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Reviewed work(s):

Source: *Ethics*, Vol. 110, No. 4 (July 2000), pp. 669-696

Published by: [The University of Chicago Press](#)

Stable URL: <http://www.jstor.org/stable/10.1086/233369>

Accessed: 02/04/2012 16:19

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Rawls's Law of Peoples*

Charles R. Beitz

The Law of Peoples is John Rawls's most comprehensive and systematic statement of his international thought.¹ It is a remarkable and unusual essay. The normative scope is surprisingly broad for a work of this length, embracing subjects from the morality of war to the international distribution of resources to the ethics of statesmanship. The theory aims to be continuous with the political theory of a liberal, democratic political culture—indeed, to illustrate that such a theory is incomplete without an articulate understanding of the society's international responsibilities. Rawls's view is consistent with the most revolutionary developments in international law in the twentieth century—the limitation of war to purposes of self-defense and the subordination of national sovereignty to international standards of political legitimacy embodied in the doctrine of human rights, of which he provides an original and provocative interpretation. The view is situated in the intellectual context of modern Anglo-American international thought, aspiring to occupy the middle ground between the skepticism of the so-called realists and a politically inert utopianism. The tone is more personal, and Rawls's conception of our historical situation is made more explicit, than in his earlier works. Together with his paper, "The Idea of Public Reason Revisited" (republished in the same volume),² *The Law of Peoples* represents, as he writes, "the culmination of my reflections on how reasonable citizens and peoples might live together peacefully in a just world" (p. vi). For all of these reasons, this essay ranks among Rawls's most important works in

* I am grateful to Joshua Cohen and Thomas Pogge, and to an audience at Columbia University, for comments on an earlier draft of this article.

1. John Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999) (henceforth, *LP*). All page references in the text are to *LP*. Rawls's monograph is a revision and expansion of his 1993 lecture of the same title, first published in *On Human Rights: The Oxford Amnesty Lectures, 1993*, ed. Stephen Shute and Susan Hurley (New York: Basic, 1993), pp. 41–82. The changes are substantial and readers should be warned that the lecture is no substitute for the monograph.

2. First published as John Rawls, "The Idea of Public Reason Revisited," *University of Chicago Law Review* 64 (1997): 765–807.

Ethics 110 (July 2000): 669–696

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political theory and among the really constructive contributions to international thought of our time.

Although it is written with clarity and economy, *The Law of Peoples* is not easily accessible. Many of the central ideas—for example, those of public reason, political liberalism, “stability for the right reasons,” and philosophy as reconciliation to our social world—have special meanings in Rawls’s larger theory, without which their significance here may not be fully appreciated. Moreover, the very idea of a “law of peoples” is itself unusual: it is a philosophical conception that does not correspond precisely with any familiar intuitive idea.³ Finally, given its scope, the monograph makes large demands on its readers—we are asked to accept a good deal without extended argument, as if the coherence of the whole, and its consistency with political liberalism, should be persuasive in itself. So it seems best to proceed in stages. I will begin by describing the aims and structure of the theory, leaving aside many of its complexities. Then I will take up some central aspects in greater detail, concentrating on the differences between Rawls’s theory and cosmopolitan theories of international relations, to which the Law of Peoples constitutes a powerful challenge.

THE AIMS AND STRUCTURE OF THE THEORY

The Law of Peoples sets forth a liberal theory of foreign policy: it seeks to articulate the fundamental purposes that should guide the foreign policies of liberal democratic societies. Rawls’s approach is to frame an ideal conception of international relations and then to work backward to principles for the nonideal world. He refers to the ideal conception as a “realistic utopia” which “extends what are ordinarily thought to be the limits of practicable political possibility and, in so doing, reconciles us to our political and social condition” (p. 11).⁴ The major parts of the theory are a set of principles of foreign policy (“the Law of Peoples”) for the members of an idealized “Society of Peoples”; an outline of their justification, extending the “original position” familiar from Rawls’s earlier work to the international realm; and inferences for the conduct of foreign policy by liberal societies in the nonideal world. Important among these are constraints on the uses and conduct of war and a requirement to assist in the development of societies burdened by unfavorable natural and historical conditions. Throughout, there is an emphasis on the role played by legal, political, and social institutions in shaping the patterns

3. It is not, e.g., an interpretation of the *jus gentium*, as I explain below.

4. The ideal is meant to be realistic in a sense inspired by Rousseau: it takes “men as they are and laws as they might be” *LP*, p. 13 (quoting Jean-Jacques Rousseau, *Of the Social Contract*, opening paragraph). That is, it aims to describe a social world that we can reasonably hope could come into existence as a result of choices open to us or our successors, one consistent with the facts of human nature and social life as we know them.

of belief and action that distinguish cultures from one another and influence the quality of life within them.

The relationship of the Law of Peoples to the political theory proposed in Rawls's earlier works needs to be understood carefully. The content of the Law of Peoples resembles (though adds significantly to) what, in *A Theory of Justice*, was called "the law of nations."⁵ However, the political theory whose extension is presented in this monograph is that set forth in *Political Liberalism* and various mostly subsequent articles, not found in *A Theory of Justice*.⁶ The two books represent distinct philosophical projects. *A Theory of Justice* aims to advance a conception of social justice that could be accepted as a reasonable basis for social cooperation among persons who share certain basic beliefs or "comprehensive doctrines" about ethical life and individual good. *Political Liberalism*, by contrast, proceeds from a recognition that this assumption is unrealistic in modern liberal societies—indeed, that it is a predictable outcome of the exercise of human reason in free institutions that multiple comprehensive doctrines will arise, each embodying different and possibly incompatible conceptions of individual good. Rawls calls this "the fact of reasonable pluralism" and writes that it "limits what is practicably possible" (pp. 11–12). On the view taken in *Political Liberalism*, the central problem for a liberal political theory—a problem not confronted in *A Theory of Justice*—is to explain what political institutions would have to be like in order to elicit the willing cooperation of reasonable persons given this permanent fact, rooted as it is in human nature itself.

Rawls conceives of the fundamental problem of international political theory as analogous to this. Thus, he assumes that some degree of cultural pluralism is a permanent fact of life among societies as it is among individuals in a free society and that this diversity will express itself in a variety of political forms. Just as there might be several reasonable but incompatible comprehensive conceptions of individual good coexisting in domestic society, so, in international society, there might be several reasonable but incompatible conceptions of the way that domestic political society should be organized. Not all of these will conform to liberal standards of social justice; yet, as Rawls believes, it is at least conceivable that there could be nonliberal forms of political society that are sufficiently decent to justify us in accepting them as "equal participating members in good standing of the Society of Peoples" (p. 59).

5. John Rawls, *A Theory of Justice* (rev. ed.; Cambridge, Mass.: Harvard University Press, 1999), p. 331.

6. John Rawls, *Political Liberalism* (rev. paper ed.; New York: Columbia University Press, 1996). The new introduction to this edition is valuable in describing the relationship between *A Theory of Justice* and *Political Liberalism* as Rawls understands it. Also see, in particular, Rawls, "The Idea of Public Reason Revisited," in *LP*, pp. 129–80. Hereafter, references to this work will be to its appearance in *LP*.

The problem of international political theory is that the norms of international conduct arising from these various political cultures may not coincide. The possibility of a peaceful international life, in which liberal societies can flourish, depends upon finding a basis on which reasonable and decent peoples can cooperate willingly given the international analog of the fact of reasonable pluralism.⁷

The Law of Peoples is the solution to this problem. It consists of eight principles:

1. Peoples are free and independent, and their freedom and independence are 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 certain 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. (P. 37)

Readers of *A Theory of Justice* will recognize that principles 1–5 and 7 recapitulate “the law of nations” as it was presented there.⁸ Of particular note is the proscription of war except in self-defense (principle 5), though it should be added that Rawls holds war might also be justifiable, in extreme cases, in defense of human rights (pp. 93–94, n. 6). The duties to honor human rights (principle 6) and to assist peoples in unfavorable conditions (principle 8) are new. The first of these significantly limits the powers of sovereignty, and the second calls for what in practice would likely be an ambitious system of international development assistance financed by transfers from the rich countries. These additions constitute substantial changes from *A Theory of Justice* and result in a considerably more progressive view.⁹

7. The idea of a “people” is not transparent, though for most purposes it can be interpreted as referring to a society with a common political culture organized as a state. I discuss some complexities below.

8. Rawls, *A Theory of Justice*, sec. 58.

9. Rawls notes that the list of principles is incomplete in at least two important respects. First, the rights to independence and self-determination hold only within certain limits—roughly, only to the extent that honoring these rights advances (or at least does not impair) respect for the human rights of individuals. Second, there would be a need for additional principles to regulate organized international collaboration—e.g., standards of fair trade—and “provisions for ensuring that in all reasonable liberal (and decent) societies people’s basic needs will be met” (*LP*, p. 38). The latter is plainly a significant requirement; Rawls does not say how it would be implemented. On principles for cooperative organizations, see the important remarks at pp. 42–43 and p. 115.

The Law of Peoples forms the basic charter of the Society of Peoples. It is composed of the liberal and nonliberal but decent peoples, which, together, Rawls refers to as “well-ordered societies.” The institutional structure of the Society of Peoples does not include an international analog of the state—there is no “world government” or superstate—but rather a network of cooperative organizations concerned with matters of security, finance, and trade. This conception of an ideal international order reflects Rawls’s acceptance of two Kantian ideas. The first is the belief that a world government, considered as a unified global regime with its own systems of law and law enforcement, “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” (p. 36).¹⁰ The second is the idea of a “pacific federation” of republican states. Following Kant, Rawls believes that liberal democratic (and, apparently, decent nonliberal) societies are unlikely to go to war with each other and will develop, over time, increasingly dense networks of peaceful collaboration.¹¹ So, assuming that the Society of Peoples were to grow to include an increasing portion of the world’s societies, a world government, which would be undesirable in any case, would also be unnecessary as a mechanism for keeping order. The hypothesis of democratic peace plays a central role in explaining why the defense and extension of the society of liberal and decent peoples should be the fundamental goal of liberal foreign policy.

The structure of the argument for the eight principles is parallel to that of the argument Rawls has given for principles of social justice in the domestic case. He imagines an international “original position” in which all reasonable peoples are represented. He emphasizes that peoples, not persons, are the units of representation and that the criterion of fairness for the Law of Peoples is that its principles should be acceptable from the points of view of reasonable peoples.¹² The interests

10. Compare Immanuel Kant, *Perpetual Peace: A Philosophical Sketch* (1795), in *Kant's Political Writings*, ed. Hans Reiss and trans. H. B. Nisbet (Cambridge: Cambridge University Press, 1970), pp. 102–4. Kant shifted his view from the position taken, with some ambivalence, in the essay “On the Common Saying: ‘This May Be True in Theory, But It Does Not Apply in Practice’” (1793). There, he calls upon states “to enter into a *cosmopolitan* constitution,” in Reiss, ed., p. 90 (emphasis in original).

11. Rawls considers the hypothesis of a “democratic peace” and the evidence in its behalf at some length; see *LP*, pp. 44–54, and the sources cited there, particularly Michael W. Doyle, *Ways of War and Peace* (New York: Norton, 1997), pp. 277–84. It might be noted that there is disagreement about the plausibility of the hypothesis and about the political mechanism usually supposed to explain it. For example, Joanne Gowa concludes that “a democratic peace does not exist in the pre-1914 world, and it cannot be extrapolated to the post-Cold War era.” See *Ballots and Bullets: The Elusive Democratic Peace* (Princeton, NJ: Princeton University Press, 1999), p. 113.

12. Rawls writes: “We view *peoples* as conceiving of themselves as free and equal *peoples* in the Society of Peoples (according to the political conception of that society)” *LP*, p. 34 (emphasis in original).

of individual persons are taken into account only indirectly, as they may be served by advancing the legitimate interests of their societies.

In fact, there are two (international) original positions: the first represents the perspective of liberal democratic peoples, and the second, that of decent nonliberal ones. Rawls considers the Law of Peoples from each perspective. However, in contrast to the procedure for domestic society, in neither case is there a comparison of the principles proposed for the Law of Peoples with any alternatives. The argument consists, instead, of the noncomparative claim that the parties in each original position, situated behind a veil of ignorance and given an appropriate understanding of their societies' fundamental interests, would find it reasonable to endorse the principles as a basis of foreign policy.¹³

The distinction between liberal democratic and decent but nonliberal peoples is fundamental to the theory and requires an explanation. As noted earlier, Rawls believes that some degree of cultural diversity is inevitable and that this will be reflected in a diversity of political forms, some of which may be incompatible with liberal principles but still satisfy conditions that justify their recognition as cooperating members of international society. The distinction between liberal and decent societies models this diversity.

The conditions defining a liberal people will not be surprising. Its basic structure includes a constitutional regime that respects certain familiar basic rights and liberties equally for all its citizens; it gives the protection of these rights and liberties priority over the claims of the social good and of perfectionist values; and it assures for all citizens access to the primary goods needed to make productive use of these freedoms (p. 14).¹⁴

The category of decent peoples is broader than this; indeed, liberal societies themselves satisfy Rawls's criteria for any decent society (p. 63). But these criteria can also be satisfied by various nonliberal societies. A decent people satisfies two conditions. First, the society does not have aggressive aims in foreign policy and respects the independence of other societies. Second, the society has a "common good conception of justice," in which each person's interests are taken into account (though not necessarily on an equal basis) in public decisions and basic human rights (including subsistence rights) are secured for all; all persons are treated as subjects of legal rights and duties; and judges and other officials accept and apply the common good conception of justice in carrying out their public responsibilities (pp. 64–67). Rawls describes one kind of decent society in some detail. This is the idea of a "decent hierarchical people" whose institutions have the structure of a "decent con-

13. Rawls observes that the subject of debate in the international original position(s) is not the choice of principles but their interpretation (*ibid.*, p. 42).

14. Compare "The Idea of Public Reason Revisited," in *LP*, p. 141.

sultation hierarchy.” Such societies are “associationist” in form, regarding their people as members of various primary social groups, each of which is represented in a “consultation hierarchy” (p. 64).¹⁵ Rawls believes that the notion of a decent hierarchical society is consistent with a plausible interpretation of Islamic political ideas and illustrates this with a hypothetical example of a decent Islamic society he calls “Kazanistan” (pp. 75–78).

Why should the Law of Peoples be considered in two steps, first from the perspective of liberal societies and then from that of decent non-liberal ones? Part of the answer is that liberal and decent peoples have different fundamental interests which they bring to bear on the appraisal of principles for foreign policy. These differences reflect the differences in their political cultures: each type of people is fundamentally interested in securing international conditions in which their cultures and institutions can flourish. They are interested, moreover, in a “proper self-respect of themselves as a people, resting on their common awareness of their trials during their history and of their culture with its accomplishments.” Therefore, they insist “on receiving from other peoples a proper respect and recognition of their equality” (pp. 34–35). They would want to be assured that acceptance of any particular international principles would be compatible with their self-respect as a people.

This cannot be the whole story, however. In the domestic case, the veil of ignorance screens the choice of principles from influence by the variable elements in individual conceptions of the good. Why should the choice of international principles be treated differently? I believe the answer is that the two cases are not fully analogous. In the domestic case, the object is to choose principles of justice for institutions that will include and apply to everyone. In the international case, by contrast, the object is not precisely to choose principles for international institutions. Recall that the Law of Peoples is a body of principles for the foreign relations of liberal democratic societies: it is an extension of liberal political morality to foreign policy. Offhand, there is no reason to think that nonliberal societies, whether decent or not, would take any interest in it. The motivation for considering the Law of Peoples from a nonliberal point of view is a reflection of the requirement of reciprocity that Rawls believes is intrinsic to liberalism itself: we wish to act on principles which are not only reasonable to us but which we believe it would be reasonable to expect those affected by our actions also to accept (p. 58). Understood this way, Rawls’s conception of a decent, nonliberal society, and the claim that acceptance of the Law of Peoples would be reasonable from its point of view, is part of an argument that the Law of Peoples is justifiable for liberal societies themselves. The idea of a decent nonlib-

15. One example of a consultation hierarchy is the form of society described by Hegel; see *LP*, pp. 72–73 and p. 73, n. 13.

eral society therefore describes what, from a liberal perspective, should be regarded as the limit of international toleration.

Rawls also describes other kinds of societies—"outlaw states," which do not adhere to the Law of Peoples, and "burdened societies," whose historical, economic, and cultural conditions make it difficult for them to become well-ordered on their own (pp. 6–7). These he regards as outside the Society of Peoples: they would not exist in the fully realized ideal but pose problems of foreign policy in the nonideal world. In keeping with the fundamental aim of enlarging the Society of Peoples, the guiding objectives of liberal foreign policy should be, first, to defend liberal societies against the aggression of outlaw states, and second, to assist burdened societies to develop liberal or decent institutions. "Non-ideal theory" contains principles corresponding to both objectives: laws of war, which direct and limit the use of force to attain political ends, and a duty of assistance, which requires well-ordered societies to support the economic and political development of burdened societies, up to the point where they are able to sustain just or decent institutions for themselves.

In contrast to the situation of liberal and decent societies, outlaw states and burdened societies are not represented in the international original position; there is no effort to justify the Law of Peoples to representatives of either kind of society. The Law of Peoples is therefore not to be confused with the *jus gentium*: it is not a body of principles universally accepted by states, nor is it intended necessarily to constitute a reasonable basis for the cooperation (or for that matter the peaceful co-existence) of all existing states.

One might wonder if the exclusion of some societies from the scope of justification is objectionable. Recall that the Law of Peoples is an extension of liberal political morality, supplying a doctrine of foreign policy for liberal states. In the doctrine of the Law of Peoples, the question of justification is, so to speak, a creature of the liberal society in which it is posed, and the adequacy of any reply is governed by the criteria of reasonableness accepted within that society. If the idea of a decent society is successful in defining the outer limits of reasonable toleration in international affairs, then the omission of outlaw states from representation in the international original position should not be surprising; it is simply a reflection of the fact that the liberal notion of reciprocity does not require us to show that our principles would be acceptable to those holding fundamentally unreasonable points of view.

I note, finally, that the Law of Peoples accords great significance to institutions as determinants of the material and social conditions of human life. Rawls writes: "The great evils of human history—unjust war and oppression, religious persecution and the denial of liberty of conscience, starvation and poverty, not to mention genocide and mass murder—follow from political injustice. . . . Once the gravest forms of

political injustice are eliminated . . . these great evils will eventually disappear” (pp. 6–7). These statements are not tautologies. They express the conviction that when human beings grow up in reasonably just social and political institutions, they come to affirm their institutions’ basic principles, and this affirmation serves to regulate and stabilize the institutions themselves and the political and social life they organize. Rawls treats it as an open question—albeit one to be answered affirmatively in the course of the monograph—whether such institutions can be imagined and, if so, whether they are compatible with the facts of human nature and social life. An institutional scheme satisfying these conditions would be a “realistic utopia”: “realistic” because it could possibly exist and “utopian” because it “joins reasonableness and justice with conditions enabling citizens to realize their fundamental interests” (p. 7).

As any summary must, this omits a good deal—for example, Rawls’s account of the basis of the laws of war and the possibly controversial interpretations of noncombatant immunity and extreme emergency; the provocative historical digressions concerning matters such as the significance of the Holocaust, the justifiability of the bombing of German and Japanese cities in World War II, and the motivation of the religious wars; and the perceptive and moving observations on the responsibilities of the statesman. Rawls’s remarks on these subjects are illuminating, and I regret that I must leave them aside.

Instead, I shall concentrate on a theme that lies closer to the heart of Rawls’s enterprise. The theory set forth in *The Law of Peoples* is the most sophisticated interpretation yet produced of a branch of the liberal internationalist tradition that might, for want of a better term, be called *social liberalism*. Views of this kind conceive of the international community as a society of (domestic-level) societies characterized by a division of labor: domestic societies are responsible for the well-being of their people, while the international community is responsible for maintaining background conditions in which decent domestic societies can flourish. Social liberalism holds that principles for international relations are to be justified by considering the fundamental interests of those societies to which the principles apply.

The most prominent alternative interpretation of the internationalist tradition is *cosmopolitan liberalism*. Although it is consistent with a conception of the world as a society of domestic societies, the cosmopolitan view, in contrast to social liberalism, accords no moral privilege to domestic societies. At the deepest level, cosmopolitan liberalism regards the social world as composed of persons, not collectivities like societies or peoples, and insists that principles for the relations of societies should be based on a consideration of the fundamental interests of persons.

The Law of Peoples aims to show that the view I have called social liberalism can be constructed in such a way as to be more attractive than

alternative cosmopolitan theories. Rawls's strategy is to press social liberalism toward its most progressive expression and then to ask what more could reasonably be required. If successful, this approach would disarm cosmopolitan liberalism of its critical thrust by showing that a view with more conservative premises converges with it at the level of policy.

Of course, we cannot know the extent of the convergence until we have a cosmopolitan theory comparable in detail to *The Law of Peoples*. Nevertheless, I suspect the normative differences may be more significant than Rawls suggests, especially regarding the content of the doctrine of human rights and the reach and requirements of international distributive justice. Such divergences would not be surprising in light of the main theoretical contrast between the views—the tendency of the Law of Peoples to conceive of domestic societies as moral agents in their own right, with interests of their own and a corporate capacity for exercising responsibility over time. In the remainder of this article, I shall consider this conception in greater detail and then turn to the dilemmas that arise from it in connection with human rights and international distributive justice.

THE PRIMACY OF PEOPLES

Rawls's theory accords a central place to the idea of a "people." This is true in two different respects. First, international society is conceived as a Society of Peoples, with each people serving as a unit of political and legal organization, having reasonably autonomous control of its economic life, and functioning as the mechanism by which the interests of individual persons are represented in international society. This is a kind of sociological primacy. Second, peoples are also ethically primary: it is peoples, not persons, which are represented in the international original position, and it is the interests of peoples considered as collective entities, not those of individual persons, that determine the choice of principles for the international conduct of states.

There are several questions. What are the distinguishing elements of a people—how, for example, is a people to be distinguished from a mere collection of persons who occupy a contiguous territory? Why rely on this idea rather than the more familiar ideas of state, society, or nation to describe the elements of world society? Finally, for the purposes of justifying principles of international conduct, why conceive of world society as a series of collective entities at all? That is, why think of world society as a society of peoples rather than persons?

First, what is a people? Rawls writes that liberal peoples have three basic features: "a reasonably just constitutional democratic government; . . . citizens united by what Mill called 'common sympathies'; and, finally, a moral nature. The first is institutional, the second is cultural, and the third requires a firm attachment to a political (moral) conception of

right and justice” (pp. 23–24). The meaning of the first of these features is clear enough. As to the second, Rawls associates himself with the conception of nationality in *Representative Government*, where Mill writes that a group of people constitute a nation if they have a “feeling of nationality” that makes “them cooperate with each other more willingly than with other people, desire to be under the same government, and desire that it should be government by themselves, or a portion of themselves, exclusively.”¹⁶ Finally, as in the case of individuals, a people has a “moral nature” when its choices about how to act are constrained by considerations of reasonableness embedded in its public political culture. All three of these features, as presented, apply specifically to liberal peoples, but Rawls plainly believes that each has a parallel for decent nonliberal peoples.

The idea of a people is part of an ideal conception of the social world and not simply a redescription of a familiar phenomenon. For example, even though a people has elements of statehood—for example, a constitutional government empowered to represent and defend its interests in the international community—not all states count as peoples. States qua states are concerned with the advancement of their rational interests, whereas peoples have a moral nature that limits the pursuit of these interests. For peoples, as for moral persons, the reasonable constrains the rational. Peoples, therefore, also differ from states in not claiming the traditional powers of sovereignty. Unlike the modern state, as Rawls understands it, peoples do not assert a right to use war as an instrument of politics except in self-defense, and they do not assert a right of autonomy in the conduct of their internal affairs. Instead, they hold themselves accountable to universal minimum standards for the decent treatment of individuals and subscribe to international mechanisms with the capacity to assist peoples—and in extreme cases to compel them—to respect these standards.

Similarly, not all societies count as peoples. Peoples are societies with a distinctive form of social unity expressed in their individual members’ “common sympathies” and in the “moral nature” of the collective entity. In the conventional view, nationhood has a necessary historical and cultural dimension: a nation’s unity is thought to be based on a common language and history, ethnic or racial uniformity, probably a common religion, and so forth.¹⁷ For Rawls, however, the origin and mechanism of a people’s common sympathies are unimportant—a group of persons can be a “people” even if the members have diverse ethnic origins and cultural backgrounds provided that they subscribe, and recognize that they subscribe, to some common pattern of political and so-

16. John Stuart Mill, *Considerations on Representative Government* (1862), chap. 16, quoted in *LP*, p. 23, n. 17.

17. There is a good discussion in David Miller, *On Nationality* (Oxford: Clarendon, 1995), chap. 2.

cial values (p. 24). Moreover, not just any consensus on political and social values will suffice; a society constitutes a people only if its shared values are consistent with a just (or decent) constitution and with the concept of a moral nature and its expectations of reciprocity.

Rawls writes as if he believes that some existing societies—perhaps the constitutional democracies—come close to satisfying this description. There might be dispute about this: one might wonder, for example, whether the requisite common sympathies and moral nature can be found in culturally diverse societies like those of the United States or Belgium, to say nothing of India or the Philippines. This thought might lead to the objection that the idea of a people romanticizes the national community by relying on counterfactual assumptions about the kind and degree of unity to be found in contemporary nation-states.¹⁸ The objection, however, falls wide of the mark. The idea of a people is part of an ideal conception of the world. Rawls need not maintain that many (or even any) actual states fully satisfy the criteria for being a people in order to maintain that it would be desirable to move in the direction of the ideal. The appropriate question about the idea of a people is whether it represents a sufficiently desirable form of human social organization to serve as the basic constituent element of world society, not whether it serves as a realistic proxy for any actually existing states.

It is one thing, however, to hold that a global Society of Peoples would be a desirable goal of political and social change and another to hold that international political theory should begin with peoples—that is, that principles of international conduct should be founded on considerations about the legitimate interests of peoples rather than persons. Why proceed in this way? It is not enough to say that the analogy with justice at the domestic level requires us to take peoples for persons in the international case; if there are substantive ethical reasons to begin with individuals, so much the worse for the domestic analogy. It is also not enough to reply that beginning with persons imports an unattractive conception of world society as a collection of unrelated (“deracinated”) individuals; just as the liberal theory of the state makes room for secondary associations, so too, a theory of international relations could make room for intermediate units without holding that they or their interests are in any way ultimate or take precedence over the interests of individuals.¹⁹

At some points, Rawls seems to suggest that the decision to regard

18. David Luban made a similar objection to the just-war theory of Michael Walzer in “The Romance of the Nation-State,” *Philosophy & Public Affairs* 9 (1980): 392–97.

19. Thus, the notion that we must choose between according domestic societies a special moral status and regarding the world as an aggregation of “deracinated men and women” is a red herring. The phrase is from Michael Walzer’s criticism of utilitarian views about immigration policy in *Spheres of Justice* (New York: Basic, 1982), p. 39, quoted in *LP*, p. 39, n. 48.

peoples rather than individuals as ethically primary is pragmatic—compelled, for example, by considerations of political realism (e.g., pp. 17, 83). He also argues that a cosmopolitan approach would necessarily be less tolerant of the diversity of political traditions and cultures: it would produce a theory that “simply assumes that only a liberal democratic society can be acceptable” when it may be that certain kinds of non-liberal societies would be sufficiently sensitive to individual human rights to be acceptable as well (pp. 82–83; cf. p. 60).

However, neither argument is persuasive. The first is a non sequitur: considerations of political realism have to do with constraints imposed by the status quo on prospects for change, and thus they pertain to questions about institutional design and reform rather than to those about standards of moral appraisal. There is no inconsistency in holding both that the ultimate appeal in questions of international justice is to the interests of individual persons and that, for political (and perhaps other) reasons, we must regard a decentralized world order as here to stay and work for reforms within its basic structure.

The difficulty with the appeal to considerations of toleration is that it produces a circular argument. Recall that the question is whether societies or peoples should be regarded as having independent ethical significance of a sort that would justify allowing their fundamental corporate interests, rather than the fundamental interests of their members considered as individuals, to determine the choice of principles of international conduct. This is different from, and more basic than, the question of whether or to what extent international institutions and the foreign policies of liberal states should tolerate nonliberal cultures. Rawls's appeal to considerations of toleration seems to invoke a generous pre-theoretical response to the second question as a way of answering the first. But this deprives the international original position of the capacity to lend any independent weight to the argument for toleration of non-liberal cultures. If there are reasons for toleration, as no doubt there are, it would seem better to articulate them within a theory rather than to presuppose them.

If this were all that could be said for the primacy of peoples, one might feel that the case had not been made. So it is important that there is a further—and a more complex—reason for taking peoples as primary.

As noted earlier, Rawls does not believe it would be desirable to establish a world government with powers analogous to those of the state. But if there is not to be a world government, then there must be some alternative world political structure in which the functions of government are more or less decentralized. Rawls holds that this alternative structure requires territorial subunits with the political capacity to take and carry out authoritative decisions: “In the absence of a world-state, there *must* be boundaries of some kind” (p. 39; emphasis in original.)

Why *must*? To explain, Rawls draws the analogy to property: "As I see it the point of the institution of property is that, unless a definite agent is given responsibility for maintaining an asset and bears the loss for not doing so, that asset tends to deteriorate. In this case the asset is the people's territory and its capacity to support them *in perpetuity*; and the agent is the people themselves as politically organized" (p. 39 [emphasis in original]).²⁰ To carry out this task without resort to authoritarian means, a government will require the capacity to enlist its people's willing support. Political culture is critical. Liberal societies depend on a complex combination of institutional loyalty, fellow feeling, and allegiance to recognizably shared political principles to motivate support and sacrifice for their institutions. Indeed, without the nurturance of a common culture, it is hard to imagine how these motivational forces could be sustained and thus how liberal institutions could be stable. People must, therefore, be encouraged to see themselves as sharing in a common enterprise, to take pride in their society's identity and accomplishments, and to accept the mutual responsibilities of membership in a cooperative scheme. So it may be that a people should be treated as having special ethical significance because its flourishing as a people is essential to its capacity to manage its human, material, and cultural resources and, thus, to sustain its institutions, for the benefit of present and future members.

This argument is consistent with one reason for holding that the distributive requirements of the Law of Peoples should be less demanding than principles of justice for domestic society. In that context, Rawls refers to "a psychological principle that social learning of moral attitudes supporting political institutions works most effectively through society-wide shared institutions and practices" (p. 112, n. 44).²¹ The thought is that we cannot realistically expect people to be motivated to make significant sacrifices for the benefit of others when these "others" are not seen as fellow members of the same enterprise. Just as considerations of affinity might explain why international justice should demand less than justice within domestic society, so they might seem to explain why the success of domestic societies over time should be seen as an independent desideratum to be built into international political theory at the foundational level.

20. One function of the Law of Peoples is to fix this responsibility in "the people themselves" and to establish incentives to carry it out: "[Peoples] are to recognize that they cannot make up for their irresponsibility in caring for their land and its natural resources by conquest in war or by migrating into other people's territory without their consent" (*LP*, p. 39). Rawls observes in a footnote that this "remark implies that a people has at least a qualified right to limit immigration" (*ibid.*, p. 39, n. 48). How, exactly, would such a right be justified? The remark in the text suggests that it would follow from some sort of entitlement to reap the benefits of past decisions to conserve and invest rather than to consume.

21. Rawls adds: "In a realistic utopia this psychological principle sets limits to what can sensibly be proposed as the content of the Law of Peoples" (*ibid.*, p. 112, n. 44).

In response, two observations. First, as before, we must distinguish between questions about justification and those about institutional design. Even if we agree about the state's significance as a mechanism for the efficient management of resources over time and the resulting need to elicit peoples' willing support, it does not follow that domestic societies have an ethical status separate from that of their members taken severally. All that follows is that domestic societies, or at least societies of a certain limited scale and internal composition, are advantageous constituent elements of global society. Second—and this is surely the more important point—we must apply an understanding of people's motivational capacities and limitations at the appropriate level of abstraction. It is a commonplace that the size of the circle of affinity is historically variable and that, under favorable institutional and cultural circumstances, the range of sympathetic concern can extend well beyond those with whom people share any particular ascriptive characteristics (as Rawls himself observes [p. 113]). The modern multicultural state would be inconceivable if this were not true. But if motivational capacities are variable and subject to change with the development of institutions and cultures, then it gets things backward to assume any particular limitations on these capacities in the structure of a political theory. This is what occurs, perhaps nonobviously, when the primacy of peoples is built into the original position. Alternatively, a theory could treat motivational constraints as variables to which a theory should be sensitive in its application to the nonideal world. But on that approach, the rationale for beginning with peoples would disappear.

THE DOCTRINE OF HUMAN RIGHTS

The Law of Peoples includes an unconventional conception of the philosophical basis and political role of the doctrine of human rights. This conception is related, on the one hand, to the critique of sovereignty, because human rights set limits to the legitimate authority of domestic governments over their own people; and on the other hand, to Rawls's defense of pluralism in international affairs, because a society's adherence to human rights, even in the absence of liberal democratic institutions, is supposed to be sufficient to shield it from external interference aimed at bringing about domestic reform.

To clarify Rawls's view, I comment first on the content of human rights within the Law of Peoples, then on the role they are expected to play in international political life. In each case, I note how Rawls's interpretation of human rights differs from the conventional view. Then I consider some difficulties.

Rawls holds that human rights are "a special class of urgent rights" whose violation is "equally condemned by both reasonable liberal peoples and decent hierarchical peoples" (p. 79). These rights include rights to life (importantly including "the means of subsistence") and

personal liberty (including liberty, though not equal liberty, of conscience), to personal property, and to equal treatment under law. These rights Rawls regards as essential to any “common good idea of justice” and, therefore, not “peculiarly liberal or special to the Western tradition” (p. 65).

The list omits several rights identified in the 1948 Universal Declaration of Human Rights (UDHR) and the various covenants, which together define the scope of internationally recognized human rights. Among those omitted are rights to freedom of expression and association (UDHR, arts. 19 and 20) and the rights of democratic political participation (UDHR, art. 21).²² Roughly speaking, these rights distinguish liberal democratic societies from others, including “decent hierarchical societies” as Rawls understands them. He observes in a footnote that, in contrast to “human rights proper,” these and certain other rights of the declaration “seem more aptly described as stating liberal aspirations” or “appear to presuppose specific kinds of institutions” (p. 80, n. 23).

The relative austerity of Rawls’s list reflects the role that human rights are to play in the political life of the Society of Peoples. Respect for human rights is, so to speak, part of the price of admission to international society and defines the threshold of toleration by liberal and decent peoples. It is a necessary (though not sufficient) condition of the decency of a society’s institutions and is “sufficient to exclude justified and forceful intervention by other peoples” (p. 80). Importantly, Rawls writes that the “political (moral) force” of human rights “extends to all societies, and they are binding on all peoples and societies, including outlaw states” (pp. 80–81). But it does not appear that human rights, in this view, are to play the broad political role envisioned in the conventional understanding—for example, as bases of claims by individuals against their own governments or as grounds of political action by the various nongovernmental organizations that compose international civil society. In Rawls’s view, human rights are a special class of rights intended for the limited purpose of demarcating the boundary of acceptable pluralism in international society as this should be understood in the foreign policy of liberal states. In keeping with the conception of the Law of Peoples, they are interpreted as neutral among the rival reasonable views of political legitimacy.²³

Two main questions arise about this interpretation of human rights: why would the liberal and decent peoples be justified in establishing adherence to human rights as a threshold of membership in international

22. For the 1948 Universal Declaration of Human Rights, see *Basic Documents in International Law*, ed. Ian Brownlie (4th ed.; Oxford: Clarendon, 1995), pp. 255–61.

23. This aspect of human rights is emphasized in Thomas M. Scanlon, “Human Rights as a Neutral Concern,” in *Human Rights and U.S. Foreign Policy*, ed. Peter G. Brown and Douglas MacLean (Lexington, Mass.: Lexington, 1979), pp. 83–92, to which Rawls refers.

society? And, is the list of human rights as Rawls constructs it too narrow—that is, considered as a minimal standard of international legitimacy, does this interpretation of human rights demand too little? The first question concerns the justification of the doctrine of human rights, and the second, its scope. As it turns out, the answer to the second question depends on the answer to the first.

In Rawls's view, the practical import of the claim that there is a human right to something—say, to personal liberty—is that intervention by outsiders, by admonition, diplomatic pressure, economic sanctions, and possibly by force, might be justified when a government persistently violates the right. An account of the justification of human rights should therefore explain why a violation would warrant intervention to bring about reform. In contrast to the conventional view, and perhaps surprisingly, Rawls does not hold that reform intervention would be justified by the good that would be done for those whose rights are in jeopardy. Instead, he argues that intervention would be justified by considerations of international stability: liberal and decent peoples do not tolerate states that violate human rights (“outlaw states”) because such states “are aggressive and dangerous; all peoples are safer and more secure if such states change, or are forced to change, their ways. Otherwise, they deeply affect the international climate of power and violence” (p. 81).

One might dispute the empirical premise of this argument: it is not hard to think of regimes which are oppressive domestically but whose international conduct is not “aggressive and dangerous.” (Even if it is true statistically that domestically oppressive states are more likely to behave aggressively in foreign affairs than liberal states, a statistical regularity would not be sufficient to justify intervention in any particular case.) This seems to me a nontrivial point. More importantly, whatever might be said about intervention, it is clear that the strategic interest in international stability does not bear on the moral status of human rights. For example, the reason why people have human rights not to be tortured does not seem to be that regimes that torture are dangerous to other regimes: although the latter fact (if it is a fact) might justify intervention, it does not imply anything about the moral situation of the tortured.

Rawls also suggests other reasons to care whether a society's institutions respect human rights. One is that human rights represent a reasonable common standard of legitimacy equally acceptable to both liberal and decent nonliberal peoples, as illustrated by the fact that the Law of Peoples, requiring respect for human rights, would be endorsed in both stages of the international original position (p. 60). But, of course, this does not provide an independent justification for human rights: the international original position includes only just and decent societies, which, by definition, respect human rights, so any point of view that

would disagree about their importance has been excluded from the outset.

Now this is not a problem for the just or decent peoples themselves. If such a society's government engaged in a pattern of violations of its citizens' human rights, there would be no philosophical difficulty in holding that remedial intervention in some form by other members of the Society of Peoples would be justified. This much is a legitimate conclusion from the argument in the international original position. However, this argument does not obviously prove anything about the justification of intervention in societies not represented in the international original position. (Indeed, how could it be otherwise?) The exclusion of outlaw (and other) societies from the international original position means that no argument for human rights, made from the point of view of the original position, could establish that human rights have the kind of universality that is usually presumed. We want to say that people are entitled to be treated in certain ways (partly) in virtue of their characteristics as human beings and independently of considerations that might be particular to their own institutions and political cultures. But these are essentially cosmopolitan considerations, and they do not register in an international original position in which the unit of representation is peoples rather than persons and agreement on principles is motivated by their corporate interests as social units rather than the interests of their members as individuals.

Setting the original position aside, Rawls argues that we are, in fact, prepared to acknowledge nonliberal societies as equal participants in international political life provided that they are "decent"—meaning, *inter alia*, that their institutions at least respect their peoples' human rights. He points out that "there is no definition of decency" from which the criteria of decency can be deduced; instead, we stipulate a definition and consider whether it is acceptable given the philosophical use to which the idea is put. "The reader has to judge," he writes, "whether a decent people . . . is to be tolerated and accepted" (p. 67). Rawls believes that most readers (at least liberal ones) will agree that it should. But if we ask what justifies their agreement, the reply is simply that this seems right—that is, when we reflect on the matter, we find that we are prepared to recognize certain nonliberal societies not only as nonthreatening to our interests but also as deserving our respect, provided (among other things) that they respect Rawls's (limited) list of human rights. The difficulty with this argument is not that it is wrong but that it is weak: if there are reasons why institutions should be held to human rights as a minimum standard of legitimacy, we should be able to say what they are.

The appeal to judgment is especially problematic when we consider the second question I distinguished earlier—whether the doctrine of human rights in the Law of Peoples demands too little. Recall that on this

view there is no human right to democratic government.²⁴ And although there is a right to freedom of conscience, there is no equal right to religious practice; a decent society may privilege one faith over others, for example, by maintaining a state church. Rawls's critics have argued that by endorsing a limited range of human rights, the Law of Peoples is excessively deferential to societies with discriminatory or undemocratic institutions.²⁵ In reply to this criticism, the appeal to pretheoretical judgment will not be much help, for whether such political forms should be recognized as acceptable, or only coped with as an unfortunate necessity, is precisely what is in dispute.

There are some other replies that might be made to the critics. One is to invoke the value of "mutual respect among peoples"; Rawls writes that to have contempt for other societies "can only cause damage," not only by provoking political conflict but also by undermining a people's self-respect (p. 62). Another is to invoke the domestic analogy in connection with toleration: if we are prepared to tolerate a range of beliefs and ways of life in domestic society, one might ask, why not also tolerate a range of ways of social life in international society?

Without exploring these replies on their merits, the point to note is that their effect is to shift attention away from the question, what are human rights, to the different question, what are appropriate principles for the international conduct of states? I believe this is significant because it underscores the dependence of Rawls's interpretation of the content of the doctrine of human rights on the details of his view about its role in international affairs. The latter is considerably restricted in relation to contemporary practice. Unless one intends to replace the conventional conception of human rights with a technical idea or a reforming definition, one must recognize that human rights serve not only as minimum conditions for international recognition, but also, as the declaration's preamble puts it, "as a common standard of achievement" for the guidance of "every individual and organ of society." Human rights function as standards of conduct for governments and in the policies of various international institutions and development agencies, as shared goals of political reform among international nongovernmental organizations (the elements of an emergent global civil so-

24. There is, however, a weaker requirement—whether Rawls would call it a human right is not clear from the text—that all decent institutions should allow "different voices to be heard" in policy making, so that those responsible for political decisions will be in a position to take everyone's interests into account (*LP*, p. 72).

25. For example, Fernando R. Têson, "The Rawlsian Theory of International Law," *Ethics and International Affairs* 9 (1995): 79–99. I note also the view that a right to democratic (and not simply "associationist") institutions has emerged in international law. See Thomas Franck, "The Emerging Right to Democratic Governance," *American Journal of International Law* 86 (1992): 46–91, *Fairness in International Law and Institutions* (Oxford: Clarendon, 1995), chap. 4.

ciety), and as focal points for domestic social movements in nondemocratic societies.²⁶ Although I cannot argue it here, I believe that a less restricted understanding of the political role of human rights would suggest a different view of their justification and, most likely, a more expansive interpretation of their content. (It is a further question, of course, whether such a view can be defended.)

DISTRIBUTIVE JUSTICE AND THE DUTY OF ASSISTANCE

Certainly the most dramatic difference between the Law of Peoples and the international doctrine in *A Theory of Justice* is the recognition of the array of conditions, both material and cultural, that can obstruct the growth of a society's capacity to satisfy its people's basic needs. Societies "burdened by unfavorable conditions . . . lack the political and cultural traditions, the human capital and know-how, and, often, the material and technological resources needed to be well-ordered" (p. 106). The Law of Peoples establishes, as a long-term goal of liberal foreign policy, the elevation of burdened societies to a point at which they can sustain liberal or decent institutions for themselves. Liberal societies have a duty to assist burdened societies in their development.

Rawls emphasizes that the duty of assistance is not an oblique requirement of international distributive justice. For one thing, the duty of assistance has a "target" or "cut-off point" after which aid may cease—namely, the point at which a society has the wherewithal to become well-ordered. It does not mandate the establishment of international institutions with a continuous capacity to regulate inequalities, as we might imagine distributive justice does within domestic society. In this respect, the duty of assistance is more like a just savings principle, requiring a society to save only to the point where it can support just institutions and a decent life for its people.²⁷ Another point of contrast is that the duty of assistance does not impose any direct constraint on the internal distribution of income and wealth in a society receiving assistance. The internal distribution is regulated by a society's local conception of justice, which, by hypothesis, in any liberal or decent society, imposes a material minimum requiring at least the satisfaction of its people's human rights and basic needs. Because the duty of assistance aims to help burdened societies become just or decent, it might be said to incorporate the material minimum by reference; beyond this, the duty is agonistic about the extent of allowable inequality within a society.

As in the case of human rights, one can regard the duty of assistance from two different perspectives, asking, first, why we should accept any

26. On the importance of nongovernmental organizations (NGOs) as agents of reform, see the case studies in Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999).

27. The analogy is Rawls's (*LP*, p. 107).

duty at all, and second, whether the duty as Rawls formulates it requires enough. I will concentrate on the second question. I note in passing, however, that the first question is not easy to answer within the constraints imposed by Rawls's theory. He does not offer any argument for the duty of assistance analogous to the argument for a distributive principle in domestic society—there is no suggestion, for example, that the international distribution of natural resources is unfair or that the circumstances of an individual's birth (e.g., whether she was born into a rich or a poor society) are in any ethically significant sense arbitrary. The force of the duty of assistance seems to arise, instead, from the importance for liberal societies of enlarging the Society of Peoples to include, eventually, all the societies of the world. For example, on the analogy of the argument against tolerating outlaw states, it might be argued that the chances of peace would be greater in a world in which all societies had been lifted out of burdening conditions. However, if the inference is that burdened societies are a threat to the security of liberal democracies, then the argument is implausible; whatever the threat posed by outlaw states, burdened societies are far less dangerous. We can imagine more plausible arguments for a duty of assistance, but these appeal to concepts of distributive justice that Rawls wishes to avoid.

Let me turn to the question whether the duty of assistance requires enough—that is, whether it embraces the full range of global distributive responsibilities it is reasonable to expect liberal states to bring to bear in their foreign policies. Because they endorse a principle of global distributive justice in some form, cosmopolitan views would hold that it does not. Rawls is at some pains to explain why such views should be rejected. I would like to consider briefly three of the reasons he offers for accepting the duty of assistance in preference to any more comprehensive global principle of distributive justice.

First, Rawls believes that the most important determinants of a society's economic condition, and hence of its capacity to support a decent life for its members, lie in its political culture, religious and moral traditions, and the character of its people.²⁸ He conjectures “that there is no society anywhere in the world—except for marginal cases—with resources so scarce that it could not, were it reasonably and rationally organized and governed, become well-ordered” (p. 108). If this is true, and if we grant for the moment that the proper goal of international action is to help societies to become well-ordered, then any global principle of distributive justice whose requirements extend beyond those of the duty of assistance would be superfluous and any transfers beyond those required by this duty would be supererogatory. The duty of assistance, in other words, is the most one can reasonably ask.

28. In this and the following paragraphs, I revise and extend some remarks in my “Social and Cosmopolitan Liberalism,” *International Affairs* 75 (1999): 524–25.

Two observations in response. First, as an empirical matter, the question of the sources of economic backwardness is hardly settled. These sources can be divided into several categories—for example, natural resource endowments (including the advantages or disadvantages of geographical location), technology and human capital, political and economic culture, and position in the international political economy. The relative importance of these factors is a subject of dispute at the general level, and it certainly varies from one society to another.²⁹ Moreover, it is not even clear that the question is intelligible as it arises for contemporary developing societies which are enmeshed in the global division of labor: a society's integration into the world economy, reflected in its trade relations, dependence on foreign capital markets, and vulnerability to the policies of international financial institutions, can have deep and lasting consequences for the domestic economic and political structure. Under these circumstances, it may not even be possible to distinguish between domestic and international influences on a society's economic condition.

Having said this, it is important to observe that the point does not turn on the outcome of an empirical dispute. For suppose that the empirical conjecture were to come out true. It would not necessarily follow that there is no occasion for considerations of international distributive justice to play a role in foreign policy—only that their role would be different, and probably more complex, than what might be supposed on a naive view of the facts. In this respect, the international situation seems to me not very different from the domestic. Within a society, it is naive and possibly false to think that the most effective means of improving the situation of the worst-off is to engage in a continuing process of income transfers from rich to poor; other strategies—such as a system of wealth taxation combined with aggressive measures to ensure equality of educational and economic opportunity—may be more successful. (This, of course, is Rawls's own view about economic inequality in liberal societies, expressed in his endorsement of Meade's conception of "property-owning democracy.")³⁰ Yet the complexity of the policies required to carry out a principle of distributive justice, as well as the potential for error arising from naive beliefs about the prospects of

29. Rawls relies on David Landes, *The Wealth and Poverty of Nations* (New York: Norton, 1998), citing it in *LP*, p. 117, n. 51. Landes is influenced particularly by the economic history of Europe and the contrasting experience of the oil states. But case studies of contemporary developing societies are less sanguine about the relative unimportance of a country's international trade and financial relations. See, e.g., Stephen Haggard and Sylvia Maxfield, "The Political Economy of Financial Internationalization in the Developing World," in *Internationalization and Domestic Politics*, ed. Robert O. Keohane and Helen V. Milner (Cambridge: Cambridge University Press, 1996), pp. 209–39.

30. Rawls, *A Theory of Justice*, sec. 43. Rawls cites J. E. Meade, *Efficiency, Equality and the Ownership of Property* (London: Allen & Unwin, 1964), pp. 11–26.

simple redistribution, do not argue against the principle itself. The question goes, instead, to matters of implementation. The same seems true in the international case.

A second argument for the duty of assistance is that a cosmopolitan distributive principle would unfairly burden societies which have been responsible in the conduct of their economic affairs and benefit those which have not. Rawls proposes a thought experiment. Imagine two liberal or decent societies at the same level of wealth and of similar size. Society A decides to industrialize and to increase the rate of saving; society B does not. Some decades later, society A is twice as wealthy as society B. Rawls believes that any cosmopolitan principle would require a flow of resources from A to B, a consequence he regards as unacceptable. He does not say why, but presumably the reason is that just or decent societies have political features in virtue of which they can legitimately be treated as responsible agents and held accountable for the results of their own decisions. On this assumption, to require society A to bear the costs of society B's choice not to industrialize and save would be unfair to society A (p. 117).³¹

As described, the case is highly idealized. Both societies are assumed to satisfy criteria of justice or decency throughout the period in question. Related to this, of course, we must assume that, as a consequence of their institutions being just or decent, the members of both societies can be treated as if they or their representatives understand the likely consequences of the economic policy choices of their governments at least well enough to express their disagreement if they would prefer different policies. It is a further assumption, also unstated, that both societies are reasonably autonomous politically, in that their decisions about economic policy are not prejudiced by such factors as excessive dependence on international capital markets or a need to conform to policy conditions laid down by international or foreign development institutions.

Needless to say, these are demanding conditions—sufficiently so that we should beware of any temptation to apply whatever intuitions the case evokes to the circumstances of contemporary poor societies. With this, I suspect Rawls would agree. So let us suppose, *arguendo*, that there could be a case meeting all of these ideal conditions. Does the possibility of such a case argue against a global principle of distributive justice?

I believe it does not. Most likely, one's initial judgment about the case depends on an analogy with individual morality, where we typically believe that society has no obligation to hold people harmless from the adverse consequences of their own informed, uncoerced choices. Society's responsibility is to maintain just background conditions in which

31. Compare James M. Buchanan, "A Two-Country Parable," in *Justice in Immigration*, ed. Warren F. Schwartz (Cambridge: Cambridge University Press, 1995), pp. 63–66.

individuals can decide how to conduct their lives, and individuals are responsible for living with the results.

But the implicit analogy is faulty. In the individual case, any disadvantage accrues to the same person whose choices brought it about. This cannot be said in the case of a society, where, as a result of changes in population over the long periods of time during which economic and social policies have effect, many or even most of those to whom disadvantages accrue would be more accurately described as the innocent victims of the past choices of others rather than as the authors of those choices themselves. It seems no less unfair to impose the costs of the bad choices of previous generations on successor members of their own societies than on outsiders—especially outsiders who, by hypothesis, enjoy a higher material standard (once again, through no fault of their own) than the unfortunate members of the society which was imprudently governed.

There may, of course, be other reasons to require societies to bear the costs of choices made by earlier generations. For example, it may be desirable to have incentives for societies to encourage savings and investment, and maintaining these incentives may require donor agencies to deny or restrict aid. But this is a case for instrumental judgment, not a matter of justice, and the possibility that access to aid might be restricted for these reasons does not embarrass the case for an international distributive principle.

A third argument for the duty of assistance is that our main reasons for concern about distributive inequality in domestic society apply in a different way in the international case. We seek to reduce distributive inequality within domestic society for a variety of reasons. Rawls mentions three: to relieve absolute poverty so that people can live decent lives, to mitigate the stigmatization and sense of inferiority often associated with differences in wealth, and to secure fair conditions for democratic politics. He argues that an international society following the Law of Peoples, including the duty of assistance, would satisfy the international analogs of these concerns. Thus, the concern to relieve poverty would be satisfied by ensuring that each society can become just or decent (and therefore able to satisfy its people's basic needs); the concern to mitigate stigmatization, by enabling each people to decide for itself "the significance and importance of the wealth of its own society;" and the concern for fair political conditions, by guaranteeing the independence of each society "and its equality in relation to others" (pp. 114–15). No further measures to reduce or to regulate international inequality would be necessary.

To some extent, this argument depends on controversial details of Rawls's construction of the international original position. Suppose we ask, for example, why the parties in the international original position would settle for a principle guaranteeing an absolute minimum while

imposing no restrictions on the distribution above it, whereas their opposite numbers in the domestic case impose some degree of distributive constraint in order to bring the position of the worst-off group above the absolute minimum level.³² The answer is that the parties to the international original position are motivated by a concern to advance the (corporate) interest of their people in obtaining material conditions adequate for just or decent institutions, and for this purpose attaining a material minimum is essential, whereas (on Rawls's assumptions) neither increments above the minimum nor differences in average wealth among societies in which the minimum is satisfied are of much importance. One would reach a different result if the international original position were constructed differently—for example, by allowing the parties to believe that their social institutions would do better (be more stable, enable their people to live more fulfilling lives, etc.) with higher average levels of wealth, or by replacing representatives of societies with representatives of individuals whose concern is to advance their various conceptions of the good.³³ In other words, the argument about the moral significance of international distributive inequality depends not only on an analysis of the range of reasons for concern about inequality at the domestic level but also on adoption of a distinctive point of view for assessing the significance of these reasons as they might arise in the international realm.

Even if we accept Rawls's construction of the international original position, the differences between the domestic and international contexts may not be as sharp as his analysis suggests. For example, it is not obvious that the stigma of relative deprivation is less insidious when the range of reference extends beyond a society's own boundaries.³⁴ And it does not seem more likely in international than in domestic society that actors with significantly different distributive shares would enjoy fairly valued political liberties in a political structure that offers them no more than the formal equality of symmetrical voting rules. (Why, for example,

32. For example, in the version of the theory presented in Rawls, *A Theory of Justice*, the parties opt to maximize the position of the worst-off group.

33. The arguments in favor of an egalitarian international principle, in the framework of an international original position, are explored in illuminating detail in Thomas W. Pogge, "An Egalitarian Law of Peoples," *Philosophy & Public Affairs* 23 (1994): 195–224.

34. Rawls writes that feelings of inferiority based on cross-border comparisons "are unjustified . . . when the duty of assistance is fulfilled, and each people has its own liberal or decent government," for then each people has the capacity to adjust the amount and distribution of its own wealth (*LP*, p. 114 [the order of the phrases has been reversed]). However, for reasons discussed earlier, I believe it is unrealistic to think that societies have autonomous control over the amount and distribution of their wealth. Resource endowments, patterns of international investment, and the degree of reliance on international trade are independently significant. If this is right, then feelings of inferiority that might arise in a relatively poorer society with decent institutions cannot simply be dismissed as unjustified.

assume that rich and poor countries would exercise equal actual influence in international financial institutions simply because they cast equal votes?) These reflections suggest that our reasons for concern about domestic distributive inequality may apply with greater force in the international case than it first appears.

I have reviewed three of Rawls's arguments for the duty of assistance in preference to a cosmopolitan principle of international distributive justice and explained why these arguments seem to me unpersuasive. Of course, it does not follow that a cosmopolitan principle should be accepted—the affirmative case is still to be made. However, I believe these reflections illustrate the instability of a theory resting on a sharp distinction between the domestic and the international realms. As in the case of human rights, the attempt to justify international distributive requirements in terms of the interests of peoples rather than persons seems to leave ethically significant considerations out of account and to encourage distortions in our perception of the character of international society.

These comments pertain mainly to the foundations of international political theory, not to its implications for politics today. In that regard, the most important observation is that the Law of Peoples, with its duty of assistance, imposes a significant international distributive requirement in the nonideal world—though it may require less than the most plausible cosmopolitan theory, it almost certainly requires substantially more of the wealthy countries than they do now or are likely to do in the near future. In this sense, the theory is highly progressive. As a practical matter, the major remaining question is how wealthy states that were motivated to do so might best act on the duty of assistance. Rawls's observations about this question are noteworthy—especially the emphasis on measures to improve the legal and economic status of women in burdened societies and their potential to relieve population pressures and improve standards of living (pp. 106–12). About these matters, he is surely correct.

CONCLUSION

Rawls frames the difference between the Law of Peoples and cosmopolitan justice with great clarity in a very simple case. Imagine two societies, each satisfying principles of liberal justice, in a world that complies fully with the Law of Peoples. The worst-off representative person in the first society is worse off in absolute terms than the worst-off person in the second society. According to the Law of Peoples, once we are assured that each society's institutions are just, there is nothing further to be said. According to the cosmopolitan view (or anyway a plausible interpretation of it), the residual inequality is an injustice, or at least might be so under certain conditions—for example, if it were produced by aspects of the global basic structure and if there were a feasible strategy available

to improve the position of the globally worse-off person—and therefore requires remediation. This difference reflects the difference in the ultimate concerns of the Law of Peoples and of the cosmopolitan view. Rawls observes, “The final political end of society,” according to the Law of Peoples, “is to become fully just and stable for the right reasons . . . [whereas] the ultimate concern of the cosmopolitan view is the well-being of individuals” (p. 119).³⁵

This seems to me exactly right. The question is which orientation to the fundamental aims of political life one should embrace—that which regards the flourishing of domestic society as the ultimate political value or that which judges the importance of any such accomplishment by its consequences for individuals. There is no simple way to make this choice: it requires the patient construction and critical assessment of alternative ideal models of global political life. Thus, although I have expressed doubts about the foundations of Rawls's view and two of its normative dimensions, the force of these doubts is not clear. For we do not yet have a cosmopolitan theory, worked out in similar detail to the Law of Peoples, to which it can be compared. Among other things, the Law of Peoples constitutes a challenge to cosmopolitan theorists to produce such a view.

This is no mere abstract challenge for, in describing the motivation of the Law of Peoples, Rawls has also described the most difficult dilemma facing cosmopolitan theorists. Recall that the Law of Peoples takes it for granted that some degree of diversity in conceptions of the social good is a permanent fact of international life. In its two-level structure, the Law of Peoples capitalizes on this fact. But it is not clear that a cosmopolitan theory can accommodate to it at all.³⁶ Cosmopolitan theories are committed to justifying and assessing social arrangements by their consequences for individuals. They are also presumably committed to some conception of toleration among individuals in society, a conception which, given the structure of cosmopolitanism, must somehow extend to the international realm. Now there is no general reason to believe that these two commitments will never conflict, and when they do, cosmopolitanism must make a choice: either it can modify the commitment to an individualistic doctrine of political justification, or it can limit the international reach of the principle of toleration. How a cosmopolitan theory resolves this dilemma—as somehow it must—will have much to do with the plausibility of the theory in the comparison with the Law of Peoples. To have made this challenge unavoidable, and to have framed it so clearly, is one of the main achievements of Rawls's work.

The Law of Peoples is a different and larger kind of achievement as well. In this monograph, Rawls evokes a vivid and appealing ideal of

35. The illustrative case is described in *LP* on p. 120.

36. I am grateful to Joshua Cohen for emphasizing this to me.

international life that appears to be consistent with the facts of human nature and social life as we understand them and whose attainment would be unambiguously desirable. In this sense, it is indeed a “realistic utopia”—a conception of the social world that “extends what are ordinarily thought of as the limits of practical political possibility” (p. 6). The significance of this achievement can only be understood against the background of the skeptical tradition in international thought with its denial that the actors in international politics would or could be motivated in their foreign policies by considerations of principle as opposed to those of self-interest. This is the tradition often, if sometimes inaccurately, associated with Thucydides and Machiavelli. Rawls stands with Kant in a different tradition, and the argument of *The Law of Peoples* is also an argument against the skepticism of the self-designated realists. The argument proceeds, not by exhibiting the philosophical errors of the skeptics, but by bringing forward a substantive vision and showing why this vision is both attainable and worthy of our support.

Rawls recognizes, of course, that although realistic utopia might exist, we have no assurance that it will exist. Yet his position is not that the Law of Peoples represents a merely theoretical possibility: it is rather a possibility “that connects with the deep tendencies and inclinations of the social world” (p. 128). This, he believes, should be enough to reconcile us to our imperfect social circumstances: “By showing how the social world may realize the features of a realistic utopia, political philosophy provides a long-term goal of political endeavor, and in working toward it gives meaning to what we can do today” (p. 128).

No doubt there will be disagreement about the political aspect of this view—for example, about the likelihood and characteristics of cooperation among the liberal democracies and about the strategy and tactics of their efforts (and those of international organizations) to promote respect for human rights elsewhere. These matters lie at the boundary between political philosophy and the policy disciplines, and there is no question that the comparative advantage lies with the latter. But this kind of disagreement is hardly to be regretted; indeed, it would be one more achievement of *The Law of Peoples* if it were to stimulate constructive dispute among students and practitioners of foreign policy about the means of accomplishing the theory’s admirable aims.