Rawls’s *The Law of Peoples* as a Guideline for the World as We Know It

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Introduction

John Rawls opens *The Law of Peoples* with the claim that his theory is to be seen as “realistically utopian” (Rawls, 2002). Being the servant of two masters, the idealistic and realistic one, the idea of a “realistic utopia” has raised several criticisms. Rawls’s concept of international law is considered either as too idealistic or as too realistic. Those who consider it to be too idealistic lament that it does not take into account current problematic political issues, such as poverty and the fair global distribution of resources; those who consider it to be too realistic claim that it tends to be too accommodating with illiberal societies, narrowing the list of human rights to be protected (Buchanan, 2006). In this paper I will try to demonstrate that these criticisms miss Rawls’s point.

I will first of all explain Rawls’s key term *peoples*. Then I will briefly explain how Rawls constructs his theory of international relations. I will point out the weaknesses of this project by analyzing some well known objections, namely the ones advanced by Thomas Pogge. Finally, I shall present my reinterpretation of Rawls’s argument. If I succeed in defending Rawls from those objections, it should become apparent how his project might support a theory of global justice.

The Idea of ‘Peoples’

The term *people* stands for two different kinds of domestic societies: liberal democracies as we know them from *Political Liberalism* and *decent peoples*, which Rawls also calls “decent consultation hierarchies”, exemplified by the imaginary Kazanistan.

Liberal peoples are – institutionally speaking – constitutional democracies, organized around a political conception of justice as a “free-standing view”, specified by the two principles of justice: The first sais that
each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others and the second deals with social and economic inequalities. These are to be arranged so that:

a) *offices and positions must be open to everyone under conditions of fair equality of opportunity*

b) they are to be of the greatest benefit to the least-advantaged members of society (*the difference principle*) (Rawls, 1971, p. 303).

The two principles are chosen among many other options by representatives of the individuals in the “original position” from behind a “veil of ignorance”.

A political conception of justice allows comprehensive doctrines to play a role only in non-political spheres. Only those issues fall under the domain of “the political”, and are therefore to be considered in public debates, that are neutral with regard to comprehensive doctrines.

Liberal democracies are also supposed to have a certain common culture, due to the shared history, common language and tradition. This should be expressed through the citizens’ “common sympathies” for each other, which are to be developed while building and living together in a political system as a historical entity. Co-citizens are to respect the culture of one another and to work together to support the political system that they share. The moral character of peoples has its roots in the moral character of its citizens, who treat their co-citizens reasonably, i.e., with respect for their rational interests that may be different from one’s own. The same reasonable conduct is expected from the peoples when they enter the international arena, just as reasonable pluralism within domestic society allows the coexistence of diversity among co-citizens. Now, not until liberal democracies become foreign policy-actors does Rawls use for liberal democracies the term *peoples*. Why?

One answer is that Rawls wants to distance his theory from principles of *Realpolitik*, which advocate that nation-states pursue their rational interests at any cost. This confines foreign policy to a *modus vivendi*. Rawls, on the contrary, wants a stable, durable peace and peace for the right reasons. Thus, Rawlsian peoples differ from the classical concept of state because they lack the traditional sovereignty, which consists in the right to declare war in pursuit of state policies and the right to an absolute autonomy in dealing with the state’s citizens. Reasonable peoples fight wars just for self-defense or in the name of human rights.

Further guarantee of peace for the right reasons is the fact that liberal democratic regimes are administrated by perfectly reasonable statesmen. The idea of a politician who is at the service of the people and “selfless in
judging his society’s needs” (Rawls, 2002, p. 97) deepens the gap between factual states and the idea of peoples.

Consequently, Rawls’s peoples are an idealized version of modern multinational states.

Decent Hierarchical Peoples

Decent hierarchical peoples are not liberal. Their internal structure was not modified through the first original position. Their legal and cultural systems are shaped by a certain comprehensive religious doctrine in which they all believe and that provides a common good. They are not aggressive. They respect basic human rights. However, members of these societies are viewed in public life not as individuals but as members of groups. Rawls calls this society associationist. Each group should be further represented in a hierarchical legal system. In this kind of society there is no such a thing as a Western public sphere in which people can practice what Rawls calls public reason. However, there are forms of consultation in which members of social groups discuss their common aims. In this context individuals are allowed to oppose to, or to depart from, the official opinion, and judges and other officials must address the objections.

The political body that makes the final decisions – the rulers of a decent hierarchical society – are to weigh views and claims of each of the consulted groups and, in that way, consult the opinion of the whole people. Thus, societies like Kazanistan are also entitled to be called peoples, idealized non-liberal cast-like societies.

To conclude, “peoples”, both liberal and hierarchical, do not exist as real world political entities. Instead, they are normative ideas, guidelines for our world. As such, the peoples’ primary interest is to take reasonable care of their co-citizens’ conception of justice and the good.

Second Original Position

The second original position builds on an analogy with the domestic case. It deals first of all with decent liberal peoples, and then with decent hierarchical peoples.

In the case of decent liberal peoples the parties are representatives whose interest is to make sure that their citizens can keep their comprehensive doctrines, acknowledging at the same time the political conception of justice as an internal order of society. In other words, their interest is to ensure security and safety of their citizens and to preserve their free politi-
cal institutions. Furthermore, each people will want to preserve self-respect and would want others to respect them, their culture and territorial integrity. Peoples need to find a “public basis of justification” (Rawls 2002, p. 32) for their interests in terms of law of peoples.

Now, for a law among peoples to be fair, the parties are going to be put behind a veil of ignorance. They do not know “the size of their territory, or the population or relative strength of the people whose fundamental interest they represent” (Rawls 2002, p. 32). Under such conditions Rawls states the eight principles of the “law of peoples” while reflecting on history and usages of international law and practice, without suggesting any alternative, whereas in the domestic case the parties in the original position were offered numerous alternative principles of justice from which they were to choose.

This list of eight principles is not by any means complete and its implementation may take different forms. Rawls mentions institutions that would be similar to GATT rounds, World Bank or United Nations, European Union or Soviet Union. However, a more detailed description of their institutional interpretation is absent.

The second part of the second original positions deals with decent hierarchical societies. The procedure is the same, but since the internal organization of liberal and hierarchical peoples differs and the model of representation requires equality of the representatives, the peoples have to be represented in two separate original positions.

Both decent and liberal peoples agree on the following eight Principles:

1. “Peoples are free and independent, and their freedom and independence is to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe a duty of non-intervention.
5. Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense.
6. Peoples are to honor human rights.
7. Peoples are to observe specified restrictions in the conduct of war.
8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime” (Rawls 2002, p. 37).

The most disputable points are 6. and 8. Rawls (2002 §10) explains that in the law of peoples a special class of urgent human rights is expressed, such as freedom from slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and geno-
cide. The enumerated rights are compatible with those from Article 3 through Article 18 of the Universal Declaration of Human Rights. The violation of this class of rights is equally condemned by liberal and decent peoples. The principle of assistance is meant to help burdened societies to become decent and then they are on their own.

Lacking a fully adequate scheme of human rights and a globalized version of the difference principle, the law of peoples seems not to be analogous to the domestic order. However, Rawls notices that it is very important on this stage that we, the citizens of current liberal societies, defend the principles and judgments of the law of peoples. It is important for Rawls that his theory is realistic as well as utopian and in that sense his reasoning has to be confirmed by the real people living in the reality of current international relations.

Pogge’s Objections

As stated in the introduction, I intend to focus on the objections presented by Thomas Pogge (2006). Pogge deals with the rejection of normative individualism in Rawls’s view of international relations, with the asymmetries between Rawls’s domestic and international theory of justice, with the definition of the term peoples, and with Rawls’s advocating “explanatory nationalism”, the notion according to which each state has sole responsibility for its level of development.

Pogge’s biggest concern is about the fact that Rawls doesn’t have a global difference principle, as it would be the case if the law of people were analogous to the domestic order. Pogge ascribes to Rawls two theories of justice: one that applies to the domestic case and another that applies to the international arena. Pogge criticizes this second theory for neglecting the needs of hierarchical societies and rejecting normative individualism. In particular Pogge raises the following objections:

1. Rawls accommodates the opponents of liberalism in his theory of international relations by tolerating other non-liberal, but reasonable ways of ordering society, but he does not accept the same principle of toleration in his domestic theory. This needs to be explained.
2. Rawls is too accommodating with non-liberal societies, as he requires no concessions from decent hierarchical societies.
3. By not envisioning more liberal global arrangements, Rawls assumes that the accommodation of decent hierarchical societies is needed forever. This also needs to be justified. However, as Pogge suggests, it is uncertain whether a well-ordered hierarchical society such as Kazanistan
could ever exist. Should this be not the case, this accommodation could actually end up accommodating no living person at all (Pogge, 2006, pp. 208-209).

In addition, Pogge criticizes the vagueness of the notion of peoples. In Pogge’s view, it is not clear which groups are to be counted as peoples, and whether “peoples” are any groups who live on a certain territory or nations that transcend state borders. It is also not clear how these peoples are to be identified: by their passports, culture, descent, choice, or combination of those (Rawls, 2002, p. 211).

Furthermore, Pogge finds structural asymmetries in the two theories. Domestic theory takes into account parties who choose the two principles of justice and then apply them to the basic structures in such a way that the principles can fit any empirical context. In the international case, the parties are presented with the basic structure and the endorsement of eight principles of the law of peoples does not foresee corrective measures for any possible misfortunate empirical case: bad negotiations of former generations or unluckily natural conditions are of no interest for this theory. The global economic order of Rawls’s utopia is shaped by “free bargaining” without any principles that could prevent stronger societies from shaping the terms of international interaction in their favor. Here Pogge’s notion of “explanatory nationalism” comes into play.

Pogge vehemently argues that the well-being of a country cannot have only local causes. Rich countries and the global institutional arrangements they design and impose are contributing to poor countries’ deprivation. Rich countries do not shy away from negotiating trade agreements with unlawful rulers or even from encouraging civil wars or opportunistic military interventions. According to Pogge, the global order is gravely unjust and “those who cooperate in its imposition are harming those whose human rights avoidably remain unfulfilled” (Pogge, 2006, p. 217). Pogge sees no reason why the parties in the original position would not consider an alternative to the Rawlsian law of peoples that would do without “explanatory nationalism” and support some kind of global difference principle instead of the principle of assistance.

The Reinterpretation

There are indeed in Rawls’s The Laws of People two theories of justice operating at different levels of abstraction. Although intertwined, those levels should be held apart in order to avoid confusion.
We start again with distinguishing two theories: a theory of justice for the domestic society and the law of peoples for the international arena. Both theories have to be taken as guidelines, the former for a just domestic society and the latter for the just international society. Accordingly, both theories could be interpreted as descriptive ideal theories (Burg, 1997, pp. 89-99), i.e., as theories that should give us a detailed elaboration of a particular ideal. In other words, Rawls’s two principles describe a domestic society, whereas Rawls’s eight principles describe the international society.

The process of coming to life of any descriptive theory parallels the process of formulating an ideal. Ideals are motivated by the dissatisfaction with the real world (Burg, 1997, pp. 23-24), e.g., in the domestic case, with social injustice. The tool we use to mediate between ideal and real world is reflective equilibrium. In the case of domestic society it is Rawls, you and me who use it. We are the citizens of a non-ideal world who are going back and forth between the principles and considered judgments, deciding on a fair strategy that should lead to the full description of an ideal.

Rawls, You and I create the original position as a means of representing an ideal situation, and we use the method of reflective equilibrium to affirm its fairness. The same method is then used by the parties in the original position to affirm the principles of justice and is constantly in use by the citizens of the well-ordered society that we envision. When reflective equilibrium is reached the theory is considered as justified, though not for ever. Reflection is constantly in action. Considered judgments as well as the principles of justice are equally subject to revision. A good example of that is Rawls’s shift from advocating a comprehensive theory in A Theory of Justice to the political free-standing view of Political Liberalism.

However, at the domestic level Rawls goes beyond the descriptive theory and introduces a normative ideal theory, which tells us which particular principles should guide our political action in that ideal context, e.g., Rawls’s elaboration of the institutions of the basic structure or his emphasis on the importance of public reason.

Now, in The Law of Peoples we find a descriptive ideal theory. The theory describes preconditions for peoples’ coexistence and their cooperation. However, it says little about the institutional arrangement that should support the law of peoples, that is, there is no normative ideal theory. Rawls’ theory of international relations starts already from a descriptive ideal theory of domestic affairs. In the latter we, Rawls, you and me, were creating the hypothetical subjects of the original position, those who will become the citizens of liberal peoples once the veil of ignorance is lifted. In the second original position the parties are either the citizens of a well-
ordered society that we hypothesize or completely new entities who do not owe their existence to the first original position.

In order not to cut the law of peoples completely out of reality, Rawls, as a member of a real world, is presenting a list of principles to the parties of the original position. They are to serve as an ideal for the theory of international relations and originate in our reflection and our dissatisfaction: “These familiar and largely traditional principles I take from history and usage of international law and practice” (Rawls, 2002, p. 41). Such principles are by no means conclusive. In the light of new events they may change, but for the time being they are accepted as reasonable by the citizens of real world liberal and some non-liberal countries.

The problem starts when the eight principles are to be interpreted, implemented and supported by institutions. To do so, we need a normative ideal theory for the international arena. However, from a real-world perspective it would be too demanding to formulate a normative ideal theory, although Rawls briefly mentions what kind of institutions he was imagining: “Suppose there are three such organizations: one framed to ensure fair trade among peoples; another to allow peoples to borrow from a cooperative banking system; and third an organization with a role similar to that of the United Nation, which I would now refer to as Confederation of Peoples (not States)” (Rawls, 2002, p. 42).

Two questions should be considered here:

Why doesn’t Rawls use individuals as the parties in the second original position, the same ones he used in the first original position in order to tackle the above mentioned problem?

Can a descriptive ideal theory of international relations be of any use as a normative real-world theory?

For the second original position to be enacted by individuals Rawls would need to completely give up his theory of justice for a domestic society, since the country borders would play no role at all. It would make even bigger idealistic claims on the real world than Rawls’s descriptive ideal theory for the global arena, which, though ideal, has a realistic touch. Rawls hypothesizes a possible future ideal society of peoples, and in order to do so he relies on his considered judgments, in which nation states, as central actors of the current international arena, still play an important role.

Therefore, the question as to whether a descriptive ideal theory of international relations can be of any use for a normative theory of real world is to be answered affirmatively. Rawls claims that political philosophy has four distinctive roles, one of which is orientation. Using our reason we should find our bearings in the conceptual space of all possible ends: individual, associational, political, social (Rawls, 2003, p. 3).
Hence, descriptive ideal theory is to have an orientational role in advancing a political culture and developing political conscience is a long process:

[…] the grounds of constitutional democracy and the basis of its rights and duties need to be continually discussed in all the many associations of civil society as part of citizens’ understanding and education prior to taking part in political life. These matters need to be part of the political culture; they should not dominate day-to-day contents of ordinary politics, but must be presupposed and operating in a background (Rawls, 2002, p. 102).

Answer to Pogge

Pogge’s argument about how the law of peoples allows rich countries to misuse global institutions, or even the objection about Rawls’s neglect of individualism, fails at the level of a descriptive ideal theory. If Rawls had been more precise about how the global institutions were to work, then Pogge’s objection would stand. Pogge’s complains about global inequality, etc., are imply criticisms of politicians and politics of nowadays, and require normative theory for justification.

As to Pogge’s question as to why we have to come to terms with theories that oppose to liberalism in the international arena, I would answer that Rawls’s approach is not at all accommodating with any non-liberal theories, but only decent theories, which we can include in our reflective equilibrium. without immediately rejecting them. The conclusions that we draw as a consequence of our reflection modify what we have established in the domestic case, which does not mean that such conclusions cannot be modified again in order to favour liberalism completely. This would be an ultimate wish of Rawls’s.

The objection that hierarchical societies do not make any concession is also incorrect. Hierarchical societies start a dialogue with societies that do not share their comprehensive doctrines.

Finally, do we have to accept non-liberal societies indefinitely? Since Rawls’s main goal is peace – established on reasonable grounds –, then I do not see why our acceptance of non-liberal societies should not last for ever, provided that such an arrangement brings peace and stability, and decent peoples behave as described in Kazanistan.

Furthermore, while criticizing the vagueness of the term peoples, Pogge states that Rawls makes no effort to show that his concept of people reflects “general and entrenched facts in the contemporary world” (Rawls, 2002, p. 210). In my view, the term peoples does mirror the state of our world’s affairs inasmuch as peoples are an idealized version of really exist-
ing societies. We get to such an idealised conception as a reaction to the dissatisfaction that we feel regarding our world, and the idea of *peoples* is therefore a guideline for the further development of the state-entities that populate the world that we live in.

However, by letting the idealised versions of the states interact with one another on a virtual international arena will not help solve the specific problems of the real world, at least not in the pragmatic and strictly empirical sense that Pogge expects. Pogge is mixing two different levels of argumentation. The same is true for Pogge’s concerns with Rawls’s “explanatory nationalism”. Complains about “explanatory nationalism” are all part of our considered judgments: Pogge’s dissatisfaction with current global organisations and trade agreements, his statistical data about the world poverty and need for its alleviation, etc., need to find their place in normative theory, not in descriptive ideal theory.

Pogge’s ideas for a global theory of justice takes place at the level of our considered judgments about the current state of our world’s affairs. Thus, Pogge looks for principles that would have a normative relevance for a global theory of justice that be able to have an impact on the peoples’ conditions of existence. In so doing, Pogge fails to see that Rawls’s theory is of a larger scope. Pogge’s dilemma is how to prevent the existing, and obviously unreasonable, affluent countries from exploiting global institutions in order to further their interests, whereas Rawls asks “how would a world of well-ordered societies look like?” Rawls goes beyond the limits of what is possible here and now and in that way is realistically utopian.

**Conclusion**

If we bear in mind the distinction between normative and descriptive parts of ideal theories we become able to organize our thoughts about the problems of the real world and the possibilities for its development. Otherwise, instead of expanding the “limits of practical political possibility” we run the risk of looking for answers in the wrong conceptual domain. In my view, this is exactly what Pogge does. Without questioning his objections to the current state of the world – objections that I hold to be completely right –, my point is that he fails to see that Rawls is giving a guideline for a possible, though in near-term maybe not achievable society of peoples. Rather than a text-book on international law, Rawls is giving us a philosophical account of global justice.
References


IV. Economic Justice