

## 12

Do Rawls's Two Theories  
of Justice Fit Together?

Thomas Pogge

In *A Theory of Justice*, John Rawls offered his account of domestic justice, meant to provide moral guidance for the assessment, design, and reform of the institutional order ("basic structure") of one society.<sup>1</sup> Twenty-eight years later, he published a work on international justice: *The Law of Peoples*, presenting it as an extension of his domestic theory.

Central to both texts are thought experiments involving a fictional deliberative forum, the *original position*, composed of rational deliberators, or *parties*. In the domestic case, the parties represent individual persons. As there is one representative for each prospective citizen, this original position is said to model the freedom and fundamental equality of all persons. The parties have the task, in behalf of their respective clients and protecting their interests, to agree on a public criterion of justice for assessing alternative feasible basic structures for a society. A *veil of ignorance* conceals all distinguishing features of these prospective citizens from the parties, who must choose a public criterion of social justice without knowing their clients' particular creeds, values, tastes, desires, and endowments or even the natural and historical context of their clients' society. On the basis of a highly complex array of rigorous arguments, Rawls tries to demonstrate that the parties would select his liberal public criterion: the two principles of justice with the two priority rules (*TJ*: 266–7).

In the international case, the thought experiment of the original position is deployed rather differently. Four divergences spring to mind. The rational deliberators are conceived as representing *peoples* rather than persons, and the international original position is thus said to model the freedom and equality of *peoples*. Representation is granted *selectively*: it is granted only to peoples who are well-ordered by having either a liberal or a decent domestic institutional order, while the remainder are not accepted as equals and are thus denied equal respect and tolerance. The veil of ignorance is *thinner*, allowing the parties to know whether they are representing a liberal or a decent people; and Rawls therefore

conducts his international thought experiment twice to show separately that representatives of liberal peoples and representatives of decent peoples would independently join the same agreement. And the task assigned to the parties in the international original position is, importantly, disanalogous; they are *not*, as one might have expected, charged with agreeing on a public criterion for the assessment, design, and reform of the global institutional order, but charged with agreeing on a set of rules of good conduct that cooperating peoples should (expect one another to) obey.

## Why Two Theories at All?

Developing his domestic theory, Rawls writes, "at some level there must exist a closed background system, and it is this subject for which we want a theory" (*PL*: 272 n.9). And so he assumes throughout, if only for purposes of "a first approximation" (*ibid.*), that the society whose institutional order he discusses is "self-contained" (*TJ*: 401), "more or less self-sufficient" (*TJ*: 4), and "a closed system isolated from other societies" (*TJ*: 7). The citizens of such a society ought to structure it, he concludes, according to his public criterion of justice (the two principles with the two priority rules).

Since the world at large is self-contained, more or less self-sufficient, and a closed system isolated from other societies, it seems to fit Rawls's stipulations – certainly better than any national society does. So how about structuring all of humankind in accordance with the public criterion of social justice proposed in his domestic theory? Rawls not merely denies that we ought to do this, but even insists that we ought not. What reasons can he offer?

As a first reason, Rawls can adduce his skepticism about the feasibility of a well-ordered world state: "Here I follow Kant's lead in *Perpetual Peace* (1795) in thinking that a world government . . . would either be a global despotism or else would rule over a fragile empire torn by frequent civil strife as various regions and peoples tried to gain their political freedom and autonomy" (*LoP*: 36).

But this appeal to Kant is questionable. Kant writes in *Perpetual Peace* that a plurality of independent states, "is still to be preferred to their amalgamation under a single power which has overruled the rest and created a universal monarchy. For the laws progressively lose their impact as the government increases its range; and a soulless despotism, after crushing the germs of goodness, will finally lapse into anarchy."<sup>2</sup> This passage expresses strong reservations about a universal monarchy achieved by conquest. Kant does not, here or elsewhere, express such reservations about a liberal world republic achieved through a peaceful merger of republics – though he realized, of course, that such a transition might well be opposed by existing rulers.<sup>3</sup>

Even granting, without textual support, that Kant believed that any world state would invariably lead to despotism or civil strife, it is quite doubtful that his

opinion is the best evidence one can have about whether such a just world government is feasible in the twenty-first century and beyond. This is doubtful because the last two hundred years have greatly expanded our historical experience relevant to this question and have vastly improved our social theorizing, especially in economics and political science. In particular we have learned from the federalist systems of the United States and the European Union that – Kant's contrary view notwithstanding – a genuine division of powers, even in the vertical dimension, is workable and no obstacle to stability and justice.

Moreover, had Rawls really been convinced that limits on the range of just and effective government render a global liberal society infeasible, then we should expect these limits to appear within his domestic theory – as the requirement, perhaps, that the society it discusses must not grow beyond a certain population or area, or beyond a certain percentage of the global population or land surface area. But he never considers such limitations.

Finally, even if a justly structured world government were infeasible, this would not invalidate the global application of Rawls's public criterion of social justice. This criterion does not prescribe a specific institutional design, but governs the comparative assessment of alternative feasible institutional designs. Applied globally, it would instruct us to design global political institutions that would secure the basic liberties of human beings as far as possible and to design the global economic order so that fair equality of opportunity is realized worldwide as far as possible and so that it engenders socioeconomic inequalities among persons only insofar as this raises the socioeconomic floor. The applicability of this criterion is not refuted, but rather *confirmed* by Rawls's empirical speculation: If world government would lead to despotism or civil strife, then the public criterion would correctly reject this institutional option for its failure to secure the basic liberties of human beings worldwide. This criterion would then favor another global institutional design – perhaps a global federation on the model of the European Union, or a loose league of nations as Kant had described, or Rawls's similar Society of Peoples, or a states system like that existing now.

As a second reason against the applicability of his public criterion of social justice to the world at large, Rawls could point out that it would be wrong to impose a global order designed according to a liberal criterion of social justice upon decent peoples who may reject the normative individualism of this criterion as well as its emphasis on basic liberties.<sup>4</sup> His international theory is needed, then, to accommodate decent peoples whom liberals are to tolerate and welcome as equal “members in good standing of the Society of Peoples” (*LoP*: 59).

This argument, too, is problematic in three respects. First, why must we “express liberalism's own principle of toleration for other reasonable ways of ordering society”<sup>5</sup> by accommodating the opponents of liberalism in Rawls's international theory and the interactions among societies, but not in his domestic theory and the design of our national institutional order?

Second, why should the accommodation Rawls suggests be so one-sided? As far as I can see, Rawls's theory of international justice requires no concessions at all from decent hierarchical societies, which get exactly the rules that best accord with their values and interests. But it greatly compromises liberal values by rejecting normative individualism, by disregarding the basic liberties of persons outside well-ordered societies, by truncating the basic liberties of persons in decent societies,<sup>6</sup> and by tolerating poverty and huge inequalities worldwide. (While greatly compromising liberal values, Rawls does accommodate those who profess such values quite well by sanctioning the 22:1 income advantage and the much greater wealth advantage that the citizens of today's liberal countries enjoy over the rest of humankind.)

Third, why does Rawls, by not envisioning more liberal global arrangements, assume that the accommodation of decent hierarchical societies is needed forever? Is this a stipulation based on principle or an empirical prediction? Rawls describes a fictional such society, Kazanistan, in which normative individualism is rejected (*LoP*: 75–8). But is the mere possibility of such societies reason enough to accommodate them in the design of the international original position and of the envisioned Society of Peoples – even if such accommodation accommodates no living persons or peoples?

It is unclear how Rawls would answer this question. Either answer would reveal a gap in his reasoning. To motivate an affirmative answer, one would need to explain why an equal place should be indefinitely preserved for such societies when Rawls himself deems them morally flawed – “a decent hierarchical society does not treat its own members reasonably or justly as free and equal citizens” (*LoP*: 83) – and defends accommodation by claiming that it encourages decent societies to reform themselves in a liberal direction (*LoP*: 61–2).

A negative answer would leave a different gap, as Rawls gives no evidence that there really are – let alone always will be – nonliberal societies that qualify as decent and also reject normative individualism. Contemporary defenses of nonliberal societies often stress how happy and secure individuals feel under their more authoritarian, communal, or moralizing social institutions and how disorienting and alienating they find liberal ones. Thus, justifications of decent regimes might well take the interests of persons as morally fundamental. If actual decent regimes were so justified by their supporters, or if no such regimes existed, then a liberal commitment to accommodate actual decent peoples would *not* support an international original position that represents peoples rather than persons.

The dilemma for Rawls arises more broadly. His proposed accommodation presupposes humanity's division into mutually distinct and culturally cohesive peoples. Is this presupposition meant to reflect a moral valuation or entrenched empirical facts? Again, either possibility leads into difficulty. The former answer is problematic, because *A Theory of Justice* provides no reason for valuing political boundaries (not even federalist ones, surprisingly). The latter answer is

problematic as well, because Rawls makes no effort to show that his concept of a people reflects general and entrenched facts in the contemporary world. Many borders in Africa, Latin America, and Asia are colonial constructs that lump diverse communities together (Indonesia) while splitting others over two or more states (Kurds). In Europe, borders are rapidly losing practical significance, so that the notion of a people seems increasingly ill-fitted to the old groups (the Dutch and the Danes) and ill-fitted also to the new and still expanding population of the European Union. In the midst of globalization, we can easily imagine a broadening of this trend, leading to a world in which most borders have little political or practical significance and do not correlate with “separate languages, religions, and cultures” (*LoP*: 112).

The status of Rawls’s account remains then unclear. Calling his Society of Peoples a “realistic utopia,” does he propose it as the highest ideal for the indefinite future? Or is it a stopgap model meant to accommodate, so long as they are still around, some slightly backward but still basically passable societies that are best handled with tolerance and equal respect – a stopgap model to be superseded, in a hoped-for future era when nearly all societies will have become liberal, by a genuinely liberal conception of global justice? Perhaps *The Law of Peoples* is not meant to be clear on this point. The accommodation of actual decent societies – whichever ones Rawls may have in mind under this label – can have its desired effects only if it is genuine and unconditional, only if decent societies feel assured that their equal place is secure indefinitely irrespective of their number or power (cf. *LoP*: 122–3).

This parallels the liberal domestic accommodation of diverse comprehensive (e.g., religious) doctrines. But there are two crucial differences: Rawls expresses no preferences within the range of reasonable comprehensive doctrines and he predicts that, barring state oppression, citizens will continue to hold and to respect doctrines throughout this range (the “fact of reasonable pluralism” – *PL*: 36). In the international case, by contrast, Rawls holds that decent societies are morally inferior and hopes that all human beings will eventually live under liberal institutions. Ought the humanity of such a happy future age share his concern to maintain a global order fully acceptable and hospitable to decent regimes? Would it be wrong (unjust) if, with universal approval, they adopted Rawls’s two principles of justice to guide the design of their global institutional arrangements? It may seem wise to leave this issue unexplored for now. But what could possibly justify an affirmative answer?

### Why Exclude the Interests of Persons?

Insisting that two theories of justice are needed, Rawls praises the divergences between them as demonstrating the “versatility” and “flexibility” of his original position (*LoP*: 40, 86). He fails to note that such flexibility can greatly undermine

the justificatory power of reflective equilibrium (*TJ*: 42–5, 507–8). If the thought experiment of the original position can be bent in a variety of ways to deliver desired conclusions, then it becomes rather less remarkable that Rawls’s diverse considered judgments about social justice can be “derived” through one or other variant of this thought experiment. The fact that all these considered judgments fit into one contractualist account can confirm those judgments only insofar as this account exerts some discipline of fit. Failing this, the fact has no significance. As in geometry, the fact that given data points in a plane precisely fit some algebraically expressible graph shows nothing significant about these data points, because such a graph can be constructed for *any* set of points whatsoever.

The present section and the next seek to show that Rawls indeed loses much of the justificatory point of his contractualist theorizing by failing to provide a convincing rationale for the divergences between his theories. Remaining unexplained, the asymmetries between his two theories damage the credibility of both and of his far less rigorously developed international theory in particular.

Much attention has already been paid to the fact that Rawls puts so much moral weight on the notion of a people. This notion is marred by a double vagueness. First, it is unclear what groups are to count as peoples. Does Rawls want to count any group of persons residing together within the territorial boundaries of a state? What about the Kurds, the Jews, the Chechens, the Maori, the Sami, and hundreds of other traditional and aboriginal nations, which often transcend state borders or are nested within one another? Secondly, it is unclear how each of the recognized peoples is delimited. Is this decided by passport, culture, descent, choice, or any combination of these and perhaps other criteria? Can persons belong to several peoples or to one at most? All these questions would assume great importance in any attempt to realize the Society of Peoples Rawls envisions. And yet, he disregards them completely.

It has also been frequently noted that Rawls endorses normative individualism domestically but rejects it internationally. This is an asymmetry insofar as, in Rawls’s domestic theory, the interests of collectives (associations) are given *no* independent weight – are considered only insofar as persons choose and identify with them. In his international theory, by contrast, peoples *are* recognized as ultimate units of moral concern and, more remarkably still, individuals are *not* so recognized. In selecting and justifying particular rules governing state conduct, Rawls disregards the interests of persons by focusing exclusively on the interest, attributed to each well-ordered people, “to preserve [its] equality and independence” (*LoP*: 41, cf. 70) as a stable liberal or decent society (*LoP*: 33, 69).

This decision has important implications for the content of the agreement that rational representatives of well-ordered peoples would reach in the international original position. Serving that stipulated interest, such representatives might well agree to “provisions for ensuring that *in all reasonable liberal (and decent) societies* people’s basic needs are met” (*LoP*: 38, my emphasis). But, in Rawls’s international theory, ensuring that persons can meet their basic needs has no

moral importance as such. It has only instrumental moral importance insofar as it contributes to preserving the internal stability or the external equality or independence of liberal or decent societies. So what about the basic needs of members of other societies, here pointedly excluded?<sup>7</sup> Adding an eighth law to his Law of Peoples, Rawls suggests that representatives of well-ordered peoples would agree to extend their concern to other peoples that, but for unfavorable conditions, would be organized as liberal or decent societies<sup>8</sup> – though he does not explain why they would so agree. But, as the italicized qualification confirms, his international theory still ignores the basic needs of human beings in benevolent absolutisms and outlaw states (*LoP*: 4, 63) which, even when they encounter unfavorable conditions, remain in these categories. Assistance to such societies is not mandatory because it would not help them be either liberal or decent. Assistance is required only to *burdened societies* – ones that, if not prevented by unfavorable conditions that assistance would overcome, would be liberal or decent of their own accord. This limitation is entailed by the way Rawls constructs his international original position: Animated solely by the stipulated interest of well-ordered peoples, their rational representatives have no reason to commit themselves to a duty to show concern for individuals living in benevolent absolutisms or outlaw states – not even for their basic liberties, personal security, and basic needs for food, water, clothing, shelter, health care, and education.

Well-ordered peoples are required to help one another stay above the economic minimum necessary to make a well-ordered society possible. But beyond this threshold, Rawls's international theory permits indefinite economic inequalities within the Society of Peoples. This is so, because he disregards the interests of individuals within well-ordered societies. Had Rawls stipulated that the deliberators in the international original position give even just a little weight to the interest of such individuals in the absolute and/or relative socioeconomic position they have an opportunity to attain, then those deliberators would have favored global economic rules that tend to moderate rather than aggravate international economic inequality.<sup>9</sup>

Rawls avoids this conclusion by means of an undefended and dramatic asymmetry: While the interests of individuals are the only ones that count in his domestic theory, such interests do not count at all in his international theory. He acknowledges this point when he characterizes his international original position as one “that is fair to peoples and not to individual persons” (*LoP*: 17 n.9). But his attempt to defend the exclusion of individual interests as necessary to accommodate decent hierarchical societies (*LoP*: 82–5) fails: Just as liberal societies are said to be concerned for “the well-being of their citizens” (*LoP*: 34), so decent hierarchical societies are, by definition, committed to a common good idea of justice that involves a concern for “the human rights and the good of the people they represent” (*LoP*: 69; here “people” can only be read as “persons”). Accommodating decent societies is thus necessarily compatible with incorporating into the international original position a concern for at least the jointly recognized

interests of individuals, alongside the interest of each people in maintaining a stable well-ordered domestic regime.

## Why Cut Out the Middle Tier?

Let me turn to the most important structural asymmetries, which have received little scholarly attention thus far. While the domestic theory is *three-tiered* and *institutional*, the international theory is *two-tiered* and *interactional*, as illustrated in Table 12.1. What are these asymmetries, and what impact do they have on the conclusions Rawls claims the parties would reach in the two cases?

In the domestic case, the parties are to adopt a public criterion of justice which is to guide the design, reform, and adjustment of the domestic institutional order within variable natural, historical, cultural, and economic-technological circumstances. In the international case, the parties are asked to endorse particular international rules directly.

The former, three-tier construction provides more flexibility for adapting to diverse circumstances. It leaves important features of the basic structure open while prescribing only the objective that should guide their design in any concrete context. Whether and to what extent there should be private ownership in means of production, for example, is to be settled pursuant to the difference principle by examining which solution (satisfying the first and opportunity principles) would engender the best socioeconomic floor. Circumstances may change, of course, and citizens may then have reason to reorganize the basic rules of their legal and political system so as to maintain the security of the basic liberties or to reorganize the basic rules of their economic order so as to keep the difference principle satisfied.

The latter, two-tier construction provides no such flexibility. The members of Rawls's Society of Peoples are locked into a particular set of rules that could

Table 12.1

Domestic Theory	International Theory
Parties in the original position <i>who select</i>	Parties in the original position <i>who select</i>
A public criterion of social justice (Rawls's two principles and two priority rules) <i>which selects</i>	A scheme of international rules (Rawls's eight laws of peoples)
A basic-structure design for any specific empirical context	

prove too rigid to fulfill their interests as peoples under changing global circumstances. Perhaps there are reasons favoring a two-tier construction. It could be said, for instance, that the probability of errors and corrupt judgments is reduced when political actors are constrained by firm rules rather than by rules they are supposed to adjust, under the guidance of a public criterion of social justice, to changing natural, historical, cultural, and economic-technological circumstances. But one would like to know what these reasons are and, especially, why they should be decisive in the international but not in the domestic case.

The structural disanalogy leads to important substantive differences. Consider to what extent members of one generation should be saddled with the economic costs of decisions made by their predecessors. Rawls's domestic theory rules out some such costs completely, through the first and opportunity principles: All members of society, no matter how irresponsibly their parents may have behaved, have an equal claim to a fully adequate scheme of equal basic liberties and to fair equality of opportunity. Beyond this, Rawls's domestic theory gives a flexible response: Social institutions may allow persons to be penalized for their parents' high fertility or failure to save only if and insofar as such selective penalization – mainly through the greater incentives it gives parents to behave responsibly – tends to raise the socioeconomic floor. The degree of such selective penalization embodied in social rules may then need to be adjusted over time so as to track changes in parental dispositions. Social rules or institutions are viewed as mere means, to be designed and redesigned so as optimally to serve the ends specified in Rawls's criterion.

Internationally, the same issue arises with regard to societies that have a low rate of savings or high birth rate. In this case, however, Rawls asks *directly* what the rules should be and asserts that the costs of decisions made by former members of a society should be borne entirely by its present members. To impose any of these costs on other societies "seems unacceptable" (*LoP*: 117–18). But, again, Rawls gives no reason why a different response should be appropriate in the international case. The difference in moral content is a byproduct of an unexplained variation in the parties' task description, which prevents them from adopting a flexible solution that would be sensitive to empirical information about how much loss through moral hazard would actually occur under global economic institutions designed to have a moderating effect on international inequality.

In pressing this point, I am neither dismissing Rawls's concern for the moral significance of collective self-governance, nor denying that this plausibly requires the self-governing collective to receive a disproportionate share of the benefits and burdens deriving from its decisions. Rather, I am adding two thoughts.

First, even in Rawls's ideal world of exclusively well-ordered and self-governing peoples, there may still be reasons to favor *some* burden sharing so that especially poorer societies bear not the full consequences of their unfortunate decisions but only a disproportionate share thereof. One such reason comes into play when the

consequences of crucial decisions made for a society would be borne by persons who had no role in this decision – by children or later generations, for instance, or by persons barred from meaningful political participation in their decent hierarchical society.<sup>10</sup> Another reason comes into play when the consequences of crucial decisions made for a society are heavily influenced by luck or other unforeseeable intervening causes. The force of these reasons is widely recognized with regard to the decisions of autonomous families, so why should they not be applicable to societal decisions as well? And even where neither of these reasons applies, our domestic institutions often mitigate even self-caused hardships and disadvantages, for example through the tax system or the personal bankruptcy law. (A person who is seriously hurt through his own reckless conduct, for example, can claim some of his medical expenses as an itemized deduction and, if he was blinded by the accident, he can also claim a somewhat higher standard deduction in future years.) As we have seen, Rawls's domestic theory gives general support to such mitigation of costs that poor households must bear as a result of their decisions and provides guidance for how such mitigation should be structured in light of empirical knowledge about the actual impact of moral hazards. Why should the international analogue to such mitigation be incompatible with self-governance or otherwise unacceptable?

The second thought deepens and corrects the first. How great the costs of an unfortunate decision are, and what sorts of burdens it might entail, depend importantly on the larger institutional context in which this decision is made. Society can be organized to recognize and enforce slavery or debt bondage. If it is, then unfortunate decisions by parents can result in their children growing up as slaves or virtual slaves, chained to looms or laboring in underground mines. Or society can be so organized that no parental decisions can deprive children of equal access to the national health and education systems and hence of the opportunity to compete for employment on nearly equal terms later in life. This contrast shows that the burdens typically arising from unfortunate decisions are much larger under some designs of the institutional order than under others, even when the latter involve no quantifiable burden sharing or regrettable loss in family autonomy.

The same holds also for the international realm, where collective self-governance is not seen as diminished, for instance, by the fact that international lending rules do not enable states to put up their children as loan collateral. Here is a more relevant contrast: The international order can be so structured that the rules of the world economy reflect the bargaining power of the various states, effectively preventing poorer societies from achieving rates of economic growth that are easily available to richer ones – or this order can be structured so that, regardless of the distribution of power, it maintains fair and open markets that actually make it easier for poorer than for richer societies to achieve high rates of economic growth. Even if (the first thought notwithstanding) we accept the principle that each national population ought to bear the "full consequences" of

decisions its society had made, we can still opt for either of these two contrasting institutional designs. The way we design the global order thus co-determines what the full consequences of national decisions are. The latter design, when combined with the principle of full consequences, would clearly engender much less deprivation and inequality than the former would.

The structural difference between the tasks Rawls assigns to the parties in his domestic and international original positions is associated with two distinct conceptions of economic justice. When we reflect upon social rules directly, as Rawls does in the international case, it may seem plausible to let participants themselves negotiate the terms of their economic interactions: "2. Peoples are to observe treaties and undertakings. 3. Peoples are equal and are parties to the agreements that bind them." To block the danger of excessive poverty arising from such libertarian rule making, Rawls adds the rule that "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" (*LoP*: 37).

However, Rawls himself finds strong reason to reject such a mildly constrained libertarianism in the domestic case. When a society's economic order arises from free bargaining among its members, the rich can use their greater bargaining power to shape and reshape this order in their own favor and can thus expand their advantage by capturing a disproportionate share of the social product. As Rawls writes eloquently:

suppose we begin with the initially attractive idea that social circumstances and people's relationships to one another should develop over time in accordance with free agreements fairly arrived at and fully honored. Straightaway we need an account of when agreements are free and the social circumstances under which they are reached are fair. In addition, while these conditions may be fair at an earlier time, the accumulated results of many separate and ostensibly fair agreements, together with social trends and historical contingencies, are likely in the course of time to alter citizens' relationships and opportunities so that the conditions for free and fair agreements no longer hold. (*PL*: 265-6)

He warns of "the tendency . . . for background justice to be eroded even when individuals act fairly: the overall result of separate and independent transactions is away from and not toward background justice. We might say: in this case the invisible hand guides things in the wrong direction and favors an oligopolistic configuration of accumulations that succeeds in maintaining unjustified inequalities and restrictions on fair opportunity" (*PL*: 267). In the domestic case, Rawls demands that the rules of economic interaction must not be shaped by free bargaining, but must rather be designed and adjusted (pursuant to the second principle of justice) to preserve background justice and to minimize economic hardship.

At times Rawls seems to recognize that allowing the terms of economic interaction to be shaped by free bargaining poses a threat to background justice also in

the international case. Thus he writes that any "unjustified distributive effects" of cooperative organizations need to be corrected (*LoP*: 43, 115) and suggests that the international parties, going beyond his official eight laws of peoples, "would agree to fair standards of trade to keep the market free and competitive" (*LoP*: 43).

But how are we to judge whether distributive effects are unjustified or trading arrangements unfair? To answer this question, Rawls would need a principle for assessing and adjusting the global economic order in light of its distributive effects in the way his difference principle assesses and adjusts the domestic economic order. But Rawls specifically rejects any such principle without "a target and a cutoff point" in the international case, countenancing only the duty of assistance which secures the poorest well-ordered societies no more than an economic floor defined in absolute terms (*LoP*: 115-19). He also rejects any international analogue to a democratic process, which allows a majority of citizens in a liberal society to restructure its economic order if it favors the rich too much. The global economic order of Rawls's utopia is thus shaped by free bargaining among societies, unconstrained by any principle that would check the ability of the stronger societies to use their greater bargaining power to shape the terms of international interaction in their favor in ways that further enhance their advantage.

### Is Each Society Master of its Own Fate?

Rawls decides against any principle for preserving international background justice, I believe, because he falls for what may be the most harmful dogma ever conceived: explanatory nationalism, the idea that the causes of severe poverty and of other human deprivations are domestic to the societies in which they occur.<sup>11</sup> This idea is of crucial importance for enabling the citizens of today's affluent countries to live comfortably in the face of the horrendous poverty and hardships suffered in the poorer societies. If the suffering of the poor abroad is due to local causes, then our only moral question is the one Rawls asks: whether and how much we ought to "assist" them. Thinking further along these lines, we may admit that we should help the poor abroad more than we do. But explanatory nationalism spares us the question whether and how our rich countries, especially through the global institutional arrangements we design and impose, are contributing to their deprivations. And explanatory nationalism preempts the need for a principle of global distributive justice, which would guide the design of the rules of the world economy in light of their distributive effects, by assuring us that these rules do not have significant distributive effects.

If it were explicitly formulated as an empirical assertion, explanatory nationalism would be incredible on its face. In our world (and in Rawls's utopia), conventions and treaties are negotiated about trade, investments, loans, patents, copyrights, trademarks, double taxation, labor standards, environmental protection, use of

seabed resources, and much else. How could it possibly be true that *no* feasible modifications of *any or all* of these elements of the global institutional order would appreciably affect what life is like in the poorer societies?

But then explanatory nationalism isn't explicitly formulated as an empirical assertion. It is spread by suggestion, by highlighting and debating domestic causes while disregarding external factors. Thus, the debates in development economics are mostly about the merits and demerits of various ways in which poor countries can design their economic institutions and policies, with Hong Kong and Kerala held up as competing exemplars. And other academic disciplines also sport smart debates about which domestic factors – climate, natural environment, resources, food habits, diseases, history, culture, social institutions, economic policies, leadership personalities, or whatever – are decisive for national success.<sup>12</sup> There are no careful investigations of the causal impact of global institutional factors. It is hard to find even a flat denial of such causal impact. In discussions of the causes of human misery, these factors are simply left aside, like the moons of Jupiter, as if it were obvious that they could not possibly be playing a role.

Rawls is typical in this disregard:

the causes of the wealth of a people and the forms it takes lie in their political culture and in the religious, philosophical, and moral traditions that support the basic structure of their political and social institutions, as well as in the industriousness and cooperative talents of its members, all supported by their political virtues. . . . The crucial elements that make the difference are the political culture, the political virtues and civic society of the country, its members' probity and industriousness, their capacity for innovation, and much else. Crucial also is the country's population policy. (*LoP*: 108)

If a society does not want to be poor, it can curb its population growth or industrialize (*LoP*: 117–18); and anyway, “if it is not satisfied, it can continue to increase savings, or, if this is not feasible, borrow from other members of the Society of Peoples” (*LoP*: 114).

The causal factors Rawls highlights are surely important. This is evident from the diversity in the economic and political development of societies that were in equally poor shape a few decades ago. This great diversity of trajectories seems to support explanatory nationalism, because the success of some formerly miserable societies vividly illustrates that the global institutional context cannot be what condemns their unsuccessful peers to failure.

But reconsider the argument in a less ideologically charged context. Suppose there is great diversity in the performance of the students in a class. This certainly shows that local (student-specific) factors play an important role in explaining student performance. But it does not show that “global” factors are unimportant to effective learning. It is quite possible that the class would have performed much better in a less noisy classroom or that its women students would have

learned much more if they had not been so exasperated by the teacher's sexist attitudes.

Analogous possibilities obtain with respect to divergent national development trajectories. And there is a further important point. Poor societies seeking to raise their standard of living had to compete over access to the same heavily protected markets of the affluent countries. These protections – including tariffs, quotas, anti-dumping duties, export credits and huge subsidies to domestic producers, all grandfathered into the World Trade Organization treaty – are so blatantly hypocritical and unfair that they have come to be criticized even by establishment figures and are beginning to weaken the hold of explanatory nationalism.<sup>13</sup> China's success in the last 25 years shows then at most that other poor countries could have had such success, *instead of* China – not that all of them could have had such success together. To mirror the point within my analogy, one might add to the story that teaching materials are artificially kept in short supply with students forced to compete over books, computer terminals, consultations, and classroom seats in a way that ensures that no more than a few of them can possibly attain full mastery of the subject matter.

Often overly impressed by the great diversity of national development trajectories, explanatory nationalists are also prone to another illusion: that the relevant country-specific factors are homegrown. Rawls is once more typical. When societies fail to thrive, he writes, “the problem is commonly the nature of the public political culture and the religious and philosophical traditions that underlie its institutions. The great social evils in poorer societies are likely to be oppressive government and corrupt elites.”<sup>14</sup> Yes, corruption and oppression are indeed great evils that importantly contribute to the persistent misery of many national populations. But here we must ask further how a political culture of corruption or oppression is formed and sustained. Perhaps Rawls means to suggest that such a culture is to be blamed on the local “religious and philosophical traditions.”<sup>15</sup> But there is the distinct possibility that the domestic factors he cites are themselves significantly shaped and sustained by external factors.

I have debunked two fallacies that enhance the seductive appeal of explanatory nationalism and may have helped attract Rawls to this dogma: Great diversity of national development trajectories notwithstanding, it is quite possible that global institutional factors play a crucial causal role in sustaining severe poverty and other deprivations. And corruption and oppression, inflicting horrendous harms in so many poor countries, need not be homegrown, but may themselves be importantly fuelled and sustained by external forces, and by global institutional factors in particular. These possibilities do not defeat explanatory nationalism, but they indicate how it can be defeated: by showing that these possibilities actually obtain.

To show this concisely, for both possibilities simultaneously, let us concentrate on global institutional factors that sustain severe deprivations in the poor countries by promoting oppressive and corrupt government within them. The most

important such factors are the international resource, borrowing, treaty, and arms privileges.<sup>16</sup> Those who exercise effective power in a country – regardless of how they acquired or exercise it – are internationally recognized as entitled to sell the country's resources and to dispose of the proceeds of such sales, to borrow in the country's name and thereby to impose debt service obligations upon it, to sign treaties on the country's behalf and thus to bind its present and future population, and to use state revenues to buy the means of internal repression. These privileges, enshrined in the present global institutional order, do enormous harm in the poor countries, especially in those with a large natural resource sector. They permit even the most hated, brutal, oppressive, corrupt, undemocratic, and unconstitutional regime to entrench itself. Such a regime can violently repress the people's efforts toward good governance with weapons it buys from our firms and pays for by selling us the people's resources and by mortgaging their future to our banks.

Greatly enhancing the rewards of effective power, the same privileges also encourage coup attempts and civil wars that often provoke opportunistic outside military interventions. And in many (especially resource-rich) countries, these privileges make it all but impossible, even for democratically elected and well-meaning leaders, to rein in the embezzlement of state revenues: Any attempt to hold military officers to the law is fraught with danger, because these officers know well that a coup can restore and enhance their access to state funds, which will continue to be replenished through loans and resource sale revenues which will continue to be exchangeable for military equipment.

The overly generous privileges just discussed are not innocent errors of institutional design, but hugely important to the wealth and convenience of the corporations, citizens, and governments of the rich countries. Our lifestyle absolutely depends on our appropriation of natural resources from the poor countries. And we would pay vastly more for such resources if we were not entitled to buy them from clearly illegitimate rulers or if these countries had governments that acted in the best interests of the populations they rule.

At the beginning of this section I wrote that explanatory nationalism may be the most harmful dogma ever conceived. This must have seemed hyperbolic. But consider what would happen if explanatory nationalism were explicitly repudiated in the affluent countries; if we investigated and understood the full causal impact of our decisions about the design of the global institutional order. We would then need to think about this global order in moral terms, asking ourselves whether it is permissible for the affluent states (in collaboration with the ruling "elites" of many poor countries) to impose a global institutional order designed so that it foreseeably reproduces avoidable human rights deficits on a truly horrendous scale.

We would conclude that this global order is gravely unjust and that those who cooperate in its imposition are harming those whose human rights avoidably remain unfulfilled. This would lead us to accept the minor opportunity costs

involved in the modest global institutional reforms needed to achieve a global order that would avoid human rights deficits insofar as this is reasonably possible. And this in turn would dramatically reduce the avoidable misery in the poorer half of humankind – now confined to well under 2 percent of the global product – where 831 million are chronically undernourished, 1197 million lack access to safe water, and 2747 million lack access to basic sanitation, and 2000 million lack access to essential drugs.<sup>17</sup> Insofar as explanatory nationalism blocks such reforms, it is a very harmful dogma. Today, nearly one-third of all human deaths are from poverty-related causes, some 50,000 daily or 18 million each year, including 10.6 million children under five.<sup>18</sup> This continuous death toll matches that of the December 2004 tsunami every few days, and it matches, every three years, the entire death toll of World War II, concentration camps and gulags included.

To be sure, these human right deficits would also be avoided in Rawls's Society of Peoples (though they might persist outside of it in benevolent absolutisms and outlaw states). This commonality has spawned the claim that my view differs from his in only minor ways.<sup>19</sup> But this claim overlooks the fact that we differ greatly in our moral assessment of the present world. Rawls might criticize some of the rich liberal societies today for falling short in discharging their positive duties of assistance to burdened societies, which, with more assistance, would be liberal or decent. I criticize the rich liberal societies (and the ruling elites of many poor countries) for massively violating their negative duties not to harm by imposing a global institutional order that foreseeably causes avoidable human suffering of unimaginable proportions. I see our imposition of this order as the largest, though not the gravest, crime against humanity ever committed.

### Do the Asymmetries Get Rawls the Result He Wants?

We have seen that Rawls greatly helps his case against egalitarian and cosmopolitan critics of his eight rules (*LoP*: 37) through three important and unexplained departures from his domestic theory. By conceiving his international theory *interactionally*, as seeking rules of good conduct, he sidelines what he correctly identifies, within the domestic context, as the most important moral topic: the design of the institutional order, which crucially shapes the character of the relevant actors as well as the options and incentives they face. It is undeniable that, today and in the foreseeable future, there is a global institutional order that importantly affects the options and incentives societies and their rulers face in their relations with one another and even affects profoundly the domestic institutions and cultures of especially the smaller and weaker societies. By allowing this global order to be shaped and adjusted through free bargaining among states, Rawls puts it almost entirely beyond moral assessment.



While Rawls's domestic theory gives weight *only* to individuals and their interests, his international theory gives *no* weight to individuals and their interests. To be sure, the recognized interest of each well-ordered people – to preserve its equality and independence as a stable liberal or decent society – may accord with the interest of its members to live in a well-ordered society whose equality and independence are preserved. But individuals have other interests that are relevant to formulating rules for the good conduct of states. For example, individuals have an interest in avoiding severe poverty, which they may well suffer even if their people as a whole has a sufficient economic base for maintaining itself as a liberal or decent society. And the citizens of a society also have an interest in being able to avoid very large discrepancies between their own socioeconomic level and that prevailing in more affluent societies.

Rawls's domestic theory is three-tiered and, through the middle tier, systematically incorporates sensitivity to empirical information about the distributional effects of alternative feasible institutional arrangements. His criterion of social justice specifies the objective of domestic social institutions and guides systematic reflection about which basic structure design is, in the given circumstances, best suited to this objective. His international theory, by contrast, is two-tiered and so does not systematically incorporate information about the empirical (statistical) effects of alternative formulations of the "Law of Peoples."

Can these three unexplained departures from his domestic theory help Rawls support his eight laws as the formulation that representatives of liberal and decent peoples would agree upon behind their veil of ignorance? Perhaps so. Yet all he actually offers in the text is the bald assurance that "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" (*LoP*: 41, cf. 69).

In fact, such representatives *do* have reasons to consider alternatives. They must consider the possibility that explanatory nationalism is false. And if decisions about how to design the rules of the world economy do have distributive effects, then it is to be expected that each society will try to shape these rules to its own advantage. Given that wealthier societies enjoy advantages in bargaining power and expertise, they are likely to be able to achieve agreements that (even without blatant unfairness as manifested in the current rules) secure for themselves the lion's share of the benefits of international economic interaction. This could lead to a self-reinforcing trend toward ever-increasing international inequalities in per capita incomes.<sup>20</sup>

Despite Rawls's emphatic rejection of any principle of international distributive justice without "a target and a cutoff point" (*LoP*: 115–19), rational representatives of well-ordered peoples would agree on a duty not to shape global institutional arrangements that exert such a centrifugal force. With this constraint, each well-ordered people has better prospects of being comfortably *above* the minimal economic threshold that allows it to maintain itself as a liberal or decent society.

With this constraint, each well-ordered people is more likely to avoid becoming dependent on other societies' compliance with their duty of assistance. And this constraint also makes it less likely for a well-ordered people to be exposed to corruption from abroad that could destabilize its domestic order. When a people is much poorer than others, its politicians and officials are likely to find that they have more to gain from catering to the interests of rich foreign governments and corporations than from advancing the interests of their own much poorer compatriots. Such corruption of politicians and officials may lead a people to fall short of its own conception of justice or decency – or even to cease being liberal or decent altogether. For these three reasons, the parties in Rawls's international original position would agree to constrain the treaty making of well-ordered societies to rule out a global economic order that would tend to aggravate and reinforce international economic inequalities.<sup>21</sup>

It may be objected that, in Rawls's ideal world, rich and powerful societies would never seek to shape the rules of international economic interaction for their disproportionate advantage or fail to comply with their duties of assistance, and no one would try to corrupt politicians and bureaucrats in poor societies. Rawls would not have made this objection. He meant his Society of Peoples to be one that could actually endure on this earth – a *realistic* utopia.

## Conclusion

My disagreements with Rawls's views on international justice are deep and longstanding. Still, I am most grateful to him for having worked so hard, under most adverse conditions, to give us a final and full articulation of these views. I am also very glad that he formally incorporated the duty of assistance into his Law of Peoples. This duty, suitably specified, supports a critique of most of the more affluent societies today for doing far too little toward enabling poorer societies to be well ordered. Given the magnitude of their failure and indifference, this critique might well qualify those wealthier societies as "outlaw states" in Rawls's sense.

Still, this important insight should not obscure the even more important point, which Rawls would deny. We are not merely helping too little, but also harming too much: by imposing a global institutional order under which, foreseeably and avoidably, nearly half of humankind continue to live in abject poverty and some 300 million have died from poverty-related causes since the end of the Cold War.

## Notes

<sup>1</sup> Citing Rawls's works in the text, I use *TJ* for his *A Theory of Justice*, Cambridge, MA: Harvard University Press, 1999 (1971); *PL* for his *Political Liberalism*, New York, NY:

Columbia University Press, 1996 (1993); and *LoP* for his *The Law of Peoples*, Cambridge, MA: Harvard University Press, 1999.

- <sup>2</sup> Immanuel Kant, "Perpetual Peace," in *Kant's Political Writings*, ed. Hans Reiss, Cambridge: Cambridge University Press, 1995, p. 113.
- <sup>3</sup> "For states in their relation to one another, there cannot be any reasonable way out of their lawless condition which entails only war except that they, like individual human beings, should give up their savage (lawless) freedom, adjust themselves to public coercive laws, and thus establish a continuously growing international state (*civitas gentium*), which will ultimately include all the nations of the world. But under their idea of the law of nations they absolutely do not wish to do this, and so reject in practice what is correct in theory. If all is not to be lost, there can be, then, in place of the positive idea of a world republic, only the negative surrogate of an alliance which averts war, endures, spreads, and checks the force of that hostile inclination away from law, though such an alliance is in constant peril of its breaking loose again" (*ibid.*, p. 105).
- <sup>4</sup> Normative individualism is the view that, in settling moral questions, only the interests of individual human beings should count.
- <sup>5</sup> John Rawls, "The Law of Peoples" (1993 essay version, reprinted), in his *Collected Papers*, Cambridge, MA: Harvard University Press, 1999, p. 530.
- <sup>6</sup> Decent hierarchical societies, though they solicit the views of social groups through a "decent consultation hierarchy," lack democratic procedures (*LoP*: 71–3) and may also, perhaps pursuant to a state religion, impose substantial and unequal restrictions on freedom of expression and liberty of conscience (*LoP*: 74).
- <sup>7</sup> This pointed exclusion is fully deliberate. It was stated in Rawls, "The Law of Peoples," *Collected Papers*, p. 541, n. 5 ("provisions for ensuring that in all reasonably developed liberal societies people's basic needs are met"), and I had questioned it in "An Egalitarian Law of Peoples," *Philosophy and Public Affairs*, 23 (1994): 195–224, at 209.
- <sup>8</sup> See *LoP*, p. 37. The eighth law, postulating this *duty of assistance*, was not listed in the earlier essay, "The Law of Peoples," *Collected Papers*, p. 540, n. 5.
- <sup>9</sup> I have raised this point in Section III of "An Egalitarian Law of Peoples," and so have other commentators since. But we are still missing a plausible defense of Rawls on this point.
- <sup>10</sup> Such societies are said to reach out to all their members through a "*consultation hierarchy* or its equivalent" (*LoP*: 61); members can articulate their views within their respective "associations, corporations, and estates" (*LoP*: 68), which may then pass them on to higher levels. Dissent is permitted and "government and judicial officials are required to give a respectful reply" (*LoP*: 61). Still, such a reply may be indigestible for dissenters who do not share the "state religion [which], on some questions, [is] the ultimate authority within society and may control government policy on certain important matters" (*LoP*: 74). In any case, receiving a reply, however respectful, goes no way toward a meaningful role in political decision making.
- <sup>11</sup> For the introduction of this term and further discussion, see my *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, Cambridge: Polity Press, 2002, sect. 5.3.
- <sup>12</sup> Some notable recent contributions are David Landes, *The Wealth and Poverty of Nations: Why Some Are So Rich and Some So Poor*, New York, NY: Norton, 1998; Jared

Diamond, *Guns, Germs, and Steel: The Fates of Human Societies*, New York, NY: Norton, 1999; Lawrence E. Harrison and Samuel P. Huntington, eds., *Culture Matters: How Values Shape Human Progress*, New York, NY: Basic Books, 2001.

- <sup>13</sup> For example, World Bank chief economist Nick Stern stated in a recent speech, "Cutting Agricultural Subsidies" ([globalevision.org/library/6/309](http://globalevision.org/library/6/309)), that in 2002 the rich countries spent about \$300 billion on export subsidies for agricultural products alone, roughly six times their total development aid that year. He said that cows receive annual subsidies of about \$2,700 in Japan and \$900 in Europe – far above the annual income of most human beings. He also cited protectionist anti-dumping actions, bureaucratic applications of safety and sanitation standards, and textile tariffs and quotas as barriers to developing country exports: "Every textile job in an industrialized country saved by these barriers costs about 35 jobs in these industries in low-income countries."
- <sup>14</sup> Rawls, "The Law of Peoples," *Collected Papers*, p. 559.
- <sup>15</sup> Thereby echoing Michael Walzer, who says: "it is not the sign for some collective derangement or radical incapacity for a political community to produce an authoritarian regime. Indeed, the history, culture, and religion of the community may be such that authoritarian regimes come, as it were, naturally, reflecting a widely shared world view or way of life" (Michael Walzer, "The Moral Standing of States," *Philosophy and Public Affairs*, 9 [1980]: 209–29, at 224–5).
- <sup>16</sup> I have discussed the resource and borrowing privileges, documented their effects, and sketched plausible avenues of institutional reform in *World Poverty and Human Rights* (sections V, 4.9, 6.2–4, 8.2.1). I also discuss there (section 5.3) how the culture of corruption, now deeply entrenched in many poor countries, has been decisively promoted during their formative years by extensive bribery of their officials. The industrialized countries allowed their multinational corporations to deduct such bribes from their taxable revenues, thereby providing financial incentives and moral approval for such bribery. For an insider's account of how the global rules facilitate and encourage corruption, see Raymond Baker, *Capitalism's Achilles Heel*, New York, NY: John Wiley and Sons, 2005.
- <sup>17</sup> See UNDP, *Human Development Report 2004*, New York, NY: UNDP, 2004, pp. 129–30, and for the last figure [www.fic.nih.gov/about/summary.html](http://www.fic.nih.gov/about/summary.html). I lack the space here to substantiate my belief that most of these deficits are reasonably avoidable through relatively minor modifications of the global institutional order. See *World Poverty and Human Rights*, chs. 6 and 8, and "Severe Poverty as a Human Rights Violation," in Thomas Pogge, ed., *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?*, Oxford: Oxford University Press, 2005.
- <sup>18</sup> See WHO, *World Health Report 2004*, Geneva: WHO, 2004, pp. 120–5, and UNICEF, *The State of the World's Children 2005*, New York, NY: UNICEF, 2005, inside front cover.
- <sup>19</sup> See, for example, Alan Patten, "Should We Stop Thinking About Poverty in Terms of Helping the Poor?," *Ethics and International Affairs*, 19 (2005): 19–28, at 24.
- <sup>20</sup> It is hard to deny that global rules shaped by and for the industrialized countries exerted such a centrifugal influence in the post-colonial period when "the income gap between the fifth of the world's people living in the richest countries and the fifth in the poorest was 74 to 1 in 1997, up from 60 to 1 in 1990 and 30 to 1 in 1960" (UNDP, *Human Development Report 1999*, New York, NY: Oxford University Press, 1999, p. 3).
- <sup>21</sup> See "An Egalitarian Law of Peoples," Section IV.

**Rex Martin** has held appointments in both the United States and the United Kingdom. Currently he is Professor of Philosophy at the University of Kansas and Honorary Professor at Cardiff University. He has held a number of visiting teaching positions, independent research fellowships, and fellowships at research centers, most recently a research fellowship at the National Humanities Center in North Carolina (as William C. and Ida Friday Senior Fellow, in 2004–5). His most recent books are *A System of Rights* (1997 in paperback) and a revised edition of R. G. Collingwood's *An Essay on Metaphysics* (2002 in paperback).

RexMartin@compuserve.com

**David Miller** is Professor of Political Theory at the University of Oxford and Official Fellow in Social and Political Theory at Nuffield College, Oxford. He is a Fellow of the British Academy. In addition to many articles and chapters in political theory, he is the author of several books, including *Social Justice* (1976), *On Nationality* (1995), *Principles of Social Justice* (1999), and *Citizenship and National Identity* (2000).

david.miller@nuffield.oxford.ac.uk

**James Nickel** is Professor of Law and Affiliate Professor of Philosophy at Arizona State University. He is the author of *Making Sense of Human Rights* (1987, revised edition forthcoming from Blackwell) and many articles and chapters in political philosophy, human rights, and normative international relations. He has held several visiting positions and several research fellowships including a National Endowment for the Humanities Fellowship, a Rockefeller Foundation Humanities Fellowship, an ACLS Fellowship, and a National Humanities Center Fellowship.

james.nickel@asu.edu

**Philip Pettit** is L. S. Rockefeller University Professor of Politics and Human Values at Princeton, where he teaches political theory and philosophy. He is the author of many articles and numerous books in social and political theory. His recent books include *Republicanism: A Theory of Freedom and Government* (1997), *A Theory of Freedom: From the Psychology to the Politics of Agency* (2001), and *The Economy of Esteem*, with Geoffrey Brennan (2004). A collection of his papers, *Rules, Reasons, and Norms*, was published in 2002, and a collection of collaborations with Frank Jackson and Michael Smith, *Mind, Morality and Explanation*, was published in 2004.

ppettit@Princeton.EDU

**Thomas Pogge**, since receiving his PhD in philosophy from Harvard, has been teaching moral and political philosophy at Columbia University. His recent publications include *World Poverty and Human Rights* (2002) and the edited volumes *Global Institutions and Responsibilities* (2005) and *Real World Justice* (2005). He is editor for social and political philosophy for the *Stanford Encyclopedia of Philosophy* and a member of the Norwegian Academy of Science. His work has been supported, most recently, by the MacArthur Foundation, the Princeton Institute for Advanced Study, All Souls College, and the National Institutes of Health. He is currently a professorial fellow at the Center for Applied Philosophy and Public Ethics at the Australian National University.

tp6@columbia.edu

**David Reidy** is Assistant Professor of Philosophy at the University of Tennessee. He is the author of many articles and chapters in political philosophy and the philosophy of law and on Rawls in particular. He is the co-editor, with Mortimer Sellers, of *Universal Human Rights: Moral Order in a Divided World* (2005) and the author of *On the Philosophy of Law* (forthcoming).

dreidy@utk.edu

**Markus Stepanians** studied philosophy at the University of Hamburg and was a Visiting Scholar at Harvard from 1991 to 1993. He received his doctoral degree in Hamburg in 1994. Since 1998 he has taught philosophy at the University of Saarland in Saarbruecken. He is the author of *Frege und Husserl über Urteilen und Denken* (1998) and *Frege – Eine Einführung* (2001). Currently he is preparing a collection of essays on “Rights” as well as a new book, *Analysing Rights: A Defence of the Classical View*.

m.stepanians@mx.uni-saarland.de

**Kok-Chor Tan** received his PhD in philosophy from the University of Toronto (1998). He is Assistant Professor of Philosophy at the University of Pennsylvania. He is a past Faculty Fellow at the Center for Ethics and the Professions at Harvard University. His area of research is in moral and political philosophy, with special interests in issues of global justice, nationalism, and human rights. In addition to many articles and chapters, his books include *Toleration, Diversity, and Global Justice* (2000) and *Justice without Borders* (2004).

kctan@sas.upenn.edu

**Leif Wenar** received his PhD from Harvard in 1997. Since 2005 he has been Professor of Philosophy at the University of Sheffield. His work in political and

I contend that this scenario is realistic – it could and may exist. I say it is also utopian and highly desirable because it joins reasonableness and justice with conditions enabling citizens to realize their fundamental interests.

John Rawls, *The Law of Peoples*, p. 7

# Rawls's Law of Peoples

## A Realistic Utopia?

Edited by

Rex Martin and  
David A. Reidy

 **Blackwell**  
Publishing

Editorial material and organization © 2006 by Rex Martin and David A. Reidy.  
Chapter 1 © 2006 by Rex Martin and David A. Reidy; Chapter 2 © 2006 by David Boucher;  
Chapter 3 © 2006 by Philip Pettit; Chapter 4 © 2006 by Catherine Audard; Chapter 5 © 2006  
by Kok-Chor Tan; Chapter 6 © 2006 by Leif Wenar; Chapter 7 © 2006 by Wilfried Hinsch  
and Markus Stepanians; Chapter 8 © 2006 by Alistair M. MacLeod; Chapter 9 © 2006 by  
Allen Buchanan; Chapter 10 © 2006 by David A. Reidy; Chapter 11 © 2006 by David Miller;  
Chapter 12 © 2006 by Thomas Pogge; Chapter 13 © 2006 by Rex Martin; Chapter 14 © 2006  
by Samuel Freeman; Chapter 15 © 2006 by James W. Nickel; Chapter 16 © 2006 by Alyssa R.  
Bernstein; Chapter 17 © 2006 by Andreas Follesdal.

BLACKWELL PUBLISHING  
350 Main Street, Malden, MA 02148-5020, USA  
9600 Garsington Road, Oxford OX4 2DQ, UK  
550 Swanston Street, Carlton, Victoria 3053, Australia

The right of Rex Martin and David A. Reidy to be identified as  
the Authors of the Editorial Material in this Work has been asserted in  
accordance with the UK Copyright, Designs, and Patents Act 1988.

All rights reserved. No part of this publication may be reproduced, stored in a  
retrieval system, or transmitted, in any form or by any means, electronic, mechanical,  
photocopying, recording or otherwise, except as permitted by the UK Copyright,  
Designs, and Patents Act 1988, without the prior permission of the publisher.

First published 2006 by Blackwell Publishing Ltd

1 2006

*Library of Congress Cataloging-in-Publication Data*

Rawls's Law of peoples : a realistic utopia? / edited by Rex Martin and David A. Reidy.  
p. cm.

Includes bibliographical references and index.

ISBN-13: 978-1-4051-3530-6 (hardback : alk. paper)

ISBN-10: 1-4051-3530-1 (hardback : alk. paper)

ISBN-13: 978-1-4051-3531-3 (pbk. : alk. paper)

ISBN-10: 1-4051-3531-X (pbk. : alk. paper) 1. Rawls, John, 1921- Law of peoples. 2.  
International relations - Philosophy. 3. International law - Philosophy. 4. Justice. 5. Human  
rights. 6. Liberalism. I. Martin, Rex, 1935- II. Reidy, David A., 1962-

JZ1242.R395 2006

320.51-dc22

2005020534

A catalogue record for this title is available from the British Library.

Set in 10/13 Galliard  
by Graphicraft Limited, Hong Kong  
Printed and bound in the UK  
by TJ International, Padstow, Cornwall

The publisher's policy is to use permanent paper from mills that operate a sustainable forestry  
policy, and which has been manufactured from pulp processed using acid-free and elementary  
chlorine-free practices. Furthermore, the publisher ensures that the text paper and cover board used  
have met acceptable environmental accreditation standards.

For further information on  
Blackwell Publishing, visit our website:  
[www.blackwellpublishing.com](http://www.blackwellpublishing.com)



For my mother, Cecelia Reidy, and in memory of my father,  
David Reidy, Sr.

# Contents

<i>Notes on Contributors</i>	x
<i>Preface</i>	xv
<i>List of Abbreviations</i>	xviii
<b>Part I Background and Structure</b>	<b>1</b>
1. Introduction: Reading Rawls's <i>The Law of Peoples</i> Rex Martin and David A. Reidy	3
2. Uniting What Right Permits with What Interest Prescribes: Rawls's Law of Peoples in Context * David Boucher	19
3. Rawls's Peoples Philip Pettit	38
<b>Part II Cosmopolitanism, Nationalism, and Universalism: Questions of Priority and Coherence</b>	<b>57</b>
4. Cultural Imperialism and 'Democratic Peace' Catherine Audard	59
5. The Problem of Decent Peoples Kok-Chor Tan	76

6. Why Rawls is Not a Cosmopolitan Egalitarian Leif Wenar	95
<b>Part III On Human Rights</b>	<b>115</b>
7. Human Rights as Moral Claim Rights Wilfried Hinsch and Markus Stepanians	117
8. Rawls's Narrow Doctrine of Human Rights Alistair M. Macleod	134
9. Taking the Human out of Human Rights Allen Buchanan	150
10. Political Authority and Human Rights David A. Reidy	169
<b>Part IV On Global Economic Justice</b>	<b>189</b>
11. Collective Responsibility and International Inequality in <i>The Law of Peoples</i> David Miller	191
12. Do Rawls's Two Theories of Justice Fit Together? Thomas Pogge	206
13. Rawls on International Distributive Economic Justice: Taking a Closer Look Rex Martin	226
14. Distributive Justice and <i>The Law of Peoples</i> Samuel Freeman	243
<b>Part V On Liberal Democratic Foreign Policy</b>	<b>261</b>
15. Are Human Rights Mainly Implemented by Intervention? James W. Nickel	263
16. A Human Right to Democracy? Legitimacy and Intervention Alyssa R. Bernstein	278

17. Justice, Stability, and Toleration in a Federation of Well-Ordered Peoples Andreas Follesdal	299
Index	318