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The Law of Peoples

THE LAW OF NATIONS

The principles of justice are a conception of *social* justice; they regulate the relations among people living in the *same society*, specifying their duties to one another and society's duties to them. They are not a conception of human rights, and do not specify duties that societies owe to other societies or their members; nor does the difference principle require that societies globally distribute their social product to the world's less advantaged.

In the opening sections of *A Theory of Justice* Rawls says:

I am concerned with a special case of the problem of justice . . . There is no reason to suppose ahead of time that the principles satisfactory for the basic structure hold for all cases. These principles may not work for the rules and practices of private associations or for those of less comprehensive social groups . . . [Also] The conditions for the law of nations may require different principles . . . I shall be satisfied if it is possible to formulate a reasonable conception of justice for the basic structure of society conceived for the time being as a closed system isolated from other societies.

(*TJ*, 7–8/7 rev.)

Rawls's assumption of a "closed system isolated from other societies" has been widely criticized, for no modern society can remain closed and isolated from the influences of other societies for long. But unrealistic hypothetical assumptions of closed isolated systems are common in the natural and social sciences.

Their purpose is to bracket outside influences that are not regarded as central to the understanding of the phenomena to be explained. For example, to determine how prices are set in market systems, economists assume unrealistic conditions of perfect competition among rational self-interested economic agents and therewith the absence of many normal motivations (altruism, patriotism, envy, religious fervor, a sense of justice, etc.) and political and economic facts (government fiscal policy, tariff restrictions, oligopolies, etc.) that influence people's choices. Once the basic economic laws and tendencies are ascertained based on these and other hypothetical assumptions, relevant information can be restored and its complex influences ascertained.

In *A Theory of Justice and Political Liberalism* Rawls also focuses on a "special case" (ibid.); he seeks to discover the most appropriate conception of justice to regulate social cooperation among the members of a well-ordered democratic society. Once this ideal conception of *social and political justice* has been ascertained, Rawls thinks that the hypothetical assumption of a closed society can be relaxed, and that other "special cases" of justice can be addressed, including principles of international justice that regulate the relationships between societies and their governments. This is the "law of nations," later called the "law of peoples." Social principles of justice regulate domestic policies and social relations domestically, within society. But a society's relations with other societies is unavoidable, and a foreign policy is needed to regulate them. Where is this foreign policy to come from? Rawls's idea is not to start anew, but rather "to extend the theory of justice to the law of nations. . . . Our problem then is to relate the just political principles regulating the conduct of states to the contract doctrine and to explain the moral basis of the law of nations from this point of view" (TJ, 377/331 rev.).

Already in *Theory* Rawls envisions a method for extending the contractarian framework to cover international justice and relations among different nations. The law of nations is to be determined by a hypothetical contract, not among all people in the world but among the representatives of different nations. They too are to be put behind a veil of ignorance regarding facts about

themselves and their societies, and come to an agreement upon principles of justice to regulate relations among different societies. As in the domestic original position, the parties in the international original position are motivated only by individual interests, in this case the interests of their individual nation. But their national interest is primarily a moral one – not aggrandizement of power or economic gain, but maintaining the justice of their own basic structure. “The national interest of a just state is defined by the principles of justice that have already been acknowledged. Therefore such a nation will aim above all to maintain and to preserve its just institutions and the conditions that make them possible” (TJ, 379/333 rev.).

The parties in the international original position then differ from those in the domestic case in that they are morally motivated to preserve and maintain justice, as applied among their own people. Still, they are rational in that they are indifferent to the justice and interests of other nations, except in so far as it bears upon their own interests in achieving justice in their own society.

Here it is important that the representatives in the international original position do not directly represent individual persons but rather separate nations, or “peoples.” Why is this? Rawls is mainly concerned with principles for institutions needed to establish moral relations of justice *among nations*. His question is: How should separate nations or peoples, regarded as independent agents, conduct themselves towards one another? He is not directly addressing individuals’ rights or duties, or the problem: What are the relations and duties among individuals in the world, no matter what their affiliation as members of particular societies? To some degree this problem has already been addressed within justice as fairness, for the *natural duties* – of justice, mutual respect, and mutual aid – agreed to in the domestic original position are duties that individuals owe to all persons in the world, not just to members of their own societies. One way to look at the law of nations in *Theory* is that it extends the natural duties for individuals to relations among nations (TJ, 115/99 rev.). Nations too have duties of justice, mutual respect, and mutual aid towards each other. The problem of the law of nations (and the law of peoples) is to define the nature and scope of these duties.

Here cosmopolitans object: Why doesn't Rawls have a "global original position" among all the world's individual inhabitants instead of an international one among representatives of nations? After all, Rawls proceeds from the Kantian idea of mutual respect for persons regarded as free and equal persons. If equal respect for persons is the basis for social justice, why should it not also provide the basis for relations among everyone in the world? Rawls's "state-centric" view of global justice belies his commitment to equal respect for persons.

This is the challenge raised by cosmopolitan critics of Rawls's proposed law of nations and its subsequent development in *The Law of Peoples*.¹ To fully assess this objection we must look at the details of Rawls's Law of Peoples. But something in general should be said at the outset about why Rawls rejects cosmopolitanism. There are different ways to understand cosmopolitanism, and Rawls's own Law of Peoples has cosmopolitan features (such as human rights as limits on autonomy of governments and a duty of assistance to burdened peoples). Cosmopolitans do not necessarily endorse a world-state, but they do regard national boundaries and social affiliations as secondary, if not incidental, from a moral point of view. "Liberal cosmopolitanism" is defined by its main proponents as a moral ideal grounded in the equal moral status of all persons and the justifiability of social arrangements to everyone in the world.² These moral values are said to imply the recognition of equal basic rights and liberties for all persons in the world and a global egalitarian principle of distributive justice. The liberal cosmopolitan objection to Rawls is that his Kantian commitment to equal respect for persons conflicts with his primary focus on social justice; for equal respect requires that we ignore social affiliations and give equal consideration to all people in the world in deriving principles of justice.

"Equal respect and concern" is a key idea in Ronald Dworkin's liberal philosophy.³ I am not aware that Rawls uses the term "equal respect," except to make the narrow claim that free and equal persons have "a right to equal respect and consideration in determining the principles by which the basic structure of their society is to be governed" (TJ, 475 rev.).⁴ The terms he uses instead

are “respect for persons,” “respect for equal persons,” “respect for free and equal persons,” or “mutual respect.” It’s a minor point, perhaps, but relevant to the cosmopolitan claim that the priority Rawls assigns to social justice is inconsistent with a commitment to equal respect and concern for persons – for Rawls makes no such specific commitment in those terms.

The liberal cosmopolitan objection challenges Rawls’s initial focus on social cooperation and the basic structure of society. Recall that Rawls opens *A Theory of Justice*, and later *Political Liberalism*, with the general question: What is the most appropriate conception of social and political justice for a *democratic society*, wherein citizens regard themselves as free and equal? Cosmopolitans, in effect, say that this question has no answer, for there is no conception of justice peculiarly appropriate for a democratic society that is any different from the correct cosmopolitan account that applies to all the world; or they say that the appropriate conception of justice for a democratic society can be, at most, an application of the correct cosmopolitan theory, and thus is not ascertainable until we first address cosmopolitan justice.

Why does Rawls start with the problem of social and political justice and regard it as the foundation for both international justice and “local justice” (justice within the family and other associations)? One reason Rawls gives for the basic structure of society as the “first subject” of justice is the profound effects of social cooperation and its basic institutions on people’s present and future prospects, their characters, relationships, plans, and self-conceptions – the kinds of persons they are and can aspire to be. Cosmopolitans meet this with the rejoinder that there may be more frequent interaction among the members of a society but it’s just a matter of degree, for global relations also have profound effects on people’s future prospects, characters, etc.; moreover, societies benefit from one another and are becoming increasingly interdependent due to globalization. Now it is true that all sorts of real and potential benefits stem from cooperation among members of different societies, including economic benefits, technology and cultural exchanges, etc. In the absence of cooperation with other societies the living standards of (prosperous) people

would be lower, and they would have to become economically self-sufficient. Still, for Rawls, there is a fundamental qualitative difference, not simply one of degree, between the effects of social cooperation and cooperation with people from other societies.

To begin with, social relations, unlike global relations, are coercively enforced. Social cooperation for Rawls invariably involves political cooperation, and with it the political enforcement of basic social rules and institutions necessary to society. People have no choice but to engage in social cooperation and comply with the demands of society's basic structure. For this reason Rawls sees it as essential that terms of social cooperation be reasonably acceptable to everyone, and justifiable by (public) reasons that all can accept. By contrast, economic and cultural relations between societies are normally voluntary and are based in treaties; they extend no further than the terms of their agreements. When coercive relations between peoples exist they signify duress or an absence of cooperation instead of being a precondition to cooperative relations as in the case of members of the same society.

But much more significant is social cooperation's centrality to who and what we are. While the absence of cooperative relations with other societies means the absence of many potential benefits, if we deprive people of society altogether then *everything* changes. Social cooperation is necessary to our development as persons, the realization of our reasoning and moral powers, the development of our social capacities, and our having a conception of the good. An individual may be able to survive without having ever experienced the benefits of social cooperation, alone in the wild or in herds not governed by social norms. But their lives would be primitive – as Rousseau says, the lives of “stupid limited animals.” There would be no system of property and contracts, and no economic system with division of labor, cooperative productive activity, and trade. Production, if any, would be primitive, and without the recognition of property it is questionable whether agriculture would be possible. People would be without culture, scientific knowledge, technology, and formal and most informal associations (including the social institution of the family).

Morality and justice would be absent, as would even language itself. Social cooperation is the most profound and influential relationship that humans can have; it is the fundamental precondition for our developing our distinctly human capacities and achieving a status as free agents with a capacity for practical reason and a conception of our good. It is even a condition for our having a conception of ourselves as persons with a past and a future.⁵

By contrast, global cooperation is not a precondition of our survival or flourishing as developed persons, or to the development of our rational, social, and moral powers. In fact, global cooperation among all or even most of the world's peoples has never really existed in any significant measure. Instead, peoples normally enter into cooperative relations individually with other societies to one degree or another.⁶ Clearly, cooperation with other societies, particularly trade between peoples, is beneficial to a society, but it is not a precondition to the existence of its social and political institutions, or to reasoning and language, moral personality, or the development of humans as social beings. It is optional and voluntary in a way that social cooperation is not. Without cooperation with *other societies*, we lose the economic and cultural benefits of commerce with other peoples. Without social cooperation with *other persons*, we lose civilization and all its essential benefits and are without reason itself. All other forms of cooperation are dependent upon social cooperation, while societies can endure and even flourish in many respects in the absence of most other forms of cooperation. Of course, some form of the family is needed during our formative years; but the family itself is a social institution, and familial cooperation, unlike social cooperation, is not needed to survive and flourish for all of one's life. The basic point is that it is primarily because of the all-encompassing and pervasive significance of social relations to our development as moral and rational beings that Rawls regards social justice as the primary foundation of our moral relations with others. For purposes of justice, we are fundamentally social beings, not natural or cosmopolitan beings.

Some cosmopolitans may dismiss these considerations and minimize the significance of social cooperation to justice altogether.⁷

Like libertarians, they see cooperation as irrelevant to justice. Other cosmopolitans regard social cooperation as important but see global cooperation as one form of social cooperation. ("After all, it is a social relationship and it is cooperative, so what else could it be?") But for Rawls social cooperation presupposes a shared basic structure of basic social institutions, including political institutions, and these do not exist at the global level or between peoples. Social justice for Rawls has to do with the principles that regulate basic social and political institutions and the relations of people living within them, and not the relations among different societies or among all people in the world.

While cosmopolitans usually recognize that relations within the family have their own distinctive moral norms and special rights and obligations and that we have good reason to have a special concern for family members, they do not recognize that there are distinct and independent principles of social and political justice that apply within societies to structure and regulate social cooperation among its members. Social principles of justice, if they exist at all, are derivative from allegedly more basic principles of cosmopolitan justice; if there are any distinct social duties and special obligations owed to a society's members, they are largely instrumental to promoting the primary end of cosmopolitan justice.⁸

Cosmopolitanism in this regard resembles libertarianism; both are in their own distinctive way asocial, apolitical views. Both deny a basic assumption of the social contract tradition, the fundamental moral significance of social and political relations to justice. But social and political cooperation among members of a society are not simply arbitrary facts; they are not just one-way, rather they are the *only realistically possible way* that individuals' basic rights are recognized and protected, that property exists as an institution, that production of goods and services takes place, and that economic value is created. In this and other regards, cooperation with other peoples, and clearly global cooperation with all peoples, are secondary; they may be conducive to but are not necessary for respect for basic rights and liberties, and the production, use, and consumption and enjoyment of income and wealth.

These facts are for Rawls of fundamental significance to any account of political and distributive justice.

THE LAW OF PEOPLES AND POLITICAL LIBERALISM

The *Law of Peoples* (1999) is Rawls's final work. It delivers on the promise of a contractarian account of the Law of Nations made in *A Theory of Justice*, suitably modified to comply with the limitations and requirements of *Political Liberalism*. Rawls now refers to "peoples" instead of "nations." He has little to say about what constitutes a people, but clearly it is an idealization. Apparently, "peoples" is meant to convey that it is distinct societies of persons, cooperating within one basic structure of institutions, that are the primary actors in relations between societies – not "states" or the governments that represent a people, or even nations in the traditional sense. A people is responsible for the kind of government it creates, at least under the ideal conditions of well-ordered societies that Rawls regards as the appropriate condition from which to ascertain principles of justice. A precondition for the existence of a people is political cooperation, which for Rawls is part of social cooperation. A people may constitute more than one ethnic group or "nation" as traditionally understood. Rawls is not then a "nationalist," certainly not in the sense which says that each nation of people, whether ethnically, culturally, or linguistically constituted, has a right to political self-determination. Of basic importance to being a people are not shared ethnic, communal, or even linguistic bonds, any more than shared religious bonds. While all these might be present to some degree, they are not necessary. Rather, social cooperation and sharing the same basic structure are all that are absolutely necessary to being a people. There are many different kinds of associational bonds – ethnic, linguistic, political, historical, and so on – that might account for social unity among a people. As in the United States, social unity among a people might rest simply on individuals of different ethnic, linguistic, religious and other groups all recognizing and being committed to the same political constitution, having a sense of its history, and valuing their membership in the same political

culture. The main distinguishing feature of a people, then, is that they “share a common central government and political culture, and the moral learning of political concepts and principles . . . in the context of society-wide political and social institutions that are part of their shared daily life” (LP, 112).

Rawls’s account of the Law of Peoples is an essential part of *Political Liberalism*. For this reason it is easily misunderstood. Rawls is not addressing the question, “What is the ideal constitution of the cosmopolitan order?” Kant, Rawls’s model in many respects, did address this question. Kant rejected a world-state since he thought it would degenerate into either global despotism or a fragile empire torn by civil wars where regions and peoples seek to gain their political autonomy. He held that an ideal cosmopolitan order consists of an international society of politically independent and autonomous peoples, each of whom has a republican constitution. A republican constitution, Kant says, affirms the democratic sovereignty of the people as that legal person which “possesses the highest political authority.” It guarantees each member the status of free and equal citizen, and gives them the “civil rights” of citizens.⁹ Rawls follows Kant in rejecting a world government as utopian.¹⁰ Rawls’s Law of Peoples also endorses the independence and autonomy of different peoples. But Rawls does not incorporate Kant’s requirement that every government should be republican and guarantee all the civil rights of free and equal citizens. What underlies this surprising conclusion? It may seem as if Rawls no longer endorses the position advocated in *A Theory of Justice* – namely, that a well-ordered democratic society is a universal ideal of justice, and that equal rights of political participation are morally required once a society achieves the requisite social and economic conditions for democracy.

The Law of Peoples addresses a different question than Kant and others who are concerned with the questions of cosmopolitan justice raised above. Within his own partially comprehensive doctrine presented in *A Theory of Justice*, Rawls always believed that every society in the world has a duty to develop its institutions so that it realizes the moral requirements of justice as fairness. Any society that does not conform to justice as fairness is not just, and

societies, both liberal and non-liberal, are unjust to the degree that they depart from the principles of justice. Rawls says nothing within *Political Liberalism* or *The Law of Peoples* that changes this position. *The Law of Peoples* is not intended to endorse relativism or multiculturalism; it does not imply that it is morally appropriate for non-liberal or non-democratic societies to continue in their ways without reforming their institutions. Instead, in *The Law of Peoples* Rawls assumes the realistic conditions of a less than perfect international order consisting of both liberal and non-liberal governments and peoples. He does not question the possibility of a world of liberal societies (however unlikely it may be), for there is no character flaw in human nature (like original sin) that prevents such a world from coming about. Indeed, *The Law of Peoples* contains an account of the principles of justice that should apply in that most ideal world of exclusively liberal societies (for it deals first, in Part 1, exclusively with relations among liberal societies). But the Law of Peoples also is designed to address a more likely scenario of a world with both liberal and non-liberal peoples. One of the main questions it raises then is: How are liberal peoples to relate to non-liberal peoples, and in particular to non-liberal peoples who are “decent,” even if not just by the standards of a well-ordered constitutional democracy?

Rawls’s Law of Peoples is then developed within political liberalism; it is an extension and hence part of a liberal political conception of justice. A liberal political conception, such as justice as fairness, mainly pertains to domestic justice and the basic structure of society. But social and political justice is not the only kind of justice a liberal political conception must address. Also needed are principles of foreign policy to regulate a constitutional democracy’s interaction with other societies, both liberal and non-liberal (LP, 10, 83). “The Law of Peoples proceeds from the international political world as we see it, and concerns what the foreign policy of a reasonably just liberal people should be. . . . It allows us to examine in a reasonably realistic way what should be the aim of the foreign policy of a liberal democratic people” (LP, 83).

The eight principles that constitute the Law of Peoples are straightforward and unsurprising, though Rawls says that they

require much interpretation and explanation. He also says they are incomplete and that others need to be added (LP, 37). The principles require that all peoples (1) respect the freedom and independence of other peoples; (2) observe treaties and undertakings; (3) respect the equality of peoples in agreements and relations; (4) observe a duty of non-intervention; (5) wage war only in self-defense or in defense of other peoples unjustly attacked; (6) honor human rights; (7) observe just restrictions in waging war, such as not attacking non-combatants; and (8) come to the assistance of burdened or other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime. In saying this list is incomplete, Rawls leaves leeway for additional principles. But he excludes any role for a principle of global distributive justice or a resource distribution principle that would be in addition to (8) the duty of assistance.

Rawls's argument for these principles relies upon a "second original position." He imagines the representatives of well-ordered liberal peoples coming together to work out the terms of their cooperation. Not knowing which society they represent, they would all agree to the principles of the Law of Peoples behind a (thick) veil of ignorance that brackets all factual information about their own and other societies. The parties then do not know the size of any society, their resources or wealth, their ethnic, religious, cultural makeup, and so on. They do know the same general facts as parties know in the first original position regarding principles of domestic justice. They also know that they are well-ordered liberal and democratic societies whose social unity depends upon citizens' affirmation of a liberal and democratic conception of justice. The primary interest of the parties to the second original position is not to maximize their wealth, power, or any other advantage, but rather to provide appropriate conditions for maintaining just social institutions in their own society. This moral aim is the rational motivation of the parties who are representatives of liberal peoples. They are concerned with promoting the demands of domestic justice among their own people. Importantly, as in the domestic original position, they are indifferent towards other peoples, and are not concerned with their

well-being. While liberal citizens are directly concerned with the domestic justice of other peoples, their legal representatives in the second original position are not; it concerns them only in so far as it is relevant to liberal justice in their own society. Representatives of peoples are like trustees or legal guardians; they are instructed to ignore their personal interests and all other interests except those of the persons or society they are assigned to represent.

The representatives of liberal peoples, so defined, would all agree to the eight principles listed above, as "the basic charter of the Law of Peoples." Unlike the first original position, Rawls does not give them a choice of alternative principles or the opportunity to choose a global resource principle or principle of global distributive justice. He says (rather mysteriously), "Rather, the representatives of well-ordered peoples simply reflect on the advantages of these principles of equality among peoples and see no reason to depart from them or to propose alternatives" (LP, 41). Rawls's critics see this as an arbitrary limitation, even as question-begging.¹¹ In effect, Rawls prevents representatives from raising the issue of a global distribution principle or resource tax, or at least supposes that they do not have reason to upon reflection. (Later we will discuss why.) Instead, these eight principles provide the primary regulative norms of cooperation for the Society of Peoples. The basic structure of the *Society of Peoples* consists of the institutions that are needed to maintain the Law of Peoples. It does not include a world-state, or a comprehensive global legal system with original jurisdiction to specify global property, contract rights and other laws. Original political and legal jurisdiction to specify property and other rights within their own territories resides with independent peoples. Relations among peoples and any institutions and laws that result from their relations are to be based in treaties and agreements among them. On the basis of treaties the Society of Peoples is to include international political federations with derivative jurisdiction (such as a U.N.-like body) as well as federations that provide for fairness and efficiency in trade relations (resembling the WTO, though unlike it, focused mainly on fairness and not controlled by more advantaged nations), and other cooperative institutions, with judicial

powers where appropriate to resolve disputes and enforce agreements and other measures (cf. LP, 38).

TOLERATION OF DECENT SOCIETIES

Rawls maintains that well-ordered liberal societies all would reasonably accept the principles of the Law of Peoples as fair principles of cooperation with other liberal societies, agreeing thereby not to interfere with their domestic affairs, and to recognize their independence and respect them as equals. But should liberal societies also tolerate and cooperate with non-liberal societies that are not just or legitimate according to (political) liberalism; and if so, how far should their toleration and cooperation extend? Or should liberal societies seek to shape in their own image all societies not yet liberal or democratic, intervening in their internal affairs and applying sanctions whenever they might be effective?

To address these questions Rawls distinguishes a *just society*, which is a well-ordered liberal society, from a *decent society*; then he distinguishes both from indecent or “outlaw” societies, which violate in some way the requirements of decency. Respect for human decency is a condition of justice, but not all decent societies are just in a liberal democratic sense. A *decent hierarchical society* Rawls defines as one that (a) is peaceful and non-expansionist; (b) is guided by a *common-good conception of justice* that affirms the good of all of its members; (c) has a “*decent consultation hierarchy*,” which represents each major segment of society, and which is seen as legitimate in the eyes of its people (LP, sect. 9); and (d) honors the basic *human rights* that respect the humanity of its members (LP, sect. 10). The basic human rights that are a condition of a decent society are, Rawls says: (1) the rights protecting the life and integrity of the person, which include the right to life and security of the person, and also minimum rights to the means of subsistence (a decent people does not let its members starve); (2) rights to liberty of the person (including freedom of movement, freedom from forced work and forced occupation, and the right to hold personal property); (3) rights of formal equality and to protections of the rule of law (rights to due process, fair trials, against

self-incrimination, and so on); and (4) some degree of liberty of conscience, freedom of thought and expression, and freedom of association (LP, 65, 78–81). It is not a condition of a decent society that it affirm the equality of its members or give them equal political rights (it may afford them no political rights at all), or even that it provide for equality of all basic human rights. For example, a decent society may have a state religion and politically enforce a religious morality, as long as it provides an appropriate degree of freedom to practice dissenting religions. Also a decent society must respect the human rights of women, and represent their interests in its just consultation hierarchy (LP, 75, 110).¹²

It is essential to keep in mind that Rawls's Law of Peoples is (like his principles of social justice) specified for the ideal case, among "well-ordered societies." How the Law of Peoples is to be applied in our world, "with all its injustices," is a separate issue. All reasonable members of a well-ordered society generally accept the public conception of justice that regulates society and have a willingness to comply with it. In well-ordered liberal societies all citizens conceive of themselves as free and equal and they publicly endorse one or another liberal conception (all guaranteeing the basic liberties and their priority, equal opportunities, and a social minimum). In well-ordered decent hierarchical societies all endorse the non-liberal, common-good conception of justice that regulates society, including respect for everyone's human rights and other requirements of decency. Common-good conceptions, by definition, promote a conception of the good of each member of society. This does not mean that the common good promoted is the freedom and equality of society's members; nor does it mean that everybody in a well-ordered decent society accepts all laws designed to promote their common good. But still all do accept the common-good conception used to justify those laws, even if they do not agree with all its interpretations and applications. This parallels the account of well-ordered liberal societies, all of whose reasonable members accept a liberal political conception, but disagree about its interpretation and application.

Since decent hierarchical societies accept the requirements of decency and their members have a (non-liberal) sense of justice,

they have a “moral nature” and are therefore reasonable to a degree. They seek to do what is right, comply with moral demands, and respect others’ rights all for their own sake, not simply to avoid international sanctions or for other self-interested reasons. Apparently for Rawls, both a people and individual persons can be reasonable in a limited sense, even if they do not conceive of themselves as free and equal, as we liberals do, and do not accept liberalism. Having moral dispositions, including a sense of justice, and endorsing human rights, a common good, and other requirements of decency seem to be sufficient for non-democratic people to be reasonable, or at least not unreasonable. Interestingly, the same does not seem to be true of non-liberal members of democratic societies with the same beliefs; they are unreasonable for not endorsing the liberal terms of cooperation that regulate relations among free and equal persons in the society they are members of. This is not inconsistent; reasonableness for Rawls seems to depend in the first instance upon having moral motives and a sense of justice, and is made relative to the moral terms of cooperation that govern a liberal or decent society. (“When in Rome . . .” – though here I doubt Rawls would say that liberal dissidents in a decent society are being unreasonable for not accepting the non-liberal components of its common-good conception of justice.)

No existing societies seem to satisfy Rawls’s description of a decent hierarchical society. Then again, no existing societies satisfy his account of a well-ordered liberal society either (LP, 75). So what is his point? One of Rawls’s primary aims in the *Law of Peoples* is to define the limits of liberal peoples’ toleration of non-liberal peoples. The idea of a decent hierarchical society is a theoretical construct developed for this purpose. Rawls contends that liberal societies should not tolerate dictatorial, tyrannical, and other “outlaw” regimes that violate human rights and do not act for the good of all their members. But what about non-liberal societies that are not just but are nonetheless decent? Is it reasonable to expect well-ordered decent societies to conform to all the liberal egalitarian norms of a constitutional democracy as a condition of peaceable co-existence and cooperation with them, even though liberal and egalitarian ideals are not part of their culture

and are not generally endorsed by their members? Rawls contends that, so long as decent peoples respect the Law of Peoples, it is unreasonable for free and equal peoples to require them to be liberal and democratic or refuse to cooperate with them. To insist, as cosmopolitan liberals often do, that the only bases for cooperation with a non-liberal but decent and peaceable people are that they provide their members with the full rights and benefits of liberal-democratic citizens is an unreasonable position. A liberal society is to respect other societies organized by non-liberal, non-democratic comprehensive doctrines, *provided* that their political and social institutions meet conditions of decency and they respect the Law of Peoples.

Rawls's position does not imply that political liberalism endorses decent hierarchical societies as just and beyond criticism. Liberal citizens and associations have full rights (perhaps even duties according to their comprehensive views) to publicly criticize the illiberal or undemocratic character of other societies, and can boycott them if they choose. But critical assessment by liberal citizens is different from their government's hostile criticisms, sanctions, and other forms of coercive intervention. The Law of Peoples says that liberal peoples, *as peoples represented by their governments*, have a duty to cooperate with and not seek to undermine decent non-liberal societies. This means that liberal peoples have certain moral duties to decent non-liberal peoples, and their relations are not defined in purely strategic terms. Among the duties they have is a duty to respect the territorial integrity of decent peoples, as well as their political independence and autonomy (within the limits of decency).

Some object to Rawls's duty of non-interference since it seems to imply a duty not to come to the assistance of democratic liberation movements. But the duty of non-interference only prohibits assisting democratic resistance to decent hierarchical regimes, not to tyrannical and other "outlaw" regimes. This leaves room for assisting democratic rebellions against outlaw regimes, so long as internal resistance is likely to prove effective. This is very different from a decent non-liberal society, which is to be deemed capable of the self-imposition of democracy; otherwise, Rawls implies, its

members are not likely to sustain democratic rule. More troublesome perhaps is Rawls's suggestion that it is not reasonable for liberal governments to even provide incentives, such as subsidies, to decent regimes to reform their societies. Rawls says it is "more important" that subsidies be used to assist peoples burdened by unfavorable conditions (LP, 85). Here it helps to keep in mind that Rawls is engaged in ideal theory and so is referring to decent well-ordered societies, members of which have a non-liberal self-conception and generally accept the hierarchical system as legitimate and endorse its common-good conception. Under these conditions foreign incentives to become liberal are likely to be ineffective and cause resentment within the Society of Peoples and also can compromise the effective self-determination of non-liberal societies.

Rawls's account depends heavily upon the institutional division of labor in establishing justice. A just society is a liberal society, and non-liberal but decent societies are unjust (LP, 83). Rawls clearly is not a multi-culturalist or a relativist who thinks that once requirements of decency are satisfied, justice is relative to the culture and practices of a society. But he believes that non-liberal societies often are not yet ready to sustain liberal and democratic institutions. A cosmopolitan can accept this without accepting Rawls's strong view of political autonomy, which says that each liberal or decent society alone has the duty to establish and maintain liberal justice domestically on its own by guaranteeing liberal rights to free and equal citizens and just distributions for all its members. For Rawls, it is not the role of a liberal society's government to establish liberal justice non-domestically in decent societies. That is to be achieved by their own political self-determination as members of the same society. The political autonomy of decent peoples is, Rawls seems to suggest, a condition for the secure establishment of social justice. One society rarely is able to establish just liberal social institutions within another non-liberal society that will be stable and endure; its political culture is not yet ready to sustain them. The stability of just liberal and democratic institutions depends upon citizens conceiving of themselves as free and equal and developing a liberal

sense of justice. But this duty of non-interference is not simply strategic. Rawls also seems to think it is *unreasonable* for a liberal society to sanction well-ordered decent peoples or interfere with relations among their members in order to coerce or intimidate them to liberalize their institutions. Later we need to consider why Rawls puts such great moral weight on a non-liberal but decent people's political autonomy.

Rawls's theoretical argument for the toleration of non-liberal, decent hierarchical peoples is straightforward. First, he envisions a third original position agreement exclusively among decent peoples' representatives. There, decent peoples would agree to the same Law of Peoples that liberal peoples agree to. Importantly, Rawls does not arrange for an agreement between liberal and non-liberal peoples on these principles. His reason perhaps is to avoid the objection that agreement on the principles of the Law of Peoples is simply a bargain or *modus vivendi* among liberal and non-liberal peoples, where liberal peoples compromise on globally enforcing liberal basic liberties on condition that decent peoples do not insist on a redistribution principle requiring liberal peoples to redistribute their wealth.¹³ This objection is mistaken. For in the original position agreement among liberal peoples, all agree not to interfere with one another but to instead allow each liberal people to enforce liberal justice domestically. Since the eight principles of the Law of Peoples would hold in an ideal world of exclusively well-ordered liberal societies, these principles hold in the most *ideal case*. They cannot, then, result from a compromise among liberal and non-liberal decent peoples. Instead, Rawls's argument for tolerating non-liberal decent hierarchical peoples is that, since they also all accept the same eight principles of the Law of Peoples, liberal peoples have nothing to fear in their relations with them. They pose no threat to the domestic justice of a liberal society, which is the fundamental interest of the liberal parties in the second original position. For decent hierarchical peoples are reasonable in their foreign relations in that they respect the Law of Peoples and are committed to human rights and a (non-liberal) conception of justice that promotes a good common to all their members. Moreover, Rawls thinks that it would be unreasonable

for liberal societies to refuse to tolerate decent societies who have a moral nature and a sense of justice; even though their members do not conceive of themselves as free and equal persons they are nonetheless reasonable within the confines of their members' non-liberal self-conception. This is sufficient grounds, Rawls contends, for liberal peoples to (agree to) tolerate well-ordered decent peoples and respect the Law of Peoples in their relations with them.

HUMAN RIGHTS AS THE PRIMARY CONDITION OF SOCIAL COOPERATION

Now to address Rawls's list of *human rights*. A people's respect for human rights is a condition of their rights to non-interference and political autonomy. The human rights are, again: (1) the rights protecting the life and integrity of the person, including to the means of subsistence; (2) rights to liberty of the person (including freedom of movement, freedom from servitude and forced employment, and the right to hold personal property); (3) rights of formal equality and guaranteed protections of the rule of law (due process, fair trials, right against self-incrimination, and so on); and (4) some degree of liberty of conscience, freedom of thought and expression, and freedom of association, though these rights need not be equal (LP, 65, 78–81). Where does Rawls's list of human rights derive from? Why does it not include democratic rights of political participation, or full and equal rights of free expression, freedom of occupation, and other liberal liberties? Rawls distinguishes human rights from the liberal basic liberties of the first principle of justice which are required by *Political Liberalism*. Human rights are conceived as a special class of rights that specify the minimum standards of decent political institutions. To deny people the right to vote or broad freedom of artistic expression seriously infringes liberal justice; they are not then enabled to fully develop and adequately exercise the moral powers that make social cooperation possible. But these offenses against the equal basic liberties of Rawls's first principle of social justice are not as egregious as denying people the right to life or

property, or torturing or enslaving them, letting them starve, or persecuting them for their religion, all of which render people altogether incapable of social cooperation and pursuing their rational good. Rawls says human rights are the rights that are necessary for any system of social cooperation, whether liberal or non-liberal (LP, 68). People who are denied human rights are not cooperating in any sense, but (like slaves) are compelled or manipulated and treated as expendable when convenient. Without respect for their human rights, people are not seen as independent agents worthy of respect and moral consideration with a good of their own.

The centrality of social cooperation to Rawls's account of justice is once again manifested in his definition of human rights in terms of the conditions that are necessary to engage in social cooperation of any kind. Human rights are regarded as the *minimal* freedoms, powers, and protections that any person needs for the most basic development and exercise of the moral powers that enable him or her to engage in social cooperation in any society. Liberal rights, by contrast, are the freedoms, powers, and protections that are necessary for the full development and adequate exercise of the moral powers in a liberal and democratic society. Liberal rights depend on an ideal of persons and of citizens – as free, self-reflective, and self-governing agents with a good of their own that they have freely accepted. However important and inspiring this liberal ideal of the person, for a person to be denied specifically liberal rights and freedoms is not as egregious as the failure, implied by a denial of human rights, to recognize that one is a person who is due moral respect and consideration for the essential conditions of existence.

The idea of human rights has two primary roles within the Law of Peoples. The first role is to set limits to a government's internal autonomy: No government can claim sovereignty as a defense against its violation of the human rights of those subject to it. When a government consistently violates the human rights of some of its own people – the very persons whose interests government is entrusted to protect – then it forfeits its right to rule and to represent them as a people. A government then is to be

regarded as an "outlaw" and no longer has immunity under the Law of Peoples from non-interference by other peoples; moreover, if its violations of human rights are egregious enough, other peoples are entitled to depose and replace an outlaw regime with a government that respects the human rights and common interests of its people.

This suggests the second primary role of the idea of human rights in the Law of Peoples: it restricts the reasons for war and its conduct. War can only be waged against another government in self-defense, or to protect the human rights of other peoples when violated by their own or another government. Wars cannot then be justly waged for the sake of maintaining military superiority or a balance of power, or access to economic resources, or to gain additional territory, which have been the usual reasons for warfare historically. All these involve unjust violations of a people's political autonomy. Also, within war the human rights of enemy non-combatants are to be respected; non-combatants are not to be targeted for attack and measures should be taken to protect them and their property from injury (LP, 95).

Because of the special role Rawls assigns to human rights in enabling social cooperation within the Law of Peoples, he does not include among them all the moral rights of persons as such. Peoples and governments which afford only human rights but not all liberal rights meet a threshold of decency; they are not just from the point of view of liberal conceptions. But for Rawls decency is an important political category in the Law of Peoples since it is sufficient for a people's enjoying rights to non-interference and self-determination that they respect everyone's human rights, pursue a common good and meet the other conditions of decency, and respect the Law of Peoples. The implication is that an international order of independent peoples can be just and even well-ordered without all of its members being just (in the liberal-democratic sense) towards their own people. It is the business of all peoples, as corporate bodies represented by their governments, to insure basic human rights of all peoples and to assist them in meeting basic human needs. But it is not the task of governments or the Society of Peoples to enforce liberal rights of

democratic citizens among all peoples. Achieving democratic justice is to be left up to the self-determination of each independent liberal or decent people. This implies that for Rawls the duties of justice that governments and citizens owe to their own people are more extensive than the duties of justice they owe to other peoples. Many find this peculiar, since it appears to rest on nothing more than the arbitrariness of national boundaries. The puzzle for them is, "Why should we have duties to promote the political rights and economic interests of people within our own territory and not owe similar duties to those in worse positions just across the border?"

There are two separate but related questions here. First, what justifies a people having duties of justice to one another that they do not have to other peoples in the world? Second, what justifies a people having exclusive control over a territory and the right to exclude others from it? In response to the second, Rawls argues that a people having political control over a territory serves the important function of ascribing to identifiable peoples responsibility to care for that territory and its resources, and thus mitigates deterioration of the environment and waste of its resources, which is in the interest of all peoples and all their members (LP, 38–39). (This functional argument does not justify now existing boundaries, nor is it intended to. That is a separate issue Rawls does not address.) Moreover, residing in and politically controlling a territory is normally needed for a people and a society to exist. Without control over a territory and its boundaries the political autonomy of a people is not possible and political cooperation becomes extremely difficult. This renders effective productive social cooperation also very difficult if not impossible.

This relates to the first question above, of why we owe special duties to members of our own society not owed to other peoples. The answer is that special duties to members of one's society are a condition of the possibility of social cooperation. Just as families or friendships could not exist and thrive without recognizing and observing special duties and obligations among the members of their association, societies could not exist or flourish in the absence of mutual duties and obligations not owed to other societies and

their members. We've seen that, for Rawls, what makes social cooperation such an essential good is that, among other things, it is necessary to realize our human capacities and our practical nature as free and equal moral persons. Special duties to the members of one's society and a people's exclusive control over a territory are both conditions for the existence of democratic government and a democratic society. Without both, the fundamental interests of free and equal persons in their political autonomy, in the realization of their moral powers, and in the free pursuit of their rational conception of their good, all would be undermined. This reiterates my earlier emphasis on social cooperation and the necessity of *social justice* to realizing the essential good of free and equal moral persons.

THE DUTY OF ASSISTANCE

Rawls contends that independent peoples have a duty to assist "burdened societies" in meeting their members' basic needs and in becoming independent members in the Society of well-ordered Peoples (LP, 106–13). Burdened societies exist under unfavorable conditions; they lack the political and cultural institutions, human capital and know-how, and often material and technological resources that are needed to be well-ordered societies. Unlike "outlaw" societies they are non-aggressive but they often are plagued by political corruption. Rawls's recognition of the duty to assist burdened peoples (LP, sect. 15), the 8th principle of the Law of Peoples, renders his Law of Peoples a so-called "weak" cosmopolitan position, which differs from the "strong" positions requiring a principle of global distributive justice.¹⁴ The duty to assist burdened peoples differs from a principle of distributive justice, Rawls says, in that it has a "target" which, once achieved, serves as a "cut-off point" for further assistance. By contrast, a principle of distributive justice normally has no cut-off point but continues to apply to the distribution of income and wealth even once the minimum required by a duty of assistance has been reached. Rawls sees little justification for a global distribution principle (like the difference principle) (LP, 117) under ideal

conditions in view of the independence and self-determination of a people who take responsibility for their political culture and for their rate of savings and investment (LP, sect. 16). Citing Japan (LP 108), largely devoid of natural resources, Rawls says once unjust political causes are removed and a people achieves independence, its wealth is largely determined by its political culture and industriousness, not its level of natural resources.

The duty of assistance requires more than providing assistance sufficient to enable burdened people to meet subsistence needs of all their members, and seemingly even more than is required for their effective exercise of all human rights. It requires in addition "provisions for ensuring that . . . people's basic needs be met" (LP, 38), where "basic needs" are regarded as the means that are necessary for people to take part in the life of their society and culture. "By basic needs I mean roughly those that must be met if citizens are to be in a position to take advantage of the rights, liberties, and opportunities of their society. These needs include economic means as well as institutional rights and freedoms" (LP, 38, n. 47). By defining basic needs, not in absolute terms, but in relation to what is needed to function in one's own society, Rawls emphasizes once again the societal bases of his conception of international justice.

The long-term goal of the duty of assistance is to help a burdened society to manage its own affairs both reasonably and rationally, and to achieve its capacity to become an independent member in the Society of well-ordered Peoples (LP, 106, 111). "This defines the target of assistance" (LP, 111). This requires more than just adequate economic wealth. A well-ordered society need not be wealthy by any means. But for a people to be independent members in the Society of Peoples they must have, in addition to adequate economic resources and capacity to utilize them, also the capacity for establishing and maintaining just or decent institutions. "The aim is to realize and preserve just (or decent) institutions, and not simply to increase . . . the average level of wealth, or the wealth of any society or any particular class in society" (LP, 107). Simply lifting people out of destitute conditions while leaving them economically or culturally impoverished

is not sufficient. This suggests that the duty of assistance can be rather stringent. It may require a great deal more ongoing developmental assistance from advantaged peoples for education, infrastructure, agriculture, technology, cultural development, etc., until a burdened people is capable of political, economic, and social independence.

This is reinforced when Rawls says, "A second guideline for thinking about how to carry out the duty of assistance is to realize that the political culture of a burdened society is all-important" (LP, 108). (Recall that Rawls conceives of a people largely in terms of their having a shared constitution and political culture.) The crucial point is to "assure the essentials of political autonomy," and "to assist burdened societies . . . to be able to determine the path of their own future for themselves" (LP, 118). The duty of assistance then extends to helping burdened peoples establish a political culture that is capable of realizing and sustaining just or decent political institutions, and pursuing a common good for all members. This involves at a minimum measures that require or encourage burdened peoples to respect human rights, eliminate political corruption and institute the rule of law, relieve population pressures, and establish equal justice for women (see LP, 109–10).

Rawls's duty of assistance is not (as critics contend) a charitable duty. Rather it is a duty of justice that well-ordered peoples owe to burdened peoples existing under unfavorable circumstances. The duty of assistance is as much a duty of justice as is the domestic duty to save for future generations. Rawls discusses "the similarity" between these two duties; "[they] express the same underlying idea" (LP, 106–07). Like the just savings principle, the duty of assistance too should aim "to secure a social world that makes possible a worthwhile life for all" (LP, 107). The duty of assistance also resembles individuals' natural duty of mutual aid (TJ, sect. 19); it extends this duty of individuals to peoples.¹⁵ Given the parallel Rawls draws with the just savings principle, it appears that the duty of assistance to burdened peoples to meet basic needs must be satisfied (like the just savings principle) prior to determination of the distributive shares under the difference principle.¹⁶ The duty of assistance to burdened peoples then

should have priority over the difference principle and duties of distributive justice to the members of one's own society. Rawls thus seems to afford a kind of importance to meeting basic human needs worldwide that moderates claims of distributive justice within society. In this regard, and also given the potentially exacting demands that the duty of assistance can place on advantaged peoples, Rawls's "weak" cosmopolitanism would seem to be stronger than his cosmopolitan critics allow.

DISTRIBUTIVE JUSTICE AND RAWLS'S REJECTION OF A GLOBAL DISTRIBUTION PRINCIPLE

Strong cosmopolitan positions hold that distributive justice is global in reach; that is, principles of distributive justice should encompass all people in the world regardless of their society, and not be applied individually to each society. Many have argued the difference principle should serve as a global distribution principle in this manner, and that global resources and economic activity in all societies should be directed towards benefiting the least advantaged people in the world.¹⁷ Rawls rejects the global application of the difference principle; while it applies worldwide to every society in the world, within a society its reach is limited, extending only to the members of that society. One reason for this (I argue below) is that, in the absence of a world state and global legal system, the global application of the difference principle makes little sense. Moreover, to apply the difference principle at the global level is to misunderstand its function in specifying the special cooperative relations of *reciprocity* that define a democratic people. Critics may respond that, if not the difference principle, then *some other* global distribution principle should apply to fairly distribute natural resources and the products of industry. Rawls's rejection of any global distribution principle is harder to defend. On its face it seems to rely on considerations of fairness, but also it ultimately relates to his conception of the background conditions needed for a democratic society, democratic autonomy, and the essential good of democratic citizens.

The Problem with a Global Difference Principle

It is often claimed that for the sake of consistency Rawls himself must accept the global application of the difference principle. The reason most often cited is that Rawls's initial argument in favor of the difference principle and against the principle of efficiency (in TJ, sect. 12) requires it; for there he argues that in the distribution of income and wealth people should not benefit from, or be held responsible for, the natural or social advantages or disadvantages they are born with. But if so, cosmopolitans argue, people should not be advantaged or disadvantaged by the accidental fact of their birth in a rich or poor country. The social, rather than global, application of the difference principle works an injustice. The world's income and wealth should be distributed to maximally benefit the least advantaged people in the world, not the least advantaged in each particular society.¹⁸

Like (strong) cosmopolitanism generally, this objection discounts the centrality of social cooperation to social, political, and economic justice. It is in the context of socially cooperative relations on a basis of reciprocity and mutual respect that Rawls contends that accidental social and natural facts of birth should not by themselves determine distributive shares within a democratic society. It does not follow from this that the contingent fact of membership within a particular (democratic) society is also not relevant to determining distributive shares. In the determination of distributive shares membership is highly relevant. Analogously, the fact that a person is not born as naturally talented or as handsome as his siblings should not be relevant to the care and concern he receives within his family, whereas the contingent fact that another child was not born a member of that particular family is highly relevant to his standing and entitlements within that family (for he has none). As we saw in Chapter 2, the difference principle is designed to apply to the special cooperative relations existing by virtue of the shared political, legal, and economic institutions that constitute the basic structure of a democratic society. It is not designed to apply on a global level, to the more fluid and inchoate collaborative relations among world inhabitants.

What is usually envisioned by proponents of a global difference principle is a *reallocation* of wealth from wealthier to poorer societies, periodically and perhaps in lump sum payments. The problem with this reallocation model is that it is not Rawls's difference principle. We saw in Chapter 3 that the difference principle does not apply simply to allocating existing sums of wealth without regard to how or by whom they are produced and their legitimate expectations (cf. TJ, 64, 86/56, 77 rev.). This is not its proper role. Rather it applies directly to structure basic legal and economic institutions that enable individuals to exercise control over wealth and other economic resources. The crucial point is that the *difference principle* is a *political principle*: it requires legislative, judicial, and executive agency and judgment for its application, interpretation, and enforcement. There is no invisible hand that gives rise to the myriad complexities of the basic social institutions of property, contract law, commercial instruments, and so on. If *political design* of these and other basic economic and legal institutions is essential to applying the difference principle, and if distributions to particular individuals is to be left up to pure procedural justice once this design of the basic economic structure is in place, then there must exist political authority with legal jurisdiction, and political agents to fill these functions and positions. So in addition to complex economic practices and a legal system of property, contracts, commercial instruments, securities, etc., the difference principle requires for its application political authority with the normal powers of governments.

There is no global political authority to apply the difference principle; nor is there a global legal system or global system of property to apply it to. So a global difference principle is doubly infirm, without both agency and object – *no legal person* to implement it, and *no legal system* to which it is applicable. In this regard, one can see why advocates of a global difference principle might regard it as a simple allocation principle. But their global allocation principle is not a political principle that political agents can apply to design basic institutions or a basic structure. Such a principle is not the difference principle but is something quite different.

One way to think of global application of the difference principle which might preserve its political role is for the governments of many different peoples individually to apply the principle to their own basic institutions, with an eye towards advancing the position of the least advantaged group in the world (not in their own societies). The practical problem with this suggestion is that a people only has the power to shape the basic structure of their own society, and not the power to shape other peoples' basic institutions. How can a people effectively structure their own institutions to maximize the life prospects of the world's least advantaged persons when they have no political control over other peoples' policies or the life prospects of the world's least advantaged? There are enormous coordination problems with the world's governments individually applying the difference principle in this way, especially given each society's inability to directly influence the practices and laws of countries where the world's least advantaged reside. To apply the difference principle individually to the world at large is very unlikely to make the world's poorest better off than if governments were to follow some other policy.

A third alternative is to seek to apply the difference principle, not to all peoples' economic institutions worldwide or to the total product of all world economies, but to global institutions alone (lending policies, trade agreements, etc.) and the marginal product that results from economic cooperation among peoples. For example, (for all the talk of globalization) the U.S. currently exports 11 percent of its product and imports 13–14 percent of what it consumes in goods and services (hence our current trade deficit).¹⁹ The difference principle might then be applied to structure trade policies, with appropriate taxes levied on imports and exports to benefit the world's least advantaged. This is not Rawls's difference principle either, for it applies only to a limited number of institutions and does not extend it broadly to structure all economic institutions and property relations. Moreover, it is questionable whether or how much this restricted difference principle will actually improve the situation of the worst-off in the world. It seems to impose an enormous deterrent on global trade and

imports and exports of goods and labor if resulting wealth had to be subjected first to a global and then to a domestic difference principle. Whatever the case, this piecemeal difference principle, since it applies to but a marginal portion of the world's wealth, abandons the basic cosmopolitan position that distributive justice should be globally, not domestically, determined.

There are even more formidable dissimilarities between Rawls's domestic difference principle and a global difference principle. To begin with, Rawls's arguments for the difference principle rely upon a robust idea of social cooperation and of reciprocity among the members of a democratic society. "Democratic equality" and "property-owning democracy"²⁰ are the terms he uses for the economic system structured by the difference principle and fair equality of opportunity. Democratic social and political cooperation does not exist at the global level and most likely never will. Even if we agree that there should be some kind of global distribution principle, why should it be the difference principle? Outside the confines of a democratic society Rawls's reciprocity arguments for the difference principle (see Chapter 3) do not travel well when considered from the perspective of a global original position. If the argument from democratic reciprocity cannot be relied on, what then could be the argument for a global difference principle?

Even more to the point, Rawls envisions the difference principle to structure property and other economic institutions so as to encourage (when conjoined with fair equality of opportunities) widespread ownership and control of the means of production, either in a "property-owning democracy" or a liberal socialist economy:

The intent is not simply to assist those who lose out through accident or misfortune (although that must be done), but rather to put all citizens in a position to manage their own affairs on a footing of a suitable degree of social and political cooperation. . . . The least advantaged are not, if all goes well, the unfortunate and unlucky – objects of our charity and compassion, much less our pity – but those to whom reciprocity is owed as a matter of political justice

among those who are free and equal citizens along with everyone else.

(*JF*, 139)

Like J.S. Mill, Rawls believed that for workers to have as their only real option a wage relationship with capitalist employers undermines individuals' freedom and independence, blunts their characters and imaginations, diminishes mutual respect among income classes, and leads to the eventual loss of self-respect among working people. For this and other reasons Rawls was attracted to such ideas as a "share economy" (where workers have part ownership of private capital), workers' cooperatives, public provision of capital to encourage workers in becoming independent economic agents or to start up their own businesses, and other measures for the widespread distribution of control of means of production.²¹

Since it does not apply to any substantial basic structure to shape property and other economic relations, and is not conjoined with a principle of fair equal opportunities, cosmopolitans' allocation model of the global difference principle can do little to further these aims. This is not to deny that the difference principle, when applied domestically, does have an allocative role (primarily in the form of supplementary income payments for workers who earn too little in the labor market for economic independence) (*TJ*, 285/252 rev.). But the difference principle (1) is not an instrument for alleviating poverty or misfortune (though it incidentally does that); nor (2) is its purpose to assist those with special needs or handicaps, or (3) compensate the unfortunate for bad luck, natural inequalities, and other accidents of fortune. Any number of principles, domestic and global, can provide a decent social or global minimum and serve the role of (1) poverty alleviation. Rawls's duty of assistance to meet basic needs is already sufficient to serve that role.

As for (2) assisting those with handicaps or special needs, in the domestic case Rawls envisions other principles to be decided at the legislative stage to serve this role. They are based in considerations of assistance and mutual aid similar to those behind the global duty of assistance, (cf., the natural duties of mutual aid and

of mutual respect (TJ, sects.19, 51)). Here the frequent objection – that Rawls misdefines the least advantaged and does not take into account the needs of the handicapped in his account of distributive justice – misconceives the role of the difference principle in structuring production relations and property systems among free and equal democratic citizens. To oversimplify somewhat, the difference principle focuses initially on the side of production, not consumption. It is because of Rawls's focus on social cooperation in the production of wealth among members of a democratic society that he is able to insist upon reciprocity in its final distribution, as specified by the difference principle. As a principle of reciprocity the difference principle is not suited to deal with problems of meeting people's special needs. We could always spend more upon those who are especially handicapped, and to apply the difference principle to their circumstances would severely limit if not eliminate the share that goes to the economically least advantaged (currently, unskilled workers at the minimum wage) who contribute to production.

Finally, regarding (3), Rawls says, "the difference principle is not of course the principle of redress. It does not require society to try to even out handicaps as if all were expected to compete on a fair basis in the same race" (TJ, 101/86 rev.). Rawls suggests that "luck egalitarianism" by itself, taken as a conception of distributive justice, is implausible, for it does not take into account production relations, measures needed to advance the common good, or to improve standards of living on average or for the less advantaged. "It is plausible as most such principles are as a *prima facie* principle" (ibid.).

The general point then is that Rawls does not regard distributive justice in an alleviatory manner; rather he transforms the issue from a narrow question of allocation of a fixed product of wealth for alleviatory purposes in order to address a larger set of issues. "The main problem of distributive justice is the choice of a social system" (TJ, 274/242 rev.). Accordingly, "We reject the idea of allocative justice as incompatible with the fundamental idea by which justice as fairness is organized: the idea of society as a fair system of social cooperation over time. Citizens are seen as cooperating to

produce the social resources on which their claims are made" (JF, 50). Distributive justice is then made part of the larger question about how to fairly structure economic and property relations among socially cooperative productive agents who regard themselves as free and equal, where each does his or her fair share in creating the social product. Rawls therewith incorporates the question of distributive justice into the tradition of Mill and Marx, wherein the primary focus is on how to fairly structure production and property relations in a way that affirms the freedom, equality, dignity, and self-respect of socially productive agents. "What men want is meaningful work in free association with others, these associations regulating their relations to one another within a framework of just basic institutions" (TJ, 290/257 rev.). The robust conception of democratic reciprocity implicit in the difference principle responds to this general issue. The difference principle is not a proper response to the problem of global poverty or to other alleviatory issues mentioned (meeting handicaps and special needs, redressing misfortune, etc.). These are specific problems to address in non-ideal theory, by reference to moral duties of assistance, mutual aid, and so on, and are to be determined by citizens' democratic deliberations, on the basis of their knowledge of available resources. These alleviatory problems of non-ideal theory raise issues separate and apart from the question of ideal theory of determining appropriate standards for just distributions among socially productive democratic citizens who are cooperative members of a well-ordered society.

Rawls's Rejection of a Global Principle of Distributive Justice

Many of the reasons just discussed for not globalizing the difference principle are also relevant to explaining why Rawls rejects any global distribution principle. Rawls argues that we have duties of humanitarian assistance to burdened peoples, but that distributive justice presupposes social cooperation. Distributive justice for Rawls is mainly about the design of *basic social institutions*, including

the legal system of property, contract, and other legal conditions for economic production, transfers and exchanges, and use and consumption. The basic social institutions and legal norms that make production, exchange, and use and consumption possible are political products, one of the primary subjects of political governance. It is not just fiscal policies, taxation, public goods, and welfare policies that are politically determined; more basically it is decisions about the many property rules and economic institutions, including control of the means of production, that make these policies and economic and social cooperation more generally possible. A primary role for a principle of distributive justice is to provide standards for designing, assessing, and publicly justifying the many legal and economic institutions that structure daily life. Since these basic institutions are social and political it follows for Rawls that distributive justice also should be social and political. If so, then in the absence of a world state, there can be no global basic structure on a par with the basic structure of society. Indeed, there is nothing in global relations anywhere near to being comparable to a society's basic structure of political, legal, property, and other economic institutions. This parallels the fundamental significance of society and social cooperation to our nature and conceptions of ourselves as persons. There is global cooperation and there are global institutions,²² but these are not basic institutions. Rather, global political, legal, and economic arrangements are *secondary* institutions and practices: they are largely the product of agreements and treaties among peoples and are supervenient upon the multiplicity of basic social institutions constituting the basic structures of many different societies. Consequently the only feasible global basic structure that can exist is also secondary and supervenient: In the ideal case it is nothing more than "the basic structure of the Society of Peoples," and its governing principles are the Law of Peoples.

Rawls's critics often rely upon the fact of gross inequality and world poverty to argue for a global distribution principle.²³ World poverty is certainly a problem of justice, for it is largely due to the great injustice that currently exists in many people's governments and in world economic relations, including the

exploitation of resources of less advantaged peoples. But on Rawls's account it is an injustice that is to be addressed by the duty of assistance, by preventing the unfair exploitation of a people and their resources by other nations and international business, and by requiring corrupt governments to respect human rights and satisfy the basic needs and promote the good of their members. A global distribution principle is not needed to address the problem of severe global poverty, and indeed is an inappropriate remedy.²⁴ For distributive justice applies among peoples whether or not they are poor. Even if all the peoples of the world had adequate income and wealth to enable their members to pursue their chosen way of life, global principles of distributive justice would still apply. This suggests that there must be some other foundation than poverty for global principles of distributive justice.

Many assertions of a global distribution principle appear to be based in a kind of egalitarianism that Rawls rejects. This is the kind of egalitarianism which says that equality (of resources, or of welfare, or perhaps of capabilities) is good for its own sake. Taken strictly, the idea that equality of resources is good for its own sake implies that, even if people equally endowed voluntarily decide to use their resources in ways that create great inequalities – suppose you save your earnings and I spend mine drinking expensive wines – there are considerations that speak in favor of restoring equal distribution – hence transferring part of your savings to me so I can buy still more expensive wine. Most egalitarians, understandably, do not endorse this position. They claim, not that equal distributions per se are intrinsically good, but rather equal distributions that are not the product of people's free and informed choices (under appropriate conditions). The egalitarian position here is then one that seeks to equalize the products of fortune – “luck egalitarianism” so called. So long as the relevant products of fortune have been equalized or neutralized (e.g., people have been compensated for misfortune), then inequalities in resources, welfare, capabilities – whatever the relevant good – are warranted, assuming they are based in people's free and informed choices.

Luck egalitarianism drives many (though not all) cosmopolitan calls for a global distribution principle. We saw in Chapter 3 that

Rawls rejects luck egalitarianism. Justice does not require that we equalize or neutralize the products of brute fortune (whether the products of social or natural endowments or just brute bad luck). Instead, social justice requires that society use these inevitable inequalities of fortune to benefit everyone, starting with maximally benefiting the least advantaged members of society.

It has been objected that nothing in Rawls's Law of Peoples prevents the current practice by "affluent and powerful societies" of imposing "a skewed global economic order that hampers the economic growth of poor societies and further weakens their bargaining power."²⁵ This is mistaken. Trade practices and other economic relations among existing societies are to be tested against the principles that would be agreed to in the original position among the representatives of members of a Society of well-ordered Peoples. Since representatives behind a veil of ignorance do not know the relative wealth, resources, power, and other facts about their societies, these principles will not be biased against less wealthy and less powerful peoples, as the objection assumes. Moreover, Rawls clearly recognizes the injustice of existing international economic relations. While he does not directly say so, presumably he would recognize that transition principles should apply to rectify current and past injustices, as in the case of existing social injustices, in order to bring about a well-ordered Society of Peoples. For example, just as Rawls, in order to remedy generations of pernicious racial discrimination, might support as a provisional measure preferential treatment of minorities, though strictly speaking it would infringe fair equality of opportunity as practiced in a well-ordered society, so too he could have supported as a temporary measure a global distribution principle to rectify the history of exploitation, expropriation, and gross violation of human rights endured by burdened peoples around the world.

But, importantly, such a global principle would be remedial, not permanent. For, as Rawls contends, the problem with a permanent global distribution principle is that in a well-ordered Society of Peoples there would be no cut-off point for transfers from more advantaged to less advantaged nations, even when the

less advantaged are well-to-do. Since a global distribution principle continuously applies to all wealth without a cut-off point, it would be unfair, Rawls maintains, to politically independent peoples. He gives two examples, both of which assume the ideal case of well-ordered societies whose reasonable members all accept its common-good conception of justice. The first example is two societies, A and B, that begin with the same wealth. Society A saves and invests its resources in industrialization and over time becomes wealthier, while Society B prefers to remain "a more pastoral and leisurely society" of modest means. It would be "unacceptable," Rawls says, to tax the incremental wealth of the richer society and redistribute it to the poorer nation. For Society B and its members freely eschewed the benefits of industrialization in order to gain those of a pastoral society. The second example is parallel but assumes a rather high rate of population growth. Society A undertakes population control measures to restrain the high rate of growth and achieves zero growth, while Society B, for religious and cultural reasons "freely held by its women," does not. (Rawls's example here presupposes "the elements of equal justice for women as required by a well-ordered society," LP, 118.) Over time the per capita income of Society A practicing population control is higher. Again, it "seems unacceptable" to tax the wealth of the richer nation A and redistribute it to the poorer nation B whose members freely chose to maintain its population at higher levels for religious reasons (LP, 117–18).

Underlying each of these examples is the assumption that each reasonable person in Society B freely endorses the economic and population policies leading to a lesser standard of living. To contend that, nonetheless, there still should be a redistribution of wealth from Society A to B goes far beyond luck egalitarianism to a position that says that people are not to be held responsible for the consequences of their choices. This seems to be a difficult if not untenable position.

Finally, Rawls claims that cosmopolitans' argument for a global distribution principle is grounded in concern for "the well-being of individuals and not the justice of societies." Rawls's rejection of welfarism is integral to his rejection of a global distribution

principle. In the domestic case, the end of social justice is not individual welfare, but the freedom and equality of citizens. Similarly, in the international case, the end of the Law of Peoples is not the total welfare of a people or of all peoples. It is not even the welfare of least advantaged individuals. The ultimate end or “target” of the Law of Peoples is rather political autonomy – or “the freedom and equality of a people as members of the Society of well-ordered Peoples.” Essential to this is that a society should meet the basic needs of all members so that they can participate in the social and political life of their culture. This, recall, is the basis for the duty of assistance. Here again, however, cosmopolitans may object that, if not welfare, then at least the freedom and equality of individuals, and not of peoples, should be the aim of an account of international justice. But Rawls focuses on peoples rather than individuals in the international case because of the priority he assigns to social cooperation, the basic structure of society, and the central role that political cooperation, political culture, and political autonomy all play in his account of social justice.²⁶ And this focus is precisely because of his concern for the freedom and equality of individuals, which is in the background throughout *The Law of Peoples*. (Recall again that its purpose is to “work out the ideals and principles of foreign policy of a just liberal people” (LP, 10).) For a condition of the freedom and equality of individuals, as Rawls conceives these basic democratic values, is politically autonomous citizenship within the basic structure of a democratic society that itself exercises political autonomy (“able to make their own decisions,” and “able to determine the path of their own future for themselves”) (LP, 118). In the end, Rawls’s rejection of a global distribution principle rests not simply upon the assumption that political autonomy of a people is a good, or that a people should be economically self-sufficient (relatively speaking) and not subject to manipulation by external forces beyond their control, or that they can control their level of wealth by savings, investment, population control, and other measures. It also rests upon his ideal conception of the freedom and equality of democratic citizens, and the social and political conditions that must hold if that ideal of the person is to be realized. Rawls’s

thinking seems to be that a global distribution principle would (in fact, if not in theory) jeopardize these fundamental bases for social and political justice among free and equal, reasonable and rational persons.

CONCLUSION

Many cosmopolitans are rightly bothered that global capitalism has created ways to elude political control by the world's governments. Multinational corporations are in a position to require foreign governments to extract onerous demands on their citizens (for example, requiring them to pay for their own tools and production facilities) as a condition of creating employment in a foreign nation. There is a problem of justice here – the corporate exploitation of disadvantaged peoples – and part of the problem may be that there is no global basic structure to deal with it. If these kinds of problems cannot be taken care of by individual governments regulating their corporations' foreign dealings, and by treaties and international trade organizations (and it is not clear why they cannot), then perhaps some additions need to be made to Rawls's Law of Peoples to deal with this and other problems. Rawls clearly makes room for this. It is implicit in the duty to enable burdened peoples to become politically autonomous and independent peoples. He also says that the eight principles of the Law of Peoples are not a complete list, and some additions need to be made (LP, 37). But cosmopolitans seek the wrong solution to this and other problems of economic exploitation of less advantaged peoples. It is not a problem that can be addressed, much less resolved, by a global distribution principle that simply reallocates wealth from richer nations to poorer people in developing and underdeveloped nations. What are needed are measures enabling these peoples to become politically autonomous and economically independent, putting them in control of their own fate.

Finally, though Rawls doubted the feasibility of a world state, he did not deny that global economic cooperation could evolve its own institutions (such as the World Trade Organization), and that these might eventually multiply into an intricate and complex

network of relatively independent institutions, with widespread effects upon peoples' future prospects. I do not think anything he says rules out the appropriateness of standards of justice in addition to the Law of Peoples that apply to these institutions, were they to become extensive and pervasive enough. It might even be a partial distribution principle like that discussed above, which reallocates a portion of the proceeds from international trade, or a principle that recognizes a kind of "global minimum" analogous to the liberal social minimum.²⁷ In the absence of an outline of what this global institutional framework would be like and the degree of cooperation it envisions, it is fruitless to conjecture what principles might be appropriate to it. The point is that Rawls does not have to rule out the possibility of some sort of global distribution principle that supplements the domestic difference principle in the event of the eventual evolution of a complex global web of economic institutions. It is not a situation Rawls addressed, but would conform to his view of the institutional bases of distributive justice.²⁸

FURTHER READINGS

- Beitz, Charles, "Rawls's Law of Peoples," *Ethics*, 110, July 2000, 669–96. (Critical review of *The Law of Peoples* by one of the main cosmopolitan critics of Rawls.)
- Nagel, Thomas, "The Problem of Global Justice," *Philosophy and Public Affairs*, 33: 2, 2005, 113–47. (Argues, like Rawls, for the priority of social justice over claims of global justice.)
- Pogge, Thomas, "An Egalitarian Law of Peoples," *Philosophy and Public Affairs*, 23: 3, Summer 1994. (Argues that representatives of peoples in Rawls's original position would choose a global resource tax to benefit poorer peoples.)