleration for nonliberal ways of organizing society, Rawls argues, stems from a principle basic to political liberalism, that 'a liberal society is to respect its citizens' comprehensive doctrines — religious, philosophical, and moral — provided that these doctrines are pursued in ways compatible with a reasonable political conception of justice and its public reason' (59). Thus, likewise, liberal societies are to tolerate nonliberal societies so long as these are decent, i.e., capable of conforming to the principles of the Law of Peoples. And as mentioned, one of the central aims of *The Law of Peoples* is to show how and why certain nonliberal peoples can nonetheless endorse the principles of the Law of Peoples, and why they are therefore reasonable societies or societies in good standing and to be tolerated by liberal peoples.

The idea of public reason central to Rawls's political liberalism is therefore extended to the international context in the following way: 'in proposing a principle to regulate the mutual relations between peoples, a [liberal] people or their representatives must think not only that it is

23 The phrase in quotations is from the essay 'The Law of Peoples,' 65. David Dyzenhaus has argued that this rejection of 'individualist liberalism' is already evident in Rawls's move from the comprehensive liberalism of *A Theory of Justice* to the political liberalism defended in *Political Liberalism*. David Dyzenhaus, 'Critical Notice: Charles Larmore, *The Morality of Modernity*,' *Canadian Journal of Philosophy* 28.2 (1998) 269-86, at 280. If this is right, our criticism of Rawls's Law of Peoples amounts ultimately to a criticism of Rawls's political liberalism. I pursue this point in *Toleration, Diversity, and Global Justice*.

reasonable for them to propose it, but also that it is reasonable for other peoples to accept it' (57).²⁴ So while it would not be unreasonable, but indeed 'is a consequence of liberalism and decency' (81), to criticize, and even intervene against in grave cases, violations of *basic* human rights in outlaw societies, it would be unreasonable to demand that all societies adopt liberal democratic institutions.

This idea that the liberal concept of toleration extends also to *nonliberal* societies — in spite of their restrictions on important liberal freedoms like freedom of association, expression, right to democratic participation and so on — is a point of much contention in Rawls's international theory.²⁵ But I will leave this matter aside and focus primarily on the implications of Rawls's account of toleration for *distributive* justice. Is it true that 'political liberalism would fail to express due toleration for other acceptable ways ... of ordering society' (59) if it insisted on some liberal conception of distributive justice (e.g., Rawls's own second principle) as part of an international theory?

In his first presentation of the Law of Peoples, Rawls writes that nonliberal societies would reject any liberal distributive principles between societies because they reject liberalism. In his own words: 'For their part, the hierarchical societies reject *all* liberal principles of domestic justice. We cannot suppose that they will find such principles [e.g., the difference principle] acceptable in dealing with other peoples.'²⁶

But this argument is too quickly made. It is not clear at all why the rejection of liberal principles has to be an all-or-nothing affair. Just because nonliberal societies reject (as they likely would) liberal principles pertaining to the full range of liberal civil and political rights, it does not follow at all that they will also reject liberal principles pertaining to economic and social rights. There is no reason why a society which does not accept as relevant, say, the ideals of free association and expression, cannot nonetheless endorse global principles that will distribute re-

24 *The Law of Peoples* includes a reprint of Rawls's most recent account on the idea of public reason, 'The Idea of Public Reason Revisited,' previously published in the *University of Chicago Law Review* 64 (1997).

25 See, e.g., Fernando Teson, 'The Rawlsian Theory of International Law,' *Ethics and International Affairs* 9 (1995) 79-99; Stanley Hoffmann, 'Dreams of a Just World,' *New York Review of Books* (2 Nov. 1995) 52-7. I discuss this also in 'Liberal Toleration in Rawls's Law of Peoples,' *Ethics* 108.2 (1998) 276-95; and also *Toleration, Diversity, and Global Justice*, Chaps. 2 and 4.

26 'Law of Peoples,' 75, my emphasis.

sources more equally *between* societies.²⁷ Adopting principles of justice to regulate distribution between peoples, unlike the ideals of civil and political rights, need not have any direct liberalizing implication for the domestic politics of nonliberal peoples. To put it simply, nonliberal societies can accept, as principles governing the relations between societies, liberal principles of *economic* justice even as they reject liberal principles of *political* justice.²⁸

Indeed given his own claim that 'a people sincerely affirming a non-liberal idea of justice may still reasonably think its society should be treated equally in a reasonably just Law of Peoples' (70), Rawls has to agree that it is entirely consistent for nonliberal peoples to endorse liberal *egalitarian* ideals to regulate relations between societies even as they reject the same ideal for their own domestic institutions.

As a matter of fact, given that in the real world it is nonliberal societies that tend to be the less well-off ones, and hence would be the main beneficiaries of global redistribution, it seems all the more likely that nonliberal peoples would whole-heartedly embrace such a distributive ideal between societies.²⁹

In short, the worry that imposing a liberal conception of distributive justice to regulate relations between societies would be an imposition on nonliberal societies — and hence a violation of the liberal principle of toleration — is unfounded both conceptually and empirically.

But while the above argument will take us beyond the duty of humanitarianism to a duty of distributive justice *between* societies, it still does not go far enough for cosmopolitans. It only accounts for equality between societies, but remains indifferent to inequality *within* society. Hence it is possible within this conception of international justice that

27 This is the case in the real world: nonliberal developing countries want more financial assistance from the developed world (economic equality) while resisting pressures from the developed world that they liberalize their political institutions. A global distributive scheme on a Rawlsian concept would be readily adopted by these nonliberal countries. (If there should be difficulties here, it would be that Rawlsian distributive principles do not go far enough.)

28 These labels are Beitz's. See 'Social and Cosmopolitan Liberalism,' 515.

29 This observation was made by Thomas Pogge, 'An Egalitarian Law of the Peoples,' 218. I do not imply here that nonliberal states may pick and choose aspects of liberal theory that they find useful and discard aspects that they find troublesome. My point here is that nonliberal states, in general, will not find liberal distributive principles (to regulate relations between countries) to be burdensome and unreasonable, as Rawls thinks. That nonliberal states are also expected to endorse basic civil and political liberties is a position I argued for in 'Liberal Toleration in Rawls's Law of Peoples.'

resources and wealth equally distributed between societies are not in turn redistributed equally between persons within hierarchical societies. So a cosmopolitan justice requires more than distributive equality between societies; it also calls for distributive equality within societies. Adapting Rawls's difference principle, for instance, a cosmopolitan view would hold that our social institutions are to maximize the life prospects of the globally worst-off *individuals* no matter where they reside.

This means that a cosmopolitan theory of global justice has to go beyond regulating the relationship between societies, and has to impose certain egalitarian demands within societies as well. Yet the Law of Peoples objects to this on the ground that it would undermine liberalism's principle of toleration by requiring that all societies conform to liberal egalitarian standards (by adopting, for instance, Rawls's second principle, or some other distributive principle premised on the equal moral worth of individuals).

But can *egalitarian* liberals consistently accept nonegalitarian ways of ordering societies? As mentioned, Rawls argues that liberalism has to be accepting of well-ordered though nonliberal modes of ordering society. This, he says, is analogous to the political liberal ideal of tolerating nonliberal but reasonable philosophical, moral or religious comprehensive views within a democratic liberal society. The Law of Peoples, he says, extends this conception of toleration to the international plane. But it seems to me that the analogy between the domestic and the international spheres does not hold: while political liberalism tolerates nonliberal philosophical, moral and religious outlooks, it does not, and cannot, tolerate challenges to liberal political ideals. As Rawls himself points out, 'comprehensive doctrines that cannot support ... a democratic society are not reasonable' (172-3; see also 178-9).³⁰ That is to say, the scope of liberal toleration does not and cannot extend to alternatives to liberalism itself. A political philosophy, for reasons of consistency, must take a stance against competing political philosophies. Ronald Dworkin puts this point across neatly: any political theory must 'claim truth for itself, and therefore must claim the falsity of any theory that contradicts it. It must itself occupy ... all the logical space that its content requires.'³¹ To hold the counter-intuitive view that liberalism must also tolerate nonliberal

30 See also Rawls, *Political Liberalism* (New York: Columbia University Press 1992), 152-3.

31 Ronald Dworkin, *A Matter of Principle* (Cambridge, MA: Harvard University Press 1985), 361

politics calls to mind Robert Frost's well-known caricature of the liberal as a person who is unable to take sides in her own quarrel.³²

If it is correct that the scope of liberal toleration does not extend to nonliberal ways of ordering politics, it is hard to see why it should do so when we move to the global context. To be consistent with its own fundamental commitments, a *liberal* Law of Peoples has to take a stance against nonliberal hierarchical societies. While hierarchical societies may find such critical judgments on their domestic institutions an imposition, this is not an *unreasonable* imposition from the liberal point of view. A Law of Peoples that claims to be 'an extension of a *liberal* conception of justice for a domestic regime to a Society of Peoples' (9, my emphasis) has to remain steadfast in its commitment to liberalism.

IV Justice and Global Institutions

It might be said here that the absence of an enforceable international law is the central reason why Rawls thinks liberal principles cannot be extended globally. Naturally, the objection cannot mean merely that there is a *current* lack of the appropriate institutions, for this would be contradictory to the Rawlsian idea of justice, and hence an argument that Rawls himself would not accept.³³ For Rawls, justice informs and constrains our institutions, not the other way around. For instance, concerning the case of outlaw societies, Rawls writes: 'The Society of Peoples needs to develop *new* institutions and practices under the Law of Peoples to constrain outlaw states when they appear' (48, my emphasis). To limit the Law of Peoples against existing institutional schemes is to render it 'political in the wrong way,' contradicting thus Rawls's expressed goal of achieving stability with respect to justice (44-5).³⁴ Given Rawls's stated goal and his idea of justice, the suggestion that it is because of the absence of institutional enforcement mechanisms that has compelled him not to

32 My argument here is indebted to David Dyzenhaus, 'Liberalism After the Fall,' *Philosophy and Social Criticism* 22.3 (1996) 9-37. For Frost's exact quotation, see *The Macmillan Dictionary of Political Quotations* (Toronto: Macmillan 1993), 372.

33 Thus Rawls writes in *A Theory of Justice*: 'From the standpoint of justice as fairness, a fundamental natural duty is the duty of justice. This duty requires us to support and to comply with just institutions that exist and apply to us. It also constrains us to further just arrangements *not yet established*, at least when this can be done without too much cost to ourselves' (115, my emphasis).

34 See also Rawls, *Political Liberalism*, 146-8.

extend liberal principles globally amounts, in fact, to an objection to, rather than a defense of, Rawls.³⁵

The above objection, however, could be interpreted to mean that there is simply *no feasible* global institutions, short of enacting a world-state, that can support cosmopolitan distributive principles; and the untenability and undesirability of a world-state has been famously pointed out by Kant a long ago.³⁶ If it is true that the principles of cosmopolitan justice can be realized only by certain forms of institutional arrangements that are either unattainable in the real world, or undesirable even if attainable (or both), then we will have to seriously re-evaluate the cosmopolitan idea.

But this claim, that either we establish a world-state or we reject cosmopolitan distributive principles, presents a false dilemma. Various plausible institutional means of regulating global distribution have been proposed that do not invoke the idea of a world-government.³⁷ At the very least, these alternative (non-statist) means of implementing and regulating global principles should be given due consideration, before we may rule them out as unpracticable. Rawls himself believes that alternative means of enforcing the principles of his Law of Peoples are available. He thinks that global institutions other than a world-state, 'such as the United Nations ideally conceived' (36), can have the requisite authority and capacity to express and enforce these principles. More crucially, at no point in his rejection of global distributive justice does Rawls tie that idea to the concept of a world government. He rejects global distributive justice not because he thinks that this idea is inevitably dependent on some account of a world-state, but for the reasons considered earlier.³⁸

35 For one such objection, see Hoffmann, 54.

36 Kant, 'Perpetual Peace,' in *Kant's Political Writings*, 2nd ed. Hans Reiss, trans. and ed. (Cambridge: Cambridge University Press 1991), 113. Rawls supports Kant's view on 35-6.

37 See, for example, Pogge's proposal for a Global Resource Tax (GRT) and his outline as to how this could be put into effect without a world-state. Pogge, 'An Egalitarian Law of Peoples.' Other long-term means of redistributing wealth globally that have been seriously advanced in global forums, again without the presupposition of a world-state, include the Tobin Tax (that will both tax and discourage short term international financial speculation) and the recently proposed 'bit tax' (to be imposed on internet transmission).

38 The cosmopolitan theorists with whom Rawls is dealing have themselves explicitly rejected the idea of world-state. See Pogge, 'Moral Progress,' in Steven Luper-Foy, *Problems of International Justice* (Boulder: Westview Press 1988). The problem of

In short, to put too much weight on the problem of enforceable international law obscures (by pushing a step-back) the real dispute between Rawls and the cosmopolitans.³⁹ The fundamental reason why Rawls thinks the cosmopolitan idea to be unacceptable is the fact of reasonable pluralism.⁴⁰ In Rawls's view, justice among peoples should differ from justice within a state, not *ultimately* because of the absence of an enforceable international law, as one might suggest, but because he thinks the scope of reasonable pluralism ought to be broadened in the global context. And I have tried to show above why this relaxing of the criteria of reasonableness is objectionable from a liberal point of view.

V Conclusion

Given existing institutional shortcomings, and entrenched habits and customs, it is true that liberals are sometimes limited in how they can go about supporting reforms globally and within hierarchical societies. And for the sake of peace, liberal societies may sometimes be forced to mute their global commitments. A *liberal* Law of Peoples may, therefore, be compelled to accommodate nonliberal states for practical reasons. What is important, though, is that it should regard this as an accommodation for the purpose of a *modus vivendi*, a nonideal scenario, rather than as a matter of toleration as required by ideal theory, as argued for by Rawls.⁴¹ And this is not merely an academic quibble: The aim of an ideal

world-state is thus not relevant to the dispute between Rawls and these cosmopolitans. It is important, in this regard, not to commit the mistake of associating cosmopolitanism with world-statism. I will not pursue this point here but see Beitz, *Political Theory and International Relations*, 182-3; 199-200.

- 39 This is not to say that the issue of international law is not an important one in its own right; on the contrary, a complete defense of cosmopolitan justice has to certainly confront this issue. My point here, to repeat, is that this is not central to the dispute between Rawls and the cosmopolitans.
- 40 To see more clearly why the question of enforceable international law is not the fundamental issue, we may ask this question: would Rawls propose a *fully* liberal theory of international justice were it possible for liberal states to effectively enforce liberal principles globally, everything else being equal? The answer would still be in the negative, given Rawls's (more fundamental) concern about reasonable pluralism. I thank Thomas Pogge for a helpful discussion on this point and the more general points in this section.
- 41 Hoffmann, 54. See also Thomas Nagel, 'Justice, Justice, Shalt Thou Pursue. A Review of Rawls's *Collected Papers, The Law of Peoples, and A Theory of Justice, Revised Edition*,' *The New Republic* (25 Oct. 1999), 41.

theory of justice is to provide us with a standard to aspire to. As Rawls himself has put it in *A Theory of Justice*, ideal theory 'presents a conception of a just society that we are to achieve if we can.'⁴² A Law of Peoples that regards hierarchical decent societies as societies in good-standing in the Society of Peoples, and that tolerates great inequality between states as part of its ideal theory, sets our sights too low. Achieving justice in our less than ideal world is, no doubt, an enormous challenge. But to set for ourselves a lesser goal because of this is to too easily give up our hope for a just world.

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KOK-CHOR TAN
Queen's University
Kingston, ON
Canada K7L 3N6