

Why Rawls is Not a Cosmopolitan Egalitarian

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in *Rawls's Law of Peoples: A Realistic Utopia?*, ed. R. Martin and D. Reidy

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In John Rawls's *The Law of Peoples* we find unfamiliar concepts, surprising pronouncements, and what appear from a familiar Rawlsian perspective to be elementary errors in reasoning.¹ Even Rawls's most sensitive and sympathetic interpreters have registered unusually deep misgivings about the book.² Most perplexing of all is the general character of the view that Rawls sets out to justify. For in this book Rawls, the twentieth century's leading liberal egalitarian, advances a theory which shows no direct concern for individuals and requires no narrowing of global material inequality.

I believe that *The Law of Peoples* does present a coherent and powerful argument, if not one beyond criticism. Two points are crucial for understanding the book's strengths and weaknesses. The first is that Rawls in this work is concerned more with the legitimacy of global coercion than he is with the arbitrariness of the fates of citizens of different countries. This connects *The Law of Peoples* much more closely to *Political Liberalism* than to *A Theory of Justice*. The second relates to Rawls's unusual conception of the nature and interests of peoples. A people in Rawls's view is startlingly indifferent to its own material prosperity, and this fact gives Rawls's law of peoples much of its distinctive cast.

This paper develops these themes by contrasting Rawls's law of peoples with the cosmopolitan theories of Charles Beitz and Thomas Pogge. We begin with a brief review of Rawls's theory of justice for a single country (justice as fairness) and the cosmopolitan theories that developed out of it. I then summarize Rawls's law of peoples and some of his puzzling statements about its justification. The bulk of the paper explains why Rawls's fundamental norm of legitimacy rules out cosmopolitanism, and how Rawls's conception of a people led him to reject international egalitarianism. In the conclusion I suggest that Rawls's morality of states may be more plausible than is commonly supposed, especially when contrasted to rival cosmopolitan theories.

Justice as Fairness

The subject of justice as fairness is the basic structure of a modern democratic nation.³ Rawls focuses on the basic structure because its institutions have such pervasive and unchosen effects on the life chances of the people who live within them. The problem of the justice of the basic structure arises because while social cooperation within its institutions produces great advantages, citizens are not indifferent to how the benefits and burdens of this cooperation (rights, opportunities, recognition, income and wealth) will be divided up.

Rawls's solution to the problem of the justice of the domestic basic structure can be stated in one sentence: a just society will be a fair scheme of cooperation among citizens regarded as free and equal—where “fair,” “free,” and “equal” are understood in a rather specific way. Social cooperation is to be fair in that all who do their part are to benefit according to publicly agreed standards. Citizens are free and equal in that each is an equally valid source of claims on social institutions regardless of her religious

affiliation, philosophical commitments, and personal preferences. To these characterizations of society and citizens Rawls also adds what could be called the “strong egalitarian proviso”: the distribution of benefits and burdens should not be based at the deepest level on citizens’ race, gender, class of origin, or endowment of natural talents. As Rawls famously put it, in justice as fairness the distribution of social goods will not be grounded in factors “arbitrary from a moral point of view.”⁴

In Rawls’s original position thought experiment, representatives of free and equal citizens are placed in fair conditions for choosing the fundamental rules of social cooperation. Rawls holds that two principles of justice would be selected in this original position. The first principle guarantees citizens equal basic rights and liberties. The second principle requires that all have equal opportunities for obtaining positions of power, and requires that any inequalities of income and wealth work to the greatest benefit of the worst-off members of society. The second part of the second principle is known as the difference principle.

Rawls and the Cosmopolitan Egalitarians

Justice as fairness is a theory for the institutions of one self-contained national society. In *A Theory of Justice* Rawls discussed only briefly how this theory might be extended to the global order.⁵ For a number of Rawlsians, however, the nature of the extension was clear. Global justice should be just as liberal, and just as egalitarian, as justice as fairness says domestic justice should be.

Two of the most astute Rawlsian theorists, Charles Beitz and Thomas Pogge, argued as follows.⁶ There is an international basic structure just as there is a domestic basic structure, with political, economic, and cultural institutions linking citizens of

different countries together in a worldwide system of social cooperation. Moreover this global basic structure has deep and unchosen effects on the life chances of the people within it.⁷ The problem of global justice is thus the same, *mutatis mutandis*, as the problem of domestic justice. What is therefore needed is a theory to specify what counts as a fair distribution of the benefits and burdens of global cooperation.

Beitz and Pogge proposed a direct cosmopolitan transposition of domestic justice as fairness, replacing the citizens of a liberal society with human beings regarded as “citizens of the world.” They portrayed a just global society as a fair system of cooperation among global citizens, all of whom are regarded as free and equal to each other. Indeed they described these global citizens as “strongly” equal to each other. The fact that one citizen is born in an affluent and abundant country while another is born in an impoverished and barren land is just as arbitrary from a moral point of view as are the facts that fellow countrymen are born to different genders, races and classes. Their cosmopolitan theories of justice aimed to justify a distributive principle that would overcome this arbitrariness.

The cosmopolitans proposed a global original position in which each “world citizen” has a representative, just as in the domestic original position every domestic citizen has a representative. Such a global original position will endorse, they claimed, a globalized difference principle: inequalities of income and wealth should be allowed only if these inequalities work to the greatest benefit of the world’s worst-off individuals. Beitz in particular championed such an international difference principle, which would—given the vast inequalities in global income and wealth—require significant restructuring of the world’s economic institutions.⁸

When Rawls finally published his own theory of global institutions, the shape of the theory greatly disappointed the cosmopolitans. Contrary to the cosmopolitan interpretation, Rawls stipulated that the parties in the global original position should not be thought to represent individual human beings. Rather, each party in the global original position should represent an entire domestic society—or a “people” as Rawls prefers to say.⁹ Worse still, the primary principles that Rawls claimed would be agreed upon in such a global original position bore little resemblance to the principles of justice as fairness. They instead looked very much like “familiar and largely traditional principles... from the history and usages of international law and practice.”¹⁰ Rawls’s conservatism in the international realm was most unwelcome to those who had tried to develop justice as fairness into an international egalitarian theory. As Pogge remarked in discouragement on an early version of Rawls’s theory of global relations, “I am at a loss to explain Rawls’s quick endorsement of a bygone status quo.”¹¹

The Puzzle of Rawls’s Rejection of Global Egalitarianism

Rawls’s vision of a well-ordered society of peoples is, in essence, that each people should be just by its own lights within the bare constraints of political legitimacy, and that peoples should be good neighbors to each other.

Domestically, this means that each government must respect basic human rights, apply its own laws impartially, and be responsive to the grievances of its citizens. Beyond these minimal constraints, each national society is left to work out the justice of its domestic institutions as it sees fit. Internationally, Rawls’s principles state that peoples have a right to self-defense; that peoples should keep their treaties; and that peoples should fund a world bank and ensure that trade between them is fair. Rawls does add to

these international principles a moderate principle of economic distribution, which he calls the “principle of assistance.” Under this principle wealthier peoples have a duty to assist those “burdened” societies which, because of natural disaster or an impoverished political culture, are not able to sustain minimal conditions of legitimate government. But Rawls includes no principles that require a narrowing of inequalities between richer and poorer countries beyond what the principle of assistance requires.¹² Once a society has become self-sustaining and self-guiding, any duty to transfer resources to it ceases. There is no requirement for permanently redistributive, much less egalitarian, international institutions.

Rawls’s reasons for resisting more egalitarian proposals initially sound very odd indeed. Rawls first criticizes Beitz’s global difference principle for not having a “target” state after which its demands “cut off”—as Rawls says, Beitz’s global difference principle is meant to apply “continuously and without end.”¹³ Yet this seems a peculiar objection for Rawls to make to a principle of distributive justice. If Beitz’s globalized difference principle is flawed because it lacks a target and a cutoff, then one would think that Rawls’s own domestic difference principle would be flawed for that same reason, whatever that reason turns out to be.

Rawls also ventures that redistribution among peoples would be unacceptable because it would not respect peoples’ political autonomy.¹⁴ He asks us to imagine two societies, initially equally well-off. The first society decides to industrialize and increase its real rate of savings; the second society prefers a more pastoral and leisurely existence. After a few decades, the first society is twice as well-off as the second. It would be

inappropriate, Rawls says, to tax the first society and redistribute the proceeds to the second—for this would not respect each society’s right to self-determination.

The strangeness of Rawls making this reply can be shown by conjuring up an old debate in which Nozick attempts to use an analogous example against the principles of justice as fairness. Imagine two citizens of the same society, Nozick might say, initially equally well off. The first citizen works hard at the factory and saves, the second has a leisurely life as a shepherd. After a few years, the first citizen is twice as well-off as the second. Would it not impinge on the industrious citizen’s “self-determination” to tax his earnings to give to the shepherd?

What Rawls should say in response to this sort of example in the domestic case is by now familiar. He should say that it is acceptable for differential effort and savings to bring differential rewards, but only when background institutions like taxes keep the overall distribution from reflecting factors arbitrary from a moral point of view. Since this would obviously be Rawls’s response within justice as fairness, it is hard to see how he could have a different view internationally. Yes an industrializing and abstemious society may be allowed to become better off—but only if background institutions assure that any inequalities work to the advantage of all.

In opposing the cosmopolitan egalitarian interpretation Rawls faces the general problem of identifying the asymmetry between the international order where he rejects an egalitarian distribution and the domestic order where he requires one. Until he identifies such an asymmetry, any objection he makes to international egalitarianism will simply boomerang as an objection to justice as fairness. How can Rawls resist egalitarianism at the global level?

One thought is that Rawls might point to the decent but deeply inegalitarian cultures of the world, with worries about foisting alien Western ideas of equality on unwilling foreigners. But Rawls does not in fact pursue this strategy. Indeed he says that he would reject international egalitarian principles *even for a world populated only by liberal peoples all of whom accepted justice as fairness*.¹⁵ So the existence of illiberal peoples is not relevant to our puzzle.

Alternatively, Rawls might have resisted international egalitarianism by claiming that—in contrast to the domestic case—the affinity among citizens of different countries could never grow to be strong enough for citizens of wealthier countries to make continuous and significant sacrifice of potential income for the sake of the poor of the world. Although he gestures toward this sort of skepticism in a footnote, Rawls appears to think that he cannot rest too much weight on it.¹⁶ To make plausible his own duty of assistance he must maintain that, “The relatively narrow circle of mutually caring peoples in the world today may expand over time and must never be viewed as fixed.”¹⁷ This leaves him in a weak position to assert that an extension of fellow feeling sufficient to sustain a globalized difference principle must be impossible.

Finally, Rawls might have voiced misgivings that global institutions could be constructed that are capable of administering any egalitarian principle. He does endorse Kant’s thesis that a centralized global government with legal powers like those of domestic governments would be either despotic or riven by unmanageable civil strife.¹⁸ Yet Rawls does not cite the impossibility of stable global government as a reason to resist global egalitarianism. Nor do the egalitarian proposals of Beitz and Pogge call for a

centralized world government, but rather for dispersed and overlapping agencies that together realize the egalitarian ideal.¹⁹

So far we have made little progress in clarifying Rawls's motives. Yet Rawls's final comment on the differences between his own and the cosmopolitan approach to global justice provides us with a clue. Cosmopolitan egalitarian views are concerned with *the well-being of individuals*, Rawls says, while his own law of peoples is concerned with *the justice of societies*.²⁰ To understand this important remark we must look more closely at why Rawls populates his global original position with representatives of peoples rather than representatives of individuals. And to understand the construction of Rawls's global original position we must explore the Rawlsian architectonic further, especially its idea of legitimacy.

Rawls's Fundamental Norm of Legitimacy

Let us put to one side for the moment justice as fairness, which was Rawls's project in the 1970's and early 1980's. In the late 1980's and 1990's, Rawls worked out a very different kind of theory: a theory of political legitimacy.²¹ A theory of legitimacy defines the minimal criteria for the acceptable use of coercive political power. Legitimacy is a more permissive standard than justice: institutions may be legitimate without being wholly just, and no doubt many nations' institutions are exactly this way.²² Yet the laws of a legitimate basic structure are sufficiently just that it is justifiable to enforce them. Moreover, the laws of a legitimate basic structure are sufficiently just that foreigners may not permissibly intervene to attempt to change these laws. Legitimacy is in this way a primitive concept of normative recognition both for those within and for those outside a basic structure. Citizens who recognize laws as legitimate will see these

laws as appropriately rather than as merely coercively enforced; and foreigners who recognize a government as legitimate will see this government as a rightful authority instead of as merely a powerful gang issuing threats.

The key to interpreting Rawls's later work, and for understanding how it coheres with his earlier writing, lies in appreciating how deeply Rawls came to be concerned with the legitimate use of coercive power. Indeed Rawls's later work only makes sense when it is interpreted in light of a fundamental norm of legitimacy: a norm which sets the minimum for the use of coercive political power anywhere. This fundamental norm of legitimacy is a generalization of the liberal principle of legitimacy in *Political Liberalism*. It states that the exercise of coercive political power over persons is legitimate only when this exercise of power is in accordance with a basic structure that those persons can accept, regarding those persons as either decent or reasonable, as appropriate.²³ This fundamental norm underlies Rawls's accounts of the normative minima for all three of the basic structures that his later work discusses: the basic structure of a liberal society, the basic structure of a decent, non-liberal society, and the global basic structure that regulates relations among decent and liberal peoples. The remainder of this section describes how this fundamental norm of legitimacy explains the criteria of legitimacy that Rawls sets for national institutions, both decent and liberal. The next section takes up the legitimacy of the global basic structure.

In *The Law of Peoples* Rawls presents four general conditions that national basic structures—whether liberal or non-liberal—must meet in order to be legitimate. Such basic structures must recognize basic human rights; they must impose *bona fide* legal duties and obligations on all persons within the territory; they must be conscientiously

administered, and they must give citizens a meaningful role in political discussions. Any national basic structure that meets these four conditions will be acceptable to all decent persons. Meeting these four conditions is also necessary (though not sufficient) for a national basic structure to be acceptable to all reasonable (liberal) persons.²⁴ These four conditions thus set universal criteria of legitimacy within the fundamental norm of legitimacy.

Beyond these universal criteria—and every society will have a constitution whose essential provisions go beyond them—legitimate coercion must accord with principles that are acceptable to the citizens of that particular society. In a decent traditional or hierarchical society the problem of finding such generally acceptable principles may be less acute, since decent citizens within such a society may, for example, adhere to the same religion. But the problem of finding such generally acceptable principles is more serious for modern liberal societies, in which reasonable citizens hold a wide variety of views and allegiances.

The problem of finding principles that can stably order the legitimate institutions of a liberal society is addressed in *Political Liberalism*.²⁵ Rawls fundamental norm of legitimacy states that the basic structure of a modern liberal society will be legitimate only if its design is acceptable to all reasonable citizens. Within any pluralistic society it is unreasonable to expect all citizens to accept coercive institutions based on any subgroup's particular views. This is clearest in the religious case: Protestants can reasonably reject the basic structure of their society being based on the Catholic tenets of their neighbors, just as Catholic citizens can reasonably reject the basic structure of their society being based on Protestantism. Indeed no citizen's comprehensive view of the

good will be reasonably acceptable to all citizens of a liberal society, and so no citizen's comprehensive view may be used as the basis for legitimate coercion within such a society.²⁶

Given that no comprehensive doctrine can provide the content of a liberal society's basic structure, Rawls believes that there remains only one other source of generally acceptable ideas for ordering its institutions. This is what he calls the society's *public political culture*. A society's public political culture comprises its political institutions and the public traditions of their interpretation, as well as historic texts and documents that have become part of common knowledge.²⁷ All citizens can reasonably accept coercion based on ideas in the society's public political culture, Rawls writes, because the public culture is "a shared fund of implicitly recognized basic ideas" that are likely to be "congenial to [citizens'] most firmly held convictions."²⁸ In other words, all citizens can accept ideas drawn from the public political culture as a reasonable basis for their common institutions because—in view of the pluralism of liberal societies—the public political culture is the only fund of ideas that citizens can reasonably regard as a focal point for all.

In a liberal democracy, the public political culture will contain at the deepest level the abstract idea that citizens, who are seen as free and equal, ought to relate fairly to each other within a scheme of social cooperation. Rawls believes that these abstract ideas of fairness, freedom, and equality impose three conditions of legitimacy for a liberal basic structure that go beyond the four general conditions of legitimacy stated above. These three conditions state that a legitimate basic structure will ascribe to all citizens a set of familiar basic rights and liberties, will assign a special priority to these rights and

liberties, and will assure all citizens adequate means for taking advantage of these rights and liberties.²⁹ A basic structure that meets these three conditions will be acceptable to all reasonable citizens; and so the problem of legitimacy for the institutions of a liberal society is resolved when these three conditions are met.

Beyond this threshold of liberal legitimacy each liberal society may also strive to achieve a more extensive scheme of *justice*, to give fuller expression to the basic ideas found in its particular public political culture. Rawls sees his own justice as fairness as one proposal for how to order a liberal society's institutions justly—a proposal based on specific interpretations of the abstract ideas of “fair,” “free,” and “equal,” as well as on the strong egalitarian proviso. Justice as fairness is thus presented in the later work as one of a family of reasonable views of how a legitimate liberal society can be made just.

Why Rawls is not a Cosmopolitan

Returning to the global level, we can now see how Rawls's fundamental norm of legitimacy explains his populating his global original position with peoples instead of individuals. A global original position will select principles for institutions of the global basic structure. Since these global institutions will be coercive, they will also have to meet the fundamental standard of legitimacy. This means that these global institutions will have to be acceptable to all those individuals who will be coerced by them. Yet the plurality of comprehensive doctrines is even greater globally than it is within any liberal society.³⁰ So, analogously to the liberal domestic case, Rawls must draw on the *global* public political culture to find ideas that can be acceptable to all. And he must draw on the existing global political culture, as this is the only source of doctrine that can serve as a focal point for all individuals.

This, I believe, is where Rawls turned away from a cosmopolitan original position, which would be constructed from ideas concerning the nature of and relations among individual “citizens of the world.” For the global public political culture is primarily *international*, not interpersonal. The ideas that regulate the institutions of global society are concerned primarily with the nature of nations and their proper relations—not with the nature of persons and their proper relations. This can be seen not only in the structure of the major political and economic institutions such as the United Nations and the World Trade Organization, but also in the laws that regulate global cooperation and competition in nearly all areas (trade, law-enforcement, the environment and so on). Even those documents within the global public political culture which do proclaim the freedom and equality of all individuals, such as the *Universal Declaration of Human Rights*, are almost exclusively concerned to establish limits on how domestic governments may treat individuals within their territories. These documents do not set out any substantive conception of how “citizens of the world” should relate directly to one another.

There simply is no robust global public political culture which emphasizes that citizens of different countries ought to relate fairly to one another as free and equal within a single scheme of social cooperation. Much less is there in this global public culture the strongly egalitarian ideal that the distribution of global resources and wealth among individuals should not be based on characteristics of individuals that are “arbitrary from a moral point of view.” There is no conceptual focal point comparable, that is, to the ideas within the public political culture of a liberal democracy that individuals ought to relate fairly to one another as free and equal, regardless of their more particular characteristics.

It is peoples, not individuals, that international political institutions regard as free and equal, and this is why Rawls makes peoples the subject of his global political theory.

Rawls doubtless believes as much as anyone that all humans should be regarded as free and equal. Yet he believes more deeply that humans should be coerced only according to a self-image that is acceptable to them. This far, Rawlsian politics is identity politics. Since “global citizens” cannot be presumed to view themselves as free and equal individuals who should relate fairly to each other across national boundaries, we cannot legitimately build coercive social institutions that assume that they do.³¹ Indeed such coercive institutions would be illegitimate even in a world populated only by liberal peoples all of whom accepted justice as fairness, so long as in that world (as in our world) the public political culture does not emphasize that the members of different peoples ought to relate fairly to one other. A cosmopolitan basic structure could not meet the fundamental requirement of legitimacy.

The global public political culture does, however, emphasize that *peoples* seen as free and equal should relate fairly to each other. Using these fundamental ideas of the freedom, equality and fairness, Rawls is able to construct what he believes to be an original position argument that can meet the demands of legitimacy. Only this kind of original position, constructed from ideas publicly available to all, will produce principles for the global order that are acceptable to all.

Because Rawls frames his global political theory around peoples instead of individuals, he is able to meet the requirements of legitimacy as he understands them. This focus on people produces a thoroughly statist version of liberal internationalism. The thoroughgoingness of Rawls’s statism gives his theory a high degree of internal

coherence, but this coherence comes at a price. Because Rawls's global theory works exclusively in terms of peoples, it cannot show any direct concern for individuals. This is clearest in Rawls's account of human rights and humanitarian intervention. When a Rawlsian people intervenes in another people's affairs, to stop human rights abuses or to provide food aid, the intervention is *not* for the sake of the well-being of the oppressed or the starving individuals in the other country.³² Rather, the intervener aims to bring the "outlaw" or "burdened" people up to the level of legitimacy, so that it can play its role in the society of peoples. It is as if societies were individuals, with their members being merely the cells of their bodies, and one society intervened to give medical treatment to another to enable it to rejoin the scheme of social cooperation. The fact that the concerns of peoples do not "trickle down" to become concern for individuals gives Rawls's accounts of human rights and humanitarian intervention a bloodless, institutional character.³³

How much of a price this is I leave for the reader to judge.³⁴ But we can now understand much better Rawls's enigmatic comment that while the cosmopolitan views are concerned with the well-being of individuals, his own law of peoples is concerned with the justice (or, better, the legitimacy) of societies. The law of peoples orders the relations among peoples, and therefore leaves the interests of individuals as an indirect and rather attenuated concern.

Why Rawls is not a Global Egalitarian

Understanding Rawls's views on legitimacy makes sense of his focus on peoples instead of individuals. Yet it may now seem even more puzzling why Rawls is not an global egalitarian.

Rawls implies, after all, that the international public political culture already contains the fundamental ideas that *peoples* should be regarded as free and equal, and that *peoples* should relate fairly to each other.³⁵ And these are just the ideas of freedom, equality and fairness that in justice as fairness led to the domestic difference principle. It may or may not be true that the global political culture contains the analogue of what I have called the strong egalitarian proviso—that the distribution of benefits and burdens should not depend on arbitrary features of peoples like their place in the distribution of natural resources. But if this idea is not yet in the global political culture then it might well develop. Since Rawls’s fundamental ideas of the global society of peoples so closely resemble those of the liberal society of citizens, should not Rawls be advocating that economic inequalities between peoples are only permissible if they work to the advantage of the least advantaged peoples? While we have seen why Rawls is not a cosmopolitan, we still have not found the asymmetry between the global and domestic spheres that produces egalitarian principles in one but not the other.³⁶

The asymmetry emerges when we realize how Rawls understands the interests of peoples. As Rawls defines them or discovers them in the relevant public political cultures, peoples and domestic citizens simply have different fundamental interests. Domestic citizens as such want more income and wealth, while peoples as such do not. This is why the distribution of income and wealth is a central problem for citizens, but not for peoples.

Citizens within justice as fairness are assumed to want more income and wealth, not as positional goods but simply as resources with which to pursue their visions of the good life. Peoples within the law of peoples, on the other hand, are not assumed to want

more wealth, because peoples have no vision of the good life. Rawls says that peoples have interests only in maintaining their territorial integrity, securing the safety of their citizens, maintaining their free and just social institutions, and securing their self-respect as peoples.³⁷ He suggests that the idea that peoples must hunger for more territory is left over from the disastrous days of imperial Europe, and the idea that peoples must perpetually pursue greater wealth is merely the ideology of capitalist businessmen.³⁸ The right conception is of a people as satisfied within itself, having no projects to further beyond its own material and moral maintenance. Once internal justice is achieved, Rawls says, it is perfectly possible and perhaps even preferable for a people's real rate of economic growth to stop.³⁹

A people must be concerned with its level of wealth if this is insufficient to support what its members see as a just political order. A people must also be concerned if economic inequality threatens its political status—if it is being menaced by an aggressive neighbor, for instance. But above the goal of internal justice and given no political knock-on effects, a people as such is totally uninterested in its economic status both absolutely and relative to other peoples.

We can now make more sense of Rawls's earlier example of the initially equal societies, one of which decides to industrialize and the other of which remains pastoral. Rawls said of this example that it would be unjust to tax the first to give to the second, and this seemed odd given his repeated emphasis in the domestic realm on the importance of maintaining background justice. But Rawls's reasoning is now clearer. Above the level of political self-sufficiency, there is no need to redistribute to maintain background justice because peoples are indifferent to that which would be redistributed. Should a

people decide to make itself wealthier through greater savings, then this should be of no official concern whatsoever to other peoples. We can now also understand why Rawls complained that Beitz's globalized difference principle lacks a "target" and a "cut-off point." In Rawls's view a global distributive principle for wealth must have a target, because beyond some minimal level peoples' concern for wealth simply cuts off.

So the members of wealthier peoples, wanting to justify themselves to the members of poorer peoples, could in a Rawlsian world say: "Your society meets the minimal standards of legitimacy and stability. It is just by your own lights, or if it is not just it is your task to make it so. We have more wealth than you do, it is true. But that is an indifferent matter from the standpoint of international legitimacy. If you want more wealth, it is up to you and your compatriots to decide to save more, or to borrow more, or to change your population policy, or whatever. We will guarantee your decency and stability but we need take no notice of your prosperity. Prosperity is a matter to which legitimate international institutions need not attend."

The Impossibility of Pure Cosmopolitanism

It is not my aim here to evaluate Rawls's premise that peoples as such are indifferent to greater wealth, or the implications of this premise for his account of international distributive duties.⁴⁰ Rather, I would like to return to the deeper dispute between Rawls and his cosmopolitan critics. The nascent academic sub-discipline known as "global justice" is in the process of solidifying its formulation of the basic questions of the field, and of setting out the canonical list of the theories that might provide answers to these questions. The two alternatives that are coming to be standard in scholarly articles and course reading lists are a Rawlsian statism on the one hand, and the variants on

cosmopolitanism on the other. Between these alternatives, it is safe to say that most scholars currently engaged in debates over global justice favor cosmopolitanism. Most have found Rawls's *The Law of Peoples* opaque, and, where clear, disappointingly conservative. Cosmopolitanism, by contrast, seems a natural and progressive extension of the theories of justice that many have found plausible in the context of the national institutions of a liberal society.

However, I would like to suggest that Rawls's law of peoples is superior to cosmopolitan theory both in terms of its resonance with our considered convictions and also in terms of its completeness. Indeed it seems to me premature to present cosmopolitanism as a competitor to Rawlsian statism in the way that is now becoming widespread. There is a serious question concerning whether we currently have, and indeed whether we can have, a genuine cosmopolitan alternative to Rawls's theory.

Above we saw why Rawls, with his concern for the legitimate use of coercive power, framed his global principles in terms of the relations among nations. There may be those who reject this emphasis on legitimacy, either as a theoretical matter or perhaps as an interpretation of Rawls. However, even these skeptics will recognize that theorizing in terms of peoples confers on Rawls's global theory a distinctive advantage. For theorizing in terms of peoples allows Rawls to present an argument in *The Law of Peoples* that shares the justificatory pattern of his argument in *A Theory of Justice*. Specifically, theorizing in terms of peoples allows Rawls to construct a global original position argument that first confirms and then extends the reader's considered judgments, in just the same ways as his domestic original position argument does.

Rawls's domestic original position first "shows its worth" by affirming a principle which we already to believe to be very important: the first principle of justice, which secures citizens' equal basic rights and liberties. Rawls then uses the same original position to endorse a principle of domestic economic distribution—the difference principle—which orders our intuitions in an area where our judgments were much less confident. The domestic original position first selects what we already firmly believe is the right answer about basic rights and liberties, and then the controversial distributive principle picks up justificatory power from being selected from the same perspective.

Rawls's global original position argument proceeds in the same fashion. This global original position first shows its worth by confirming principles that we already believe to be very important: that peoples have a right to self-defense, that peoples should keep their treaties, that trade among peoples should be fair, and so on. Rawls then uses the same original position to affirm a principle for global economic relief—the duty of assistance—which orders our intuitions in an area where our judgments were much less confident. Both original position arguments work by first reinforcing and then extending our reflective equilibria. Phrasing the global argument in terms of peoples enables Rawls's global original position, like his domestic original position, to "accommodate our firmest convictions and... provide guidance where guidance is needed."⁴¹

By contrast, the cosmopolitans have endorsed highly progressive economic principles (such as the globalized difference principle) without first showing that their approach can confirm the basic rules of international relations that keep our global order even minimally tolerable. Cosmopolitans, that is, have insisted upon radical distributive principles without a prior demonstration that they can validate the most fundamental

norms of global stability. Nor will it be easy for them to overcome this deficiency. For cosmopolitans cannot simply staple the basic principles of international relations into their individualistic theories. Should they wish to redeem norms like “nations have a right to self-defense” and “nations should keep their treaties,” cosmopolitans will have to explain why and in what circumstances the principles of their theories should be framed in terms of nations instead of persons. And this will require a general account of the ideal role of the nation-state in a world that is just to individuals regardless of their nationality—a formidable challenge indeed. Yet until they meet this challenge, cosmopolitans will be advancing a view whose coherence with many of our most important beliefs about the maintenance of the global order will remain at best conjectural.

Indeed we not only currently lack a comprehensive cosmopolitan theory, it can be proved that no pure and complete cosmopolitan theory is possible. There can be, that is, no theory of global affairs all of whose primary principles refer (as the globalized difference principle does) only to individuals without any reference to their national affiliation. The major steps of this proof are as follows:

1. A global state with a stable monopoly of coercive power is either impossible or highly undesirable;
2. In the absence of a global state, territorial powers with armed forces that may permissibly protect territorial borders will be a permanent feature of the global order;

3. If territorial powers may permissibly use armed forces to protect territorial borders, then individuals' basic rights and liberties cannot be fully specified without reference to those individuals' territorial affiliation.
4. No complete set of pure cosmopolitan principles is possible.

Let us examine each of these steps in turn. The first step is uncontroversial. Almost every theorist joins Rawls in accepting Kant's thesis that a global government would be either perpetually unstable or intolerably oppressive. Cosmopolitans have adopted Kant's thesis, and have portrayed the solution to the problems of governance as "dispersing political authority over nested territorial units."⁴² On this model, the sovereignty that is currently concentrated at the level of the state is to be dispersed upwards to international levels, and downwards to local levels, depending on which arrangement will best realize the goals of cosmopolitan freedom and equality for all individuals.

If there is no global state, however, then as stated in the second step there will be territorial borders and armed forces to defend these borders. Territory is, as Rawls says, property; and no system of property can be stable if its rules are not backed up by coercive power. Since there will be no overarching global state to enforce territorial borders, this coercive power must continue to be vested within the territorial units themselves. Whatever other aspects of sovereignty are dispersed away from the national level, the ability of the governments of territories to oppose military incursions must remain. In fact, territorial armed forces would be required even in a world in which a cosmopolitan principle for the just distribution of individual property entitlements were

perfectly realized. Regardless of how property is distributed, there must be some coercive power that resists when a group on one side of a territorial border attempts to seize resources on the other side of the border. In absence of a world state with overarching coercive powers the only powers that can fill this role are territorially-based armed forces. There appears to be no alternative, that is, to the system of rules that Rawls describes in which each territory is allowed to maintain armed forces in order to defend its borders.

Yet if territorial armies are maintained and permissibly used, then individuals' basic rights and liberties cannot be fully specified without reference to those individuals' territorial affiliation. The basic rights and liberties in question are individuals' basic rights to the integrity of the person. If we accept territorial armed forces, then we must continue to accept principles like those of the established laws of war that allow individuals to kill and be killed for the sake of protecting territorial integrity. And such principles will inevitably refer to individuals as affiliated with their territory. For example, such principles will refer to individuals as soldiers of a national army, or as members of the territory's civilian population. There can be no purely cosmopolitan principle that simply reads: "Individuals must not kill other individuals except in self-defense." Principles for individuals must add further qualifications that identify individuals with their territory, for example: "Individuals must not kill other individuals except in self-defense, unless the individual attacked is part of an enemy army"; and "... unless the individual attacked is a member of an enemy civilian population which is unavoidably attacked as part of an attack on an enemy military target."

We do currently accept such statist principles of war without question. Take as an example the first Gulf War. After the Iraqi incursion into Kuwait in 1990, American soldiers traveled to the Middle East and killed many thousands of Iraqi soldiers and civilians. We do not believe that these American individuals violated the basic rights of those Iraqi individuals. The American soldiers were not murderers, even though the Iraqi individuals who were killed were not (before the American invasion) threatening the Americans' lives, or anyone else's lives for that matter.⁴³ The individual Iraqi soldiers who were permissibly killed were permissibly killed because they represented a state with whom America was at war. Similarly, at least some of the Iraqi civilians who were killed as part of the American attack were permissibly killed because they were close to Iraqi military targets. In absence of a global power, principles that allow such killings are ineluctable. The laws of war are in this way incompatible with pure cosmopolitanism. Therefore, no purely cosmopolitan set of principles for the global order is possible.

A cosmopolitan might accept the inevitability of statism in war and peace, but attempt to deny that this taints the purity of his cosmopolitan theory. At the deepest level, this cosmopolitan might say, his theory is only concerned with individuals as such and their bodily integrity. The cosmopolitan might concede that the only feasible schemes of global institutions for securing individuals' bodily integrity require armed territorial powers. But this concession does not, he says, obviate the purity of cosmopolitanism. Cosmopolitanism can still present a list of principles that "at the deepest level" refer to individuals without mentioning their territorial affiliation, such as "individuals have a right to secure access to bodily integrity." Cosmopolitanism can remain pure in principle, because individuals as such are still the ultimate units of the theory.⁴⁴

This response is both disappointing and unsuccessful. First, this response finds the cosmopolitan begrudgingly accepting the same conservative, statist principles that cosmopolitanism had promised to replace. Second, the cosmopolitan who attempts this response is thrown into the awkward theoretical posture of affirming that national boundaries and state membership are morally arbitrary, while also conceding that these are practically indispensable. Third and most importantly, this response cannot in fact rescue the purity of cosmopolitanism. For, as we have seen, individuals are also the ultimate units of theory in Rawls's law of peoples. Rawls's theory is based in his fundamental norm of legitimacy, which takes justifiability to individuals as the measure of the legitimacy of coercive power. So at the deepest level Rawls's theory is also individualistic (as one expects that all theories of global morality are). Yet Rawls's theory is of course not cosmopolitan. Cosmopolitan and statist theories can only be distinguished by whether they refer to states or state affiliation in their primary principles—that is, in their most specific principles that are invariant across contingencies. It is at this level of primary principles that the cosmopolitan cannot scrub statism out. As the proof above shows, no global theory which has primary principles that refer to individuals can avoid classing these individuals according to their territorial affiliations in at least some circumstances.

In Rawlsian terms, contemporary cosmopolitans have tried to fill in their theories from bottom to top. Cosmopolitans early on proposed very progressive principles of economic justice, such as a purely cosmopolitan difference principle and a global resource dividend.⁴⁵ Subsequently theorists such as Moellendorf advocated a purely cosmopolitan principle of fair opportunity,⁴⁶ and Pogge has endorsed something like

cosmopolitan fair value of the political liberties.⁴⁷ The efforts here have been to defend analogs of Rawls's domestic second principle, and an analog of the "bottom half" (fair value) of his domestic first principle. But this upwards progression cannot be completed.⁴⁸ There can be no purely cosmopolitan first principle because the description of the most basic individual right—the right to bodily integrity—must necessarily refer to how individuals are affiliated with sovereign territorial units.⁴⁹

Statist principles such as *jus ad bellum* and *jus in bello* are by far the most highly developed normative doctrines we have for the regulation of global affairs. The neglect by cosmopolitans of the issues of war and peace suggests that cosmopolitans have been underestimating the great importance of global political stability. As Brian Barry once wrote, in the global arena "the problem of establishing a peaceful order eclipses all others."⁵⁰ In a slogan, we might say: "No peace, no justice." That is to say: peace is the first condition of justice; without peace, no progressive economic reform will be possible. And short of a global government, the principles of peace that maintain a stable global order will be inescapably statist.

Conclusion

In *Political Theory and International Relations* Charles Beitz set out three approaches to normative international political theory: realism, cosmopolitan morality, and the morality of states. Since realism is essentially skeptical, he concluded that only the last two are contenders for framing a global political morality.⁵¹ If the argument in the last section of this paper is correct, Beitz's list of contenders is still too long by one. Cosmopolitanism is not only incomplete as it stands, it cannot become a complete theory of a legitimate and stable world order. Rawls's law of peoples, though often surprising

and perhaps in places flawed, represents a liberal statism that is the only realized approach to global political morality that we have.

¹ John Rawls, *The Law of Peoples* [hereafter *LP*] (Cambridge: Harvard University Press, 1999). The current essay updates my article “The Legitimacy of Peoples,” in *Global Politics and Transnational Justice* ed. P. de Greiff and C. Cronin (Cambridge, MA: MIT, 2002), pp. 53-76. There are substantial revisions throughout, and the final section is new.

² See for example the papers by Charles Beitz and Allen Buchanan in the “Symposium on John Rawls’s *The Law of Peoples*” *Ethics* 110.4 (2000); Thomas Pogge, “The Incoherence between Rawls’s Theories of Justice,” *Fordham Law Review* 72 (2004), pp. 1739-1759.

³ John Rawls, *A Theory of Justice* [*TJ*] revised edition (Cambridge: Harvard University Press, 1999); John Rawls, *Justice as Fairness: A Restatement*, [*JF*] ed. Erin Kelly (Cambridge: Harvard University Press, 2001); see also *LP*, 30-32.

⁴ *TJ*, p. 63.

⁵ *TJ*, pp. 331-333.

⁶ Charles Beitz, *Political Theory and International Relations* with a new afterword (Princeton: Princeton University Press, 1999); “Cosmopolitan Ideas and National Sentiment.” *Journal of Philosophy* 80.10 (1983), pp. 591-600. Thomas Pogge, *Realizing Rawls* (Ithaca, NY.: Cornell University Press, 1989); “An Egalitarian Law of Peoples.” *Philosophy and Public Affairs* 23.3 (1994), pp. 193-224. I am here eliding some significant differences between Beitz’s and Pogge’s views.

⁷ To take an example of Pogge’s, “The current distribution in national rates of infant mortality, life expectancy and disease... [can] be accounted for, in large part, by reference to the existing world market system” (*Realizing Rawls*, p. 237).

⁸ Pogge supported a globalized difference principle, but also suggested that a Rawlsian should favor a more modest Global Resource Tax as a step toward an egalitarian world order. Pogge is no longer engaged in the Rawlsian project, although he would welcome support from Rawlsians for his current proposal, a Global Resource Dividend. See chapter 8 of his *World Poverty and Human Rights* (Polity: New York, 2002).

⁹ *LP*, pp. 23-30. Many have objected that Rawls's category of "peoples" is not apt for a global normative theory, because its use ignores the arbitrariness of international boundaries and the existence of important sub-national groups. Although I share some of these misgivings, I will not discuss this issue here.

¹⁰ *LP*, p. 57.

¹¹ *Realizing Rawls*, p. 246.

¹² *LP*, pp. 35-43.

¹³ *LP*, p. 117.

¹⁴ *LP*, pp. 117-18.

¹⁵ *LP*, pp. 119-20.

¹⁶ *LP*, p. 112, footnote 44.

¹⁷ *LP*, p. 113.

¹⁸ *LP*, p. 36.

¹⁹ See, for example, chapter 7 of Pogge, *World Poverty and Human Rights*.

²⁰ *LP*, pp. 119-20.

²¹ Rawls's attention to legitimacy finds its fullest expression in *Political Liberalism [PL]* (New York: Columbia University Press, 1993). See David Estlund, "The Survival of Egalitarian Justice in John Rawls' *Political Liberalism*" *Journal of Political Philosophy* 4.1 (1996), pp. 68-78; Allen Buchanan, "Justice, Legitimacy, and Human Rights," in Victoria Davion and Clark Wolf, eds. *The Idea of a Political Liberalism* (Boston: Rowman and Littlefield: 2000), pp. 73-89; and Burton Dreben, "On Rawls and Political Liberalism," *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge: Cambridge University Press, 2003), pp. 316-46.

²² *PL*, pp. 427-29.

²³ I derive this generalized principle of legitimacy, which applies to both liberal and non-liberal societies, from Rawls's liberal principle of legitimacy (*PL*, p. 137). The phrase "decent or reasonable" reflects Rawls's usage in *The Law of Peoples* that ties "reasonable" to liberal societies and "decent" to legitimate non-liberal societies. I show in more detail how an interpretation of all of Rawls's major writings

can be organized around this general principle of legitimacy in “The Unity of Rawls’s Work,” *Journal of Moral Philosophy* 1.3 (2004), pp. 265-275.

²⁴ *PL*, pp. 16, 109; *LP*, pp. 65-68, 83, 93; *JF*, p. 6.

²⁵ *PL*, pp. xvi-xviii.

²⁶ *PL*, pp. 36-38.

²⁷ *PL*, pp. 8-15.

²⁸ *PL*, p. 8.

²⁹ *PL*, pp. 156-157; *LP*, p. 141.

³⁰ *LP*, p. 18.

³¹ For the view that peoples should be treated as free and equal regardless how they see themselves, see Beitz, “Cosmopolitan Ideas and National Sentiment,” p. 596; Pogge, *Realizing Rawls*, p. 270; and Andreas Føllesdal, “The Standing of Illiberal States, Stability and Toleration in John Rawls’ ‘Law of Peoples’” *Acta Analytica*, 18 (1997), pp. 152-153.

³² A point made well by Pogge in “An Egalitarian Law of Peoples,” pp. 209-210.

³³ For critiques of Rawls on these topics see, for example, Charles Beitz, “Rawls’s Law of Peoples,” *Ethics* 110 (2000), pp. 669-696; Allen Buchanan, “Rawls’s Law of Peoples: Rules for a Vanished Westphalian World,” *Ethics* 110 (2000), pp. 697-721; Pogge, “An Egalitarian Law of Peoples,” and “Rawls on International Justice,” *Philosophical Quarterly* 51 (2001), pp. 246-53; Simon Caney, “Survey Article: Cosmopolitanism and the Law of Peoples,” *Journal of Political Philosophy* 10 (2002), pp. 95-123.

³⁴ In “The Legitimacy of Peoples,” I proposed a supplemental original position argument—here omitted for reasons of space—that aims to give more attention to individuals as members of the global economic order.

³⁵ *LP*, pp. 33-34.

³⁶ See Buchanan, “Rawls’s Law of Peoples: Rules for a Vanished Westphalian World,” p. 708.

³⁷ *LP*, pp. 29, 34.

³⁸ *LP*, pp. 25-28, 107.

³⁹ *LP*, pp. 106-107.

⁴⁰ On this point see Pogge, “An Egalitarian Law of Peoples,” pp. 208-11.

⁴¹ *TJ*, p. 18.

⁴² Pogge, *World Poverty and Human Rights*, p. 169.

⁴³ The Iraqi invasion of Kuwait in August 1990 was very quick, a matter of days. By the time the world fully appreciated what had happened, the Kuwaiti royal family had fled and Iraq was governing Kuwait as its “19th province.” Thus by the time of the US invasion, the Iraqi soldiers in Kuwait—who were in any case not the only Iraqis killed in the war—were posing no exceptional threat to the lives of Kuwaitis (beyond the standard threats of law enforcement). Nor before the US attack were the Iraqi soldiers posing a threat to American lives; certainly before the US attack (and often during it) the Iraqi soldiers were no threat to the American soldiers who later killed them.

⁴⁴ The language of “ultimate units” of a theory is from Pogge, “An Egalitarian Law of Peoples,” p. 48.

⁴⁵ Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1999), pp. 125-76; Pogge, “An Egalitarian Law of Peoples,” and *World Poverty and Human Rights*, pp. 196-215.

⁴⁶ Darrel Moellendorf, *Cosmopolitan Justice* (Boulder: Westview Press, 2002), pp. 78-80.

⁴⁷ Pogge, “An Egalitarian Law of Peoples,” p. 196.

⁴⁸ Thus there can be no pure “cosmopolitan law of persons.” Andrew Kuper, “Rawlsian Global Justice: Beyond the Law of Peoples to a Cosmopolitan Law of Persons” *Political Theory* 28 (2000), pp. 640-674.

⁴⁹ It is important to emphasize that cosmopolitans have said explicitly that they have not attempted to present a unified and comprehensive cosmopolitan theory of the kind I am discussing. See, for example, Beitz, *Political Theory and International Relations*, p. 6; and “Rawls’s Law of Peoples,” p. 695.

⁵⁰ Brian Barry, *Political Argument: A Reissue With a New Introduction* (New York and London: Wheatsheaf Harvester, 1990 [1965]), p. lxxiv.

⁵¹ Beitz, *Political Theory and International Relations*, pp. 181-83. For Beitz’s further thoughts on the tripartite division of theories, see his Afterword to the 1999 edition.
