

Why Rawls's Liberalism is both Cosmopolitan and Nationalist

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Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override ... It does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many (Rawls 1971, 3).

Can a supreme emergency be constituted by a particular threat – by a threat of enslavement or extermination directed against a single nation? Can soldiers and statesmen override the rights of innocent people for the sake of their own political community? I am inclined to answer this question affirmatively, though not without hesitation and worry. What choice do they have? They might sacrifice themselves in order to uphold the moral law, but they cannot sacrifice their countrymen. (Walzer 1977).

Liberalism holds as a general rule that the common good is subordinate to the equal moral rights of the universal individual; in some sense, liberals have no “countrymen,” for they do not distinguish one’s own people from people in general. Yet, recalling the crisis of World War II, John Rawls and Michael Walzer agree: at some point the statesman must defend the country, even at the expense of the rights and lives of individuals.

Churchill really did not exaggerate when he said to the House of Commons on the day France capitulated that, “if we fail [to stand up to Hitler], the whole world including the United States ... will sink into a new Dark Age.” This kind of threat, in sum, justifies invoking *the supreme emergency exemption*, on behalf not only of constitutional democracies, but of all well-ordered societies (Rawls 1999, 99, my emphasis).¹

The rights of innocent people must be overridden, if necessary, to save a particular political community, at least if that community is itself fighting for the principle of freedom. But whose side is the side of justice is just what communities are likely to dispute during war. Which side is the liberal on? Are liberals citizens, patriots, nationalists? Or are liberals citizens of the world, indifferent and impartial to all? What, to the liberal, is a country?

¹ Rawls derives the term “supreme emergency exemption” from Walzer (ibid, 99).

These questions touch on far more policy domains than merely the duties of leadership in wartime; they touch on almost every question politics has to offer. And the philosopher best situated to answer these questions from the perspective of liberalism is the late John Rawls. Rawls is easily the most important and influential English-speaking defender and expositor of liberalism for the turn of our century, and his last original work, *The Law of Peoples* (Rawls 1999), tackles questions of global justice and the proper interpretation of political independence head-on. The present essay clarifies his view of liberal countries by drawing novel connections between *LoP* and his earlier works, especially *A Theory of Justice* (1971), and by contrasting his position with those of his cosmopolitan and communitarian and nationalist critics.²

The puzzle is easy to see: Rawls begins from cosmopolitan premises in *ToJ* and yet defends a kind of liberal nationalism in *LoP*. Rawls “conceives of liberal democratic peoples (and decent peoples) as the *actors* in the Society of Peoples, just as citizens are the actors in domestic society” (Rawls 1999, 23).³ Because he attempts to have it both ways, some have blamed Rawls for defending the nation (Beitz 2000, Buchanan 2000, Pogge 2002), some for failing to do (MacIntyre 2003, Sandel 1982, Tamir 1993).⁴ In the views of both types of critics, Rawls’s premises commit him to a denial of collective moral agency and the drawing of moral distinctions between persons based on national origin. Human beings are free and equal, full stop; therefore, countries or states are at best derivative of global human rights – that simply has to be the liberal view.⁵ In light of these critiques, *LoP* appears to be merely the flawed product of

² I will refer to these works as *LoP* and *ToJ*, respectively, in the text. All unattributed page numbers refer to *LoP*.

³ Rawls uses multiple terms interchangeably to describe the ideal society, and I will follow his lead in this. For Rawls, “a reasonably just constitutional democratic society” can also be “referred to simply as a liberal society” (12).

⁴ Some liberals, finally, might feel that this ambivalent mixture of individualism and republicanism is one of liberalism’s strengths (Kautz 1995). But such liberals generally appeal to a more classical conception of liberalism and are critics of Rawls.

⁵ The debate is well captured in (Brock 2013).

a half-enlightened thinker.⁶ As Nussbaum argues in *Frontiers of Justice* (2006), Rawls's social contract theory takes us very far, but not as far as liberalism is, necessarily, going. One solution to the tension in Rawlsian liberalism is, then, to transcend the nationalism that it still retains. The alternative is to explain how liberals can understand themselves as nationalists after all (Miller 1995). Ironically, however, the two proffered amendments to Rawlsian liberalism exhibit significant overlap, both being devoted to similar aspects of Rawls's inclusive and redistributive political agenda. Whether cosmopolitan or nationalist, some liberals contend, "We are All Cosmopolitans Now" (Blake 2013).⁷

I do not propose to solve Rawls's dilemma or to resolve the tension in his account, which is surely present. Instead, my goal is to interpret how he understood that tension for himself, from the inside. My argument is that *LoP* is no afterthought but rather an essential component of Rawls's theory of liberalism. The debate over global justice, conducted largely by those who adhere to Rawls's liberalism and take its validity for granted, has missed the most important considerations motivating Rawls's position in *LoP*. For Rawls the problem is not primarily whether liberal justice could be extended to the world in thought; rather, the problem is that liberalism *must* be cosmopolitan in order to be at all, for the simple reason that Rawls's liberalism is unthinkable as an ideal state without presuming a peaceful world. *LoP* is not primarily a defense of statism but rather a very robustly cosmopolitan theory, animated by the ambition to imagine a *World beyond Politics* and a *Democracy without Nations* (Manent 2006, 2007), a world that could support the liberal point of view. In my contention, Rawls understood

⁶ Rawls's readers initially took him to offer "a thoroughly statist version of liberal internationalism" (Wenar 2006, 104). Hence many cosmopolitan liberals find Rawls's position on the independence of societies "opaque, and, where clear, disappointingly conservative" (Wenar 2006, 106). But more recently, scholars have begun to realize that "statist" is not quite the word for *LoP*, which denies that states are sovereign. Rather, it is "an attempt to articulate a third approach to global justice, neither statist nor cosmopolitan" (Beitz 2019, 186).

that such a theory was essential to the justification of liberalism in the domestic case. In a nutshell: no *LoP*, no *ToJ*; each presupposes the other. But because Rawls was aware of the utopianism of his thought, and its challenges, and he retained an awareness of the obstacles to it. Rawls remained a nationalist not only despite but in part because he was committed to overcoming nationalism in all of its forms. It is perfectly fair to say that his overall view is confused, and that from the perspective of strict coherence, liberalism fails to account as it should for the nation. In comparison with his disciples, however, Rawls's overall view is rich and nuanced. Rawls sought to square the circle of individual rights and national divisions without building realism into his theory at a foundational level. I argue that this is a fault, but I conclude that a more rigorously cosmopolitan position is unreasonable and even illiberal, overlapping paradoxically with an even more strident liberal nationalism.

I make this argument in two major moves. First, I briefly recall three of Rawls's universalist premises. I then show how *LoP* seeks to justify one of them, namely, the propriety of reasoning about domestic justice as a simplified case, and I criticize this justification as utopian. Second, I reveal how *LoP* brings out the fragility of his remaining premises – equality and lack of personal merit – as well. In response, I conclude that Rawls's theory of liberalism is overly ambitious but that his awareness of the problems with his assumptions is a strength of his, compared with the alternative of attempting to remove or ignore such problems.

Rawls's Cosmopolitan Premises

Three aspects of Rawls's domestic theory of liberalism are implicitly cosmopolitan in their premises. First, Rawls's version of the liberal social contract is peculiarly abstract. Unlike classical social contract doctrines, "we are not to think of the original contract as one to enter a particular society or to set up a particular form of government" (ibid, 10), so we have no

immediate reason to think that any group of persons has gathered to found a particular society.⁸ Indeed, one of Rawls's motivations for thinking that a hypothetical social contract is necessary is that it would rectify the arbitrariness of our membership in particular societies. Because democratic societies are neither communities of meaning nor even voluntary associations of mutual liking but are purely arbitrary constraints on individual fate, "We might think our presence in it, our being here, is not free" (Rawls 2001, 3-5).⁹ ¹⁰ Nevertheless, Rawls clearly thinks that this 'basic structure' is linked to a particular country or democratic state, and he presents this assumption as either a simplified case study or as an assumption that should be taken for granted for inscrutable reasons.

I am concerned with a special case of the problem of justice ... There is no reason to suppose ahead of time that the principles satisfactory for the basic structure hold for all cases ... The conditions for the law of nations may require different principles arrived at in a somewhat different way I shall be satisfied if it is possible to formulate a reasonable conception of justice for the basic structure of society conceived for the time being as a closed system isolated from other societies. The significance of this special case is obvious and needs no explanation (ibid, 7).

As cosmopolitan critics contend, rightly, we require an explanation for such "obvious" assumptions. My first argument is meant to suggest that scholars have been looking in the wrong place to find them. The key to Rawls's thinking is not to be found in rendering his concept of the

⁸ Again, Rawls states, "I assume that the parties do not know the particular circumstances of their own society. That is, they do not know its economic or political situation, or the level of civilization and culture it has been able to achieve" (ibid, 118).

⁹ The rest of the passage states, "Thus I believe that a democratic society is not and cannot be a community, where by a community I mean a body of persons united in affirming the same comprehensive, or partially comprehensive, doctrine ... Again, political society is not, and cannot be, an association. We do not enter it voluntarily. Rather we simply find ourselves in a particular political society at a certain moment of historical time" (ibid). In response, Rawls identifies the subject of justice as the "basic structure of society," a vague concept that includes constitutions and laws but also the economy and ... we know not what else; it is not clear what it includes nor what it does not. "Now admittedly the concept of the basic structure is somewhat vague," Rawls concedes (ibid, 8), and debates have raged over whether it can be clarified without producing consensus (Abizadeh 2007, Hupfer 2019, Nagel 2005).

¹⁰ Cosmopolitans often make the argument that the world today composes a "basic structure" of interaction (either cooperation or coercion or both) within which borders impose arbitrary fates on individuals. Rawls leaves himself open to these challenges because he substitutes "basic structure" for something that human beings in fact choose to create for themselves, such as a constitution.

basic structure precise and legible; the key lies in asking why he took a simplified case to begin with. Is it reasonable to begin with “society conceived for the time being as a closed system isolated from other societies?” I will argue that Rawls must justify this tactic in *LoP*.

Second, Rawls holds persons to be free and equal on the basis of all possessing moral personality, and he designs the abstract social contract to model this assumption. “Obviously the purpose of these conditions is to represent equality between human beings as moral persons, as creatures having a conception of their good and capable of a sense of justice. The basis of equality is taken to be similarity in these two respects” (Rawls 1971, 17). And Rawls takes this similarity to be universal. “I assume that the capacity for a sense of justice is possessed by the overwhelming majority of mankind ... We cannot go far wrong in supposing that the sufficient condition is always satisfied. Even if the capacity were necessary (not merely sufficient), it would be unwise to withhold justice on this ground. The risk to just institutions would be too great” (ibid, 443). But Rawls advises this prejudice in favor of universal sufficiency immediately after suggesting, implicitly, that the scope of possession may actually be narrower. “Thus equal justice is owed to those who have the capacity to take part in and to act in accordance with the public understanding of the initial situation ... We see, then, that the capacity for moral personality is a sufficient condition for being entitled to equal justice” (ibid, 442). Hence, it is ultimately important whether people do or do not have this more specific capacity, to be liberals and to act in accordance with liberal views.

Finally, third, Rawls defends his egalitarian ideal of distributive justice on the grounds that no one deserves reward for personal endowments, virtues or motivations. “No one deserves his greater natural capacity nor merits a more favorable starting place in society” (ibid, 87). This principle is designed to rule out attaching the idea of merited reward even to virtues like

industriousness, thought to be partly the product of upbringing or social circumstance. This position calls into question whether individuals are morally responsible at all, even for their own moral powers (Nelson 2019). Furthermore, Rawls argues, “The natural distribution is neither just nor unjust ... These are simply natural facts. What is just and unjust is the way that institutions deal with these facts ... But there is no necessity for men to resign themselves to these contingencies” (ibid, 87-88). But since states are themselves institutions that deal with facts, if there is no necessity to be resigned to contingencies of fate, then Rawls gives full warrant to rethinking what new forms of politics the world needs and deserves. And one must wonder, ultimately, whether individuals are ever responsible for the moral views that they hold.

The Law of Peoples as a Solution

LoP is obliged to justify these premises in the light of facts about the globe, not just about relatively stable liberal democracies, and we find that each of them face problems at the global level. In order to highlight the disconnect, I want to focus most of my attention on the first assumption, by which Rawls pleads a warrant to ignore global politics while describing a theory of justice for domestic politics. Why does Rawls think that move permissible? The answer, I suggest, is that *LoP* attempts to make good this defect, supplying a necessary premise for what would otherwise be an overly ambitious account of the liberties that any state can provide. I will show that Rawls indicates this intention and its necessity, reiterate why liberalism is so dependent upon world peace, and demonstrate that *ToJ* tacitly presupposes *LoP*.

Rawls’s intentions in *LoP* are not defined by the defense of state sovereignty or the codification or modification of familiar international norms. He warns the reader,

This monograph on the Law of Peoples is neither a treatise nor a textbook on international law. Rather, it is a work that focuses strictly on certain questions connected with whether a realistic utopia is possible, and the conditions under which it might obtain. I begin and end with the idea of a realistic utopia. Political philosophy is realistically

utopian when it extends what are ordinarily thought of as the limits of practical political possibility (Rawls 1999, 5-6).

To understand what Rawls means here, it is important to notice that the “realistic” in “realistic utopia” does not mean what one might think: it does not mean a utopia that compromises with reality.¹¹ Thus, “The idea of realistic utopia reconciles us to our social world by showing us that a reasonably just constitutional democracy existing as a member of a reasonably just Society of Peoples is possible” (127). Which is the thing that must be shown to be possible? The reasonably just Society of Peoples? Or the reasonably just constitutional democracy? Rawls means both; we theorize about global justice to show that a just constitutional democracy is possible at all.

On this matter, as on others, Rawls’s reasoning “accords with Kant’s idea that a constitutional regime *must* establish an effective Law of Peoples *in order to realize fully the freedom of its citizens*” (10, my emphasis). Why so? If we look at the essays of Kant that Rawls cites in support, we find that this necessity arises from the fact that the need for armies is *the* obstacle to domestic justice as Kant understands it. “The problem of establishing a perfect civil constitution is dependent upon the problem of a law-governed external relation between states and *cannot be solved* without having first solved the latter” (Kant 2006, 9; Universal History 8:24, my emphasis). This priority of cosmopolitan justice results from the demands war places on the resources of the state:

As long as states use all their resources to realize their vain and violent goals of expansion and thereby continue to hinder the slow efforts to cultivate their citizens’

¹¹ For Rawls, “reconciliation” means that we become rejuvenated and energized, full of hope, having seen that the world we long for can be ours. Rawls tells us of Hegel, “He seeks for us reconciliation – *Versöhnung* – that is, we are to accept and affirm our social world positively, not merely be resigned to it” (Rawls 2001, 3). In this, Rawls and Hegel follow the modern tradition, and “Hobbes’s *Leviathan* (1652) – surely the greatest work of political philosophy in English” is the origin of this tradition (Rawls 2001, 1). As Strauss explains Hobbes, “He is the classic and the founder of the specifically modern natural law doctrine. The profound change under consideration can be traced directly to Hobbes’s concern with a human guaranty for the actualization of the right social order or to his ‘realistic’ intention” (Strauss 1950, 182). The realism of modern natural right explains “the frequently observed fact that during the modern period natural law became much more of a revolutionary force than it had been in the past” (183).

minds and even to withhold all support from them in this regard, then nothing of the sort can be expected, because such moral cultivation requires a long internal process in every commonwealth in order to educate its citizens (Kant 2006, 12; Universal History 8:26).

Human nature seems nowhere less worthy of love than in relations among entire peoples. No state is secure for a moment against another with regard to its independence or its property. The will to subjugate one another or diminish what belongs to the other is always there, and arming for defense, which often makes peace more oppressive and destructive for internal welfare than the war itself, may never abate. Against this there is no other expedient possible than an international right that is founded on public laws that are backed with power and to which every state must subject itself (in accordance with the analogy with civil or constitutional right among individual persons) (Kant 2006, 65; Theory and Practice 8:312-3).

From the liberal point of view, armaments and military training waste money that could be spent relieving the poor while stunting our moral development. Whatever habits help us prepare for war are vices from the liberal point of view. Like Kant before him, Rawls understands that it is not a matter of extending a liberalism we now have to the rest of the world; it is a matter of achieving a liberalism that is unthinkable without a new world order.¹²

Of course, liberalism must make some place for the duty to defend individual liberties, at least. But it does so without referring to the general good or to patriotic affection. According to Rawls's theory of domestic justice, "Conscription is permissible only if it is demanded for the defense of liberty itself, including here not only the liberties of the society in question, but also of persons in other societies as well" (Rawls 1971, 334). There appears to be no principled

¹² These same consequences arise for Rawls in light of his three liberal principles:

- the first enumerates the basic rights and liberties of the kind familiar from a constitutional regime;
- the second assigns these rights, liberties, and opportunities a special priority, especially with respect to the claims of the general good and perfectionism values; and
- the third assures for all citizens the requisite primary goods to enable them to make intelligent and effective use of their freedoms (Rawls 1999, 14).

My criticism of these principles builds upon Michael Sandel's argument. As Sandel makes very clear, principles two and three are in tension with one another. For, if the individuals are prior to the collective good, it makes no sense why they are obliged to sustain one another financially (Sandel 1982, 77-82, 101-103, 173-4, 178). I am suggesting that Rawls seeks to have both by eliminating citizens' need to sustain each other patriotically.

difference between fighting for one's country and fighting for liberty everywhere and for everyone, from this point of view. This view is held over in *The Law of Peoples*. For by that law, liberal societies understand, "their defense is ... only their first and most urgent task. Their long-run aim is to bring all societies eventually to honor the Law of Peoples and to become full members in good standing of the society of well-ordered peoples (92-3). The only mission possible is a cosmopolitan mission, so that cosmopolitan mission must be shown to be possible.¹³

In addition, even the possibility of just wars must cease, for the third principle makes ideal liberalism acutely dependent upon the domestic consumption of state resources. Beyond demanding the priority of individual liberty to the common good, liberal citizens demand, "a decent distribution of wealth and income meeting the third condition of liberalism: all citizens must be assured the all-purpose means necessary for them to take intelligent and effective advantage of their basic freedoms" (50).¹⁴ But the need for armies limits the state's capacity to prioritize economic and distributive choices sufficiently. Guns or butter – that is the general question, and Rawls's preferred conception of liberalism requires so much butter that it must do without guns entirely. The world had better become a safe place for so much butter to lie around in and so few willing citizens to defend it. Maximizing the gains of the least advantaged person could not otherwise take priority. In other words, disarmament is *the key* to liberal social policy.

Rawls appears to know full well that liberalism as he understands it cannot be achieved at home without a cosmopolitan peace abroad. "*Our* hope for the future of *our* society rests on the belief that the nature of the social world allows reasonably just constitutions democratic societies

¹³ Of course, to be more cautious, we should allow Rawls that liberal citizens can be required to defend their country for the sake of their liberties, on the assumption that universal liberty is thereby threatened. But because an allegedly liberal state has a right and a duty to protect its citizens, "the handy appeal to national security" means that "a democratic government can easily invoke this interest to support covert interventions, even when actually moved by economic interests behind the scenes" (ibid).

¹⁴ Just in case it is not clear, the primary good in question here is "wealth and income" (ibid). Money is a measurable "all-purpose means" for the pursuits of free persons (13n).

existing as members of the Society of Peoples” (6, my emphasis). This is why Rawls seeks “peace and justice...*both* at home and abroad” (6), why he writes, “I believe the idea of realistic utopia is *essential*,” and why he sincerely believes “great evils will eventually disappear” (6-7, my emphasis). The end of great evils abroad is essential to the kind of justice Rawls hopes to have at home. And this essential connection between world justice and domestic justice makes perfectly clear that Rawls *is* proposing a cosmopolitan theory.

In short, *LoP* is a necessary aspect of the *justification* of Rawls’s domestic liberalism, even though it was written twenty-five years later. To be sure, Rawls presents *LoP* as linearly dependent upon his earlier works, and not the other way around. He reminds the reader often, “it is important to see that the Law of Peoples is developed within political liberalism and is an extension of a liberal conception of justice for a domestic regime to a Society of Peoples” (9). For that reason, “In developing the Law of Peoples *the first step* is to work out the principles of justice for domestic society” (26, my emphasis). But if we look at that first step, the domestic theory in fact depends upon a simplifying assumption that amounts to the presumption that *LoP* already applies. For, if we look into the matter, *A Theory of Justice* explicitly presupposes that no army is necessary, which assumption can only be reasonable if peace obtains in the world. Thus the “first step” in *LoP* is the theory of liberal justice, but the first step in the *A Theory of Justice* is the assumption that peace exists – presumably, through a Law of Peoples. The circularity, or mutual dependency, is perfectly clear in a single passage:

In developing the Law of Peoples the first step is to work out the principles of justice for domestic society. Here the original position takes into account only persons contained within such a society, since we are not considering relations with other societies. That position views society as closed: persons enter only by birth, and exit only by death. There is no need for armed forces, and the question of the government’s right to be prepared militarily does not arise and would be denied if it did ... Although domestic principles of justice are consistent with a qualified right to war, they do not of themselves establish that right (26, my emphasis).

The principles of justice for domestic society come first – we must know we are liberals with liberal ideals before we can formulate a foreign policy. But to know that we are domestic liberals, we *must* presuppose that there is no need for an army or a foreign policy. Putting aside this question is the most important motivation for Rawls’s choice to take a “simplified case” for the principles of justice in *ToJ*. What appears to be an arbitrarily nationalist premise is, on closer inspection, an arbitrarily cosmopolitan premise in disguise. In order to develop his theory of domestic justice, Rawls presupposes a particular, closed society, yet one which is thoroughly unaware that it is a particular society among others. The members do not know that they are one people among others in the world, and its members would *deny* that they are in any way threatened by the world. The participants in Rawls’s original position have no idea, behind that famous veil of ignorance, that beyond the borders lie foreign states, with whom they are at least potentially at war. Either the domestic theory is implicitly a theory of the world state, or its validity hangs on the presupposition of a worldwide utopia achieved.¹⁵

What was Rawls’s alternative? If Rawls’s theory of liberalism began from the question of global justice, as the cosmopolitans desire, it would have rendered his theory impotent, unrealistic, and utopian from the start. If he had, instead, lifted the veil far enough to see the enemies on the horizon, the parties to his social contract would have had to deliberate how that must affect their claims for equal liberty and social position, their concern with perfectionist virtues such as patriotism, and other such matters. But Rawls chooses instead to separate the two questions. In *LoP* he insists that we may *not* revisit these questions in the light of new

¹⁵ It remains an open question whether other theories of liberalism are similarly unrealistically motivated. Locke’s *Second Treatise*, for instance, explains the origin of a particular government, includes a discussion of “federative” power, and derives the limits of conquest from the consent of the governed (Locke and Laslett 1988). The present critique of Rawls, at any rate, is not meant to prejudge such issues.

information. Once the veil is lifted, in *LoP*, the worldly ignorance vanishes, and the liberal people see their mistake, but they simply take this to imply a new task. They formulate a Law of Peoples that will produce the external conditions that can guarantee them the peaceful existence on which they had planned during their blinkered pursuit of fairness. This new foreign policy does require some effort, and perhaps an army for self-defense in the short term, but they are not to deduce the kind of army or foreign policy powers that they or their government need from any realistic view of what lies before them. Instead, they must deduce these things from a law, which they must work out, and which insists from the start that they will not choose to consider their state to be sovereign.

The basis of that right (to self-defense) depends on the Law of Peoples, still to be worked out. This law, as we shall see, will restrict a state's internal sovereignty or (political) autonomy, its alleged right to do as it wills with people within its own borders ... The war powers of governments, whatever they might be, are only those acceptable within a reasonable Law of Peoples. *Presuming the existence of a government whereby a people is domestically organized with institutions of background justice does not prejudge these questions.* We must reformulate the powers of sovereignty in light of a reasonable Law of Peoples and deny to states the traditional rights to war and to unrestricted internal autonomy (26-7, my emphasis).

Again, the presumption employed in the domestic theory (that it is closed and therefore particular) is *not* to be considered dispositive for the collective rights of this society in international space. We are to know that we are liberal prior to knowing that we are a country and, once we know that we are a country, we are not to presume that our country has any particular rights against other societies or against our liberties. The two questions must be kept distinct for either theory to hold. This is how Rawls attempts to deal with the worldly fact of separate countries without admitting their right to be. But what is this entity that he supposes individuals to inhabit together? We have heard of states, nations, countries, polities ... what is a 'people'?

The Unrealistic Ideal of ‘Peoples’

We must understand the subjects of Rawls’s global theory in light of these considerations. The cosmopolitan and communitarian critics of liberalism are correct, in a sense: Rawls would like to describe a country that is not a country, a state that is no more than lawful justice to individuals universally conceived. Rawls’s novel genre, utopian ambition, and justificatory task force us to highlight how inscrutable this institutional subject of *LoP* is. The law is not a law of nations, or of states, or for individuals, or anything else that we know from experience. *LoP* is distinct entirely from “the traditional *ius gentium*,” says Rawls, for, “I do not use the term ‘law of peoples’ with this meaning, however, but rather to mean the particular political principles for regulating the mutual political relations between peoples, as defined in Section 2” (3n). Turning to the relevant section, we learn:

The term ‘peoples,’ then, is meant to emphasize ... peoples as distinct from states, as traditionally conceived” (27).

A difference between liberal peoples and states is that just liberal peoples limit their basic interests as required by the reasonable (29).

Put plainly, a people is nothing more and nothing less than the subject of the law of peoples. It is an ideal and imaginary corporate entity, modeled upon the constitutional democratic state, but distinguished by having the ideal characteristic of global lawfulness. The law of peoples is an ideal law for an ideal agent, yet to be seen.

Put another way, the fundamental position of the Law of Peoples is *not* that peoples are independent; the fundamental position is that peoples have duties to the international community, only by fulfilling which they remain in good standing. “Peoples Lack Traditional Sovereignty” (25).¹⁶ Thus, one might even suggest that Rawls tacitly adopts a global original position when

¹⁶ Rawls observes, in general, “The right to independence, and equally the right to self-determination, hold only within certain limits, yet to be specified for the general case” (38). In a footnote to this comment, Rawls in fact

thinking about justice.¹⁷ For Rawls argues, “It does not follow from the fact that boundaries are historically arbitrary that their role in the Law of Peoples cannot be justified. On the contrary, to fix on their arbitrariness is to fix on the wrong thing. In the absence of a world-state, there *must* be boundaries of some kind, which when viewed in isolation will seem arbitrary, and depend to some degree on historical circumstances” (39). But seeing boundaries as arbitrary in this way, and justified only by the absence of a world state, implies a cosmopolitan point of view. The point of view of *LoP* is that countries turn into “peoples” who derive their moral significance from their adherence to global law.¹⁸

But why should we trust that ‘peoples’ are more than fairy tale entities? Why should we think that peoples as he defines them could exist? If the international order is defined by states, we can be sure, then these will claim larger powers of sovereignty than the law allows. States, Rawls reminds us, “are often seen as rational, anxiously concerned with their power ... and always guided by their basic interests” (28). But if not states, Rawls must explain the nature of the agents who will function as legitimate members of utopia, the legitimate “peoples,” and why this nature excludes the possibility of war.

refers the reader to Charles Beitz’s cosmopolitan theory of international justice, noting, “I owe much to his account” (38). If we turn to the pages of *Political Theory and International Relations* that Rawls cites in support, we find Beitz claiming, “the principle of state autonomy – the central element in the morality of states – lacks a coherent moral foundation” (Beitz 121).

¹⁷ Unquestionably, then, Rawls’s Law of Peoples presents a *kind* of cosmopolitan aspiration. Rawls “hopes to say how a *world* Society of liberal and decent Peoples might be possible” (6, my emphasis). This world Society must embrace all societies eventually; the goal is for everyone to live in a liberal or decent society. “We take as a basic characteristic of well-ordered peoples that they wish to live in a world in which *all* peoples accept and follow the (ideal of the) Law of Peoples” (89). “The aim of the Law of Peoples would be fully achieved when *all societies* have been able to establish *either a liberal or a decent regime*, however unlikely that may be” (5, my emphasis). Again, this ambition is built into not only the moral ambitions, but also the theoretical assumptions, that underlie liberalism at home.

¹⁸ Seeing societies as necessary is in no conflict with this view. “I stress here that the Law of Peoples does not question the legitimacy of government’s authority to enforce the rule of democratic law. The supposed alternative to the government’s so-called monopoly of power allows private violence for those with the will and the means to execute it” (26n). Rawls’s liberalism is cosmopolitan, not anarchistic.

Thus, when Rawls explains “why peoples and not states,” he defines liberal peoples from the perspective of political liberalism, i.e. an ideal society which, as such, possesses “a moral nature” (23). Because peoples by definition follow the Law of Peoples, the crucial characteristic of peoples is their moral nature, as a people.

As reasonable citizens in domestic society offer to cooperate on fair terms with other citizens, so (reasonable) liberal (or decent) peoples offer fair terms of cooperation to other peoples. A people will honor these terms when assured that other peoples will do so as well. This leads us to the principles of justice in the first case and the Law of Peoples in the other (25).

Persons in liberal societies “mutually respect one another and recognize equality among peoples as consistent with that respect” (48). Peoples have a moral nature; they respect as equals those who respect others as equals in turn, by the “criterion of *reciprocity*” (7). “Indeed, a liberal society cannot *justly* require its citizens to fight in order to gain economic wealth or to acquire natural resources, much less to win power and empire” (91, my emphasis). The language Rawls employs suggests that peoples are supposed to have a moral nature in something like the same way that citizens are understood to have a moral nature, as individuals.

But, unlike individuals, peoples must live up to their moral nature and mutual respect *without fail*. Under the Law of Peoples, there is no war. If there were any threat of war, i.e. unjust war, the peoples would have to arm themselves and behave as states, anxious about their advantage and survival. Now, Rawls believes that individuals can be moral to some extent. Rawls believes that individuals can learn to affirm justice “and act to make sure their social world endures” (7). But he is not so utopian as to think that individuals can be *trusted* to live up to their sense of justice at all times. The moral powers we assume individuals to possess do not save them from requiring the coercive mechanisms of the state to render them peaceful (26n). Societies require a police. But, for democratic peace to hold, it must be the case that independent

democracies achieve peace without a superior coercive power. In the absence of such a power, we cannot rely on the moral powers of citizens to perpetuate international peace any more than we can rely on these powers to prevent murders and other forms of private war. Rawls is blurring two meanings of moral agency in this comparison. Ideal liberal democracies will not fight each other but, “This is not because the citizenry of such societies is peculiarly just and good, but more simply because they have no cause to go to war with one another” (8). Peoples exist and follow the Law of Peoples because peoples, being democracies, are *structurally* peaceful. “The crucial fact of peace among democracies rests on the *internal* structure of democratic societies, which are not tempted to go to war except in self-defense or in grave cases of intervention in unjust societies to protect human rights” (8). Without a structural theory of democratic peace, the cosmopolitan ideal would require a world state after all.

To argue that this is possible, Rawls denies what realists assert, “that international relations have not changed since Thucydides’ day and that they continue to be an ongoing struggle for wealth and power” (46). Rawls argues that things have changed and can change and describes “the idea of a liberal democratic peace” (ibid). This theory stems from the idea of human progress. Rawls comments, “This idea led to the movement toward democracy in the eighteenth century. As Saint-Just said, ‘The idea of happiness is new in Europe.’ What he meant was that the social order was no longer viewed as fixed: political and social institutions could be revised and reformed for the purpose of making peoples happier and more satisfied” (ibid). Focused on happiness, liberated peoples will develop “the *moeurs douces* of Montesquieu,” engaging sweetly in money-making, thinking only how they might acquire “more easily and cheaply by trade” what they might have pursued by war (ibid). Having disestablished the prideful “nobility,” and having put profit before God, one might say, they “would not be moved

to try to convert other people to a state religion or other ruling comprehensive doctrine,” so “liberal peoples have nothing to go to war about” (47). Liberal peace is “peace by satisfaction,” in Raymond Aron’s phrase.

How strong is the evidence that this theory holds? Rawls argues, “The absence of war between major established democracies is as close as anything we know to a simple empirical regularity in relations among societies” (52-3). But he also admits, “As Michael Doyle has noted ... an enumeration of favorable historical cases is hardly sufficient, since the idea of democratic peace sometimes fails” (53). On essentially any description, there are outliers. For instance, “the United States overturned the democracies of Allende in Chile, Arbenz in Guatemala, Mossadegh in Iran, and, some would say, the Sandinistas in Nicaragua” (53). To explain such wars away, Rawls invokes “the great shortcomings of actual, allegedly constitutional democratic regimes” (53). There are no democratic peoples *in fact*, only “allegedly” democratic states, which often fail in their duty. For the democratic peace theory to hold, Rawls admits, domestic political liberalism must reach its perfection. The ideal liberal people of the future will act as specified by the ideal liberal order of the future:

Thus, whether Kant’s hypothesis of a *foedus pacificum* is met depends on how far the conditions of a family of constitutional regimes *attain the ideal* of such regimes with their supporting elements. If the hypothesis is correct, armed conflict between democratic peoples will tend to disappear *as they approach that ideal*, and they will engage in war only as allies in self-defense against outlaw states. I believe this hypothesis is correct and think it underwrites the Law of Peoples as a realistic utopia (54, second emphasis mine).

LoP is dependent upon a hypothesis about what will happen between liberal democracies. But not about what will happen or has happened between these entities *as they are*. What we have so far are *states*, for clearly the existing democratic governments claim to exercise and do exercise a certain sovereign right to pursue their interests and a certain autonomy relative to their own people. It is unclear how the Law of Peoples changes that – are there sanctions? No, there is,

rather, an appeal to the possibility of an ideal entity that combines the liberal ideal of pure individualism with the safety of government: we are to imagine the moral nature and steadfast behavior of individuals organized under democratic governments minus the sense of sovereignty, self-identity, and self-partiality characteristic of countries, states, or nations. The plausibility of domestic liberalism depends upon the plausibility of international peace, which depends upon the plausibility of domestic liberalism. Thus Rawls has an answer for why he was permitted to theorize about domestic justice in isolation from foreign affairs, but his answer is at the very least highly optimistic and might be called unrealistically utopian.

Countries on the Horizon

Perhaps, if Rawls could presume a world of liberal constitutional democracies, his theory would look fairly solid at this point all the same. Putting aside the historical disappointments of that hope during the wars of the early twentieth century as aberrations (19-20), Rawls builds with confidence on the emerging order of the late twentieth century (36-7). But even today there are many nonliberal societies in the world. Democratic peace requires perfect, ideal democracies, but many parts of the world are not even democracies.¹⁹ It is unclear why this fact should not enter into the deliberations of a liberal social contract, whether or not democratic peace obtains in part.

But there are additional problems of justification with respect to nonliberal societies, putting additional pressure on Rawls's remaining premises. Let us begin with the premise of equality based in moral personality. Liberalism sees this claim as universally true. But it is not able to show that it is universally true in pure theory, and it is not accepted as universally true around the globe. "As Saint-Just said, 'The idea of happiness is new in Europe'" (46). Hence

¹⁹ "The question that Rawls asks is whether peace is only guaranteed by democratic justice *within* and *between* peoples or whether it can be the result of agreements between different cultural and political systems. This is the main issue" (Audard 2006, 61).

Rawls is concerned to show the “*Law of Peoples not Ethnocentric*” (121). This situation creates quite a dilemma for thought. Liberals wish to see beyond countries and see only individuals, free and equal, wherever they are. But the very fact that they do so distinguishes them from other people, who stare back and say, “who are these Westerners?” Are the liberals thus convicted of being something more than a ‘people’ after all?²⁰ In other words, how can Rawls square his position that human beings are free and equal and prior to society with his awareness that this very position divides the world into countries?

Rawls indicates that *LoP* is concerned with this problem. He knows that cosmopolitans have attempted to argue for a more robust global liberalism by applying his own argumentative strategy at a higher level. These fellow liberals, Rawls comments, “imagine a global original position with its veil of ignorance behind which all parties are situated symmetrically ... Proceeding in this way would straightaway ground human rights in a political (moral) conception of liberal cosmopolitan justice ... it amounts to saying that all persons are to have the equal liberal rights of citizens in a constitutional democracy” (82). But Rawls believes that this argumentative strategy fails to establish the universality of liberal rights. “Without trying to work out a reasonable liberal Law of Peoples, we cannot know that nonliberal societies cannot be acceptable. The possibility of a global original position does not show that, and we can’t merely assume it” (83). In other words, Rawls’s answer to his friends is that the tactic fails. Merely imagining a global original position does *not* show that liberalism is globally valid. Why not?

²⁰ Here is Kok-Chor Tan explaining his disappointment with Rawls’s lack of intransigence: “the scope of liberal toleration does not and cannot extend to alternatives to liberal justice itself ... a liberal must be able to philosophically and not just politically defend liberalism against its enemies (even if, as some critics point out, it is not clear on what grounds the political liberal can do this)” (Tan 2006, 88, my emphasis). But Tan has not himself done anything to provide grounds for the philosophical defense of liberalism, so far as I am aware. My hunch is that the dilemma is exacerbated for Rawls, and thus for contemporary liberals, by the much stronger demands they place, the height of their ideal for justice. When not even the existing liberal democracies live up to their ideal, and when not even Western democratic publics share their values, how can they persuade countries whose values are not even assimilable to older forms of liberalism?

The answer hangs on what one takes to be the basis of believing in liberalism in the first place. One obvious answer is that Rawls's later work beats a kind of relativistic retreat from the ambition to provide a truly foundational philosophical ground for liberalism. In general, Rawls's political liberalism offers "*No Deduction from Practical Reason*" (86). In other words, while Rawls follows Kant, he does not do so by assuming Kant's foundations, i.e. Kant's "transcendental liberalism" (87). Instead, Rawls merely gives "content to an idea of practical reason and three of its component parts, the idea of reasonableness, decency, and rationality" (86-7). This content is "not deduced, but enumerated and characterized in each case" (87). As a result, the only reason that we will approve of this theory is the idea that "the resulting principles and standards of right and justice *will hang together and will be affirmed by us on due reflection*. Yet there can be no guarantee" (87, my emphasis).

But even looking back to *A Theory of Justice*, it is obvious that Rawls's project requires strong assumptions about the intuitions of his audience in order to begin. The doctrine is presented as very universal, to be sure, for Rawls assumes that all persons have the capacity to have moral personality. But once we think of the distribution of moral attitudes in the whole world, we notice that the two moral powers that Rawls assumes present in humans as such, if given any content, must take on liberal dimensions: the capacity to have a conception of the good *as something one has chosen and could revise*, and the capacity to have a sense of justice, *as equal justice owed in accordance with the public understanding of the initial situation*, is the capacity to be an egalitarian liberal, strictly speaking.²¹ Even if we relax the precise sense of distributive justice that Rawls advocates as his preferred conception, as Rawls does in *Political*

²¹ Gertrude Himmelfarb develops this point about the non-universal content of the sense of justice in (Nussbaum and Cohen 1996).

Liberalism and LoP, we are still speaking of persons who have the capacity to see themselves as liberals. Rawls takes for granted from the beginning,

There are questions which *we* feel sure must be answered in a certain way. For example, *we* are confident that religious intolerance and racial discrimination are unjust. *We* think that *we* have examined these things with care and have reached what *we* believe is an impartial judgment not likely to be distorted by an excessive attachment to our own interests. These convictions are provisional fixed points which *we* presume any conception of justice must fit (ibid, 17).

If someone should ask why it is reasonable to presume these “fixed points” as aspects of the self-conception of those deliberating about the requirements of justice, “The answer is that the conditions embodied in the description of the original position are ones that we do in fact accept. Or if we do not, then perhaps we can be persuaded to do so by philosophical reflection” (ibid, 19). But of the latter, there is no guarantee.

Hence, Rawls is aware that his own defense of liberalism does not address people who are not already fairly open to some of its elements. Within the context of a functioning liberal democracy, he feels entitled to assume partial compliance, at least some intuitions in his favor. But in the broader world, he cannot. And that’s where his theory runs aground.

Those who reject constitutional democracy with its criterion of reciprocity will of course reject the very idea of public reason. For them the political relation may be friend or foe, to those of a particular religious or secular community or those who are not; or it may be a relentless struggle to win the world for the whole truth. *Political liberalism does not engage those who think this way*” (Rawls 1999, 132, my emphasis).

“Those who reject constitutional democracy” still includes a large number of countries and their members at this time, and Rawls has *nothing to say* to them within political liberalism. He thus warns his liberal audience that they need to confront the limits of their knowledge and the practical implications.

Some may find this fact hard to accept. That is because it is often thought that the task of philosophy is to uncover a form of argument that will always prove convincing against all other arguments. There is, however, no such argument. Peoples may often have final ends

that require them to oppose one another without compromise. And if these ends are regarded as fundamental enough, and if one or more societies should refuse to accept the idea of the politically reasonable and the family of ideas that go with it, an impasse may arise between them, and war comes, as it did between North and South in the American Civil War (123).

This possibility of war, a not entirely eradicable possibility, based on the limits to which mankind can be reconciled to the same regime, makes an enormous difference for Rawls.

Liberals are reconciled to the pluralism of beliefs, and fundamentalists are not; neither are reconciled to the other.

There are, however, important limits to reconciliation. I mention two. Many persons – call them ‘fundamentalists’ of various religious or secular doctrines which have been historically dominant – could not be reconciled to a social world as I have described. For them the social world envisaged by political liberalism is a nightmare of social fragmentation and false doctrines, if not positively evil. To be reconciled to a social world, one must be able to see it as both reasonable and rational. Reconciliation requires acknowledging the fact of reasonable pluralism both within liberal and decent societies and in their relations with one another. Moreover, one must also recognize this pluralism as consistent with reasonable comprehensive doctrines, both religious and secular. Yet this last idea is precisely what fundamentalism denies and political liberalism asserts (126-7).

Liberalism, as Rawls understands it, has no answer to religion at a fundamental level; he understands its complaint against liberal society, and he rejects it, but he does not expect to persuade everyone. They disagree over which value, truth or liberty, is truly fundamental, and perhaps neither has an argument that the other cannot answer.²² War remains possible. Is there any path forward to the peace that liberals need?

Faced with this dilemma, we might consider Rawls’s attempt to imagine a decent nonliberal society that *could* be reconciled to a liberal Law of Peoples, and to which a liberal society could be reconciled as well, as Rawls at his most imaginative. If that miracle could

²² One might wonder, would liberalism *wish* to prevail entirely? Is liberalism, i.e. the abstinence from the quarrel over truth and the liberties respected *in light of* that abstinence – is that regime even thinkable if the argument concerning the truth should end everywhere in the world? In that case, what would liberalism be saving us from?

happen, Rawls suspects, then the decent society would at least have accepted the *principle* of liberalism in one of its spheres. This would hopefully cause its leaders to become more deeply liberal in spirit and to undertake liberal reforms. Rawls is an institutionalist, in this sense.

Participation in just institutions begets just values:

Religious toleration has historically first appeared as a *modus vivendi* between hostile faiths, later becoming a moral principle shared by civilized peoples and recognized by their leading religions. The same is true of the abolition of slavery and serfdom, the rule of law, the right to war only in self-defense, and the guarantee of human rights. *These become ideals and principles of liberal and decent civilizations, and principles of the Law of all civilized peoples* (113, my emphasis).

The Law of Peoples will govern within essentially democratic institutions of representation at the international level. So, if the decent peoples can be encouraged to endorse the Law of Peoples, they will learn to speak the language of political liberalism within the Society of Peoples. Their standing within that Society depends upon them adopting the common Law not merely as a peace treaty or a common interest they share with liberal peoples; instead, to be full members, they must come to see this Law as articulating their own vision of the world. In short, Rawls once again hopes that the Law can create the peoples to which it applies, and the final result will be a consistently liberal civilization embracing all the world.²³

But is the miracle possible? For the law that would reconcile the countries comes from and assumes, at least initially, an audience of liberals who affirm liberalism. Rawls admits, “In developing the Law of Peoples I said that liberal societies ask how they are to conduct themselves toward other societies from the point of view of their *own* political conceptions” (121). Is it not a liberal law? “To the objection that to proceed thus is ethnocentric or merely

²³ Rawls certainly believes that liberalism is reasonable and universally valid, but he also sees clearly that it is the product of a history and a culture, and he would like to find a path between relativistic indifference and colonialism, which he would probably consider an unreasonable solution, though not all liberals think so (Beitz 1979, 81-3, 102).

western, reply is: no, not necessarily” (121). How does Rawls hope to show that the Law of Peoples is universal?

Whether it is so turns on the *content* of the Law of Peoples that liberal societies embrace. The objectivity of that law surely depends not on its time, place, or culture of origin, but on whether it satisfies the criterion of reciprocity and belongs to the public reason of the Society of liberal and decent Peoples ... Here it is crucial that the Law of Peoples does not require decent societies to abandon or modify their religious institutions and adopt liberal ones. We have supposed that decent societies would affirm the same Law of Peoples that would hold among just liberal societies. This enabled that law to be universal in its reach. It is so because it asks of other societies only what they can reasonably endorse once they are prepared to stand in a relation of fair equality with all other societies. They cannot argue that being in a relation of equality with other people is a western idea! In what other relation can a people and its regime reasonably expect to stand (121-2)?

Can nonliberal societies argue that being in a relation of equality with other people, *as a moral principle*, is indeed a western idea? It sounds reasonable enough on first hearing, but this “relation of equality” is not meant as *modus vivendi* or operating principle. It is meant as a moral attitude toward the international Society of Peoples. But that means treating liberal societies as equal to religious societies. Once one has done that, in one’s heart, one is a liberal. In short, Rawls proposes a grand experiment here. A liberal people can work its way up to the Law of Peoples on the basis of its own self-confident liberalism. A decent people can work its way up to liberalism on the basis of its concurrence in the Law of Peoples. If that works out, then liberalism can vindicate its claim to universality peacefully, but it depends upon strong assumptions, to say the least, about the kind of nonliberal regime it has to work with as a partner.²⁴

²⁴ Rawls’s imaginary nonliberal society, “Kazanistan,” is both liberal and nonliberal at the same time. As Audard wonders, “How is it psychologically possible that non-liberal, but decent peoples, might be ready to switch allegiances and to accept liberal principles, even if at the domestic level they would find them repulsive?” (Audard 2006, 65). The problem here is more extreme, one might think, than that involved in political liberalism’s idea of public reason, for Kazanistan’s leaders must hold to liberal principles at the international level while finding them repulsive both comprehensively *and* politically at the domestic level.

War and Foreign Aid as National Concerns

But if it does not work out, war comes, and Rawls is not willing to risk the historical prospects of liberalism on total consistency. There *is* a difference between liberal and nonliberal societies, and this difference is not merely that nonliberal societies are ruled by evil dictators; there are societies out there in the world that do not share his values or support liberalism.²⁵ They are not tolerable within the bounds of public reason, and it is not clear that they have the same rights as liberal citizens do, morally and not just positively. For how can a person who refuses to offer equal respect claim a right to equal respect? Are liberals obliged to risk themselves and their property for their enemies who dislike their way of life? And what good is giving charity to whole societies for whom one's goal is their own adoption of liberal, i.e. commercial, virtues? These questions, which have implications for the conduct of war and duties of foreign aid, implicate Rawls's premise that individuals are not morally responsible for their virtues.

LoP contains a few truly nationalist moments that contrast with the overall cosmopolitan project. One is Rawls's willingness to let necessity of state trump justice on occasion. Enemy soldiers must be killed if they fight for an outlaw state, but the reason is "not that they are responsible for the war, but that well-ordered peoples have no other choice. They cannot defend themselves in any other way, and defend themselves they must" (96). In other words, Rawls would stick to the claim that enemy soldiers are innocents but then accept the necessity to murder innocents out of necessity. This backsliding from impartial justice becomes even more pronounced when Rawls accepts the necessity to murder innocent civilians in extreme circumstances. By the "*Supreme Emergency Exemption*," we may and must "set aside – in

²⁵ Cosmopolitan authors routinely deny this fact with mere rhetorical gestures. Meanwhile, the empirical research of Ronald Inglehart and others is very clear on this matter: world values diverge widely, are grouped by religious traditions to a great extent, and are not converging (Norris and Inglehart 2009).

certain special circumstances – the strict status of civilians that normally prevents their being directly attacked in war” (Rawls 1999, 98). The liberal state must do so, “but only if it was sure that the bombing would have done some substantial good” (ibid). At the crucial moment, however cautiously, Rawls must endorse the destruction of some people for the preservation of others. He cannot let go of patriotism entirely, then.

But what kind of patriotism can Rawls believe in, when his “peoples” are such vague collections of individual rights-holders? He finds the heart of the right to do what one must in the fight against Hitler, when “the nature and history of constitutional democracy and its place in European history were at stake” (99). What Rawls means, then, is that the existing, “allegedly constitutional democratic regimes” (53), are justified in fighting for themselves in order that the ideal constitutional democracy may come to be. More than that, however, is implied. By appealing to the “place in European history” that the democracies occupied, Rawls implies that destroying the Nazi regime was justified in order that democracy could come out on top, the victor of historical struggle between societies for the right way of life. In the light of that historical struggle, peoples must be considered as actors and agents after all. Liberalism seeks a world without peoples, without borders, fair and just to individuals regardless of their national allegiances. But to build that world it must understand itself as embodied in a society with a high purpose, entitled to defend its own particular existence as the light of the world. It judges the just and the unjust by their nationality. Its citizens are chosen people, and its enemies must fall.²⁶

²⁶ And at the time, the democracies were not vastly superior in culture. As Rawls notes, “While anti-semitism had been present in Germany, it had also been present throughout most of Europe – in France (witness the Dreyfus case in the late nineteenth century) as well as pogroms in Poland and Russia, and it became church policy to isolate Jews in ghettos during the Counter Reformation in the late sixteenth century” (100n). Elsewhere, Rawls reminds us, “In a radio address to the United States on April 4, 1933, the prominent Protestant clergyman Bishop Ott Dibelius defended the new German regime’s April 1, 1933, boycott of the Jews (originally scheduled to last five days). In a confidential Easter message to the pastors in his province, he said: ‘... I have always considered myself an anti-semite. One cannot ignore that Jewry has played a leading role in all the destructive manifestations of modern civilization’” (22n). It is not the *actually* existing, but only the ideal and future democracies that deserved to prevail.

On the one hand, the Law of Peoples is “similar to ... the familiar Christian natural law doctrine of just war ... in that both imply that universal peace among nations is possible” (103). On the other hand, the Christian doctrine rests “on the divine command that the innocent must never be killed” intentionally (104). The Christian doctrine *consistently* takes the position that self-defense never extends to the right to murder. But this is an error, according to political liberalism. “Political liberalism allows the supreme emergency exemption,” which means that killing innocents is, sometimes, one of the “duties of the statesman in political liberalism” (105). Political liberalism is political, so it insists, “The statesman must look to the political world, and must, in extreme cases, be able to distinguish between the interests of the well-ordered regime he or she serves and the dictates of the religious, philosophical, or moral doctrine that he or she personally lives by” (ibid). The liberal statesman *must* be willing to kill innocent foreigners for the sake of the regime. Rawls even helpfully draws the consequence for religious liberty: “Quakers, who oppose all war ... could not in good faith seek the highest offices in a liberal democratic regime” (ibid). Rawls’s willingness to excuse political necessity and limit equal liberties here is strikingly prudent, given his general thesis that justice is the first virtue of institutions.²⁷

Rawls’s discussion of burdened societies brings up the same point. Rawls supports a principle of assistance, but he argues, “the crucial element in how a country fares is its political culture – its members’ political and civic virtues – and not the level of its resources (117). In

²⁷ In the ideal case, liberal peoples pursue their just goals with the greatest forbearance and wisdom. But really existing liberal democracies have a mixed historical record. Christianity too, historically, was not always peaceful. “Since the time of the Emperor Constantine in the fourth century, Christianity punished heresy and tried to stamp out by persecution and religious wars what it regarded as false doctrine” (21). Liberalism could not be more opposed to anything than to such crusades. “This persecuting zeal has been the great curse of the Christian religion” (ibid). But the ideal conscience of Christianity is not dirty, either, only its hands. Ironically, Rawls’s best argument here might be that bowing to necessity is more moderate, in the long run, than sticking always to principles, revealing a touch of Machiavellian logic in his thinking.

other words, Rawls distinguishes between the virtuous and the vicious or less virtuous. And he does not mean merely societies as a whole, for he speaks of a societies' "members' political and civic virtues" (Rawls 1999, 117). Liberal societies, Western societies, are characterized by their members' adoption of the right virtues. But where do virtues come from? Who is responsible for having virtue? For Rawls, "the necessary (political) virtues are those of political cooperation, such as a sense of fairness and tolerance and a willingness to meet others halfway" (15), but these social virtues seem to come from one's society, that accidental and morally arbitrary aspect of fate. Citing Montesquieu, Rawls writes, "a commercial society tends to fashion in its citizens certain virtues such as assiduity, industriousness, punctuality, and probity" (46). Yet Rawls apparently finds some moral desert in the possession of virtues and some moral failure in the possession of vice, when he looks around the world. The commercial virtues naturally produce wealth, prevent famine, and depress the need for war or migration, and Rawls blames those who lack them and seek to make up for their lack by pressing their claims on others. "People must recognize that they cannot make up for failing to regulate their numbers or to care for their land by conquest in war, or by migrating into another people's territory without their consent" (8). Rawls is not impressed with the excuse, in this context, that individuals receive their virtues and vices from socialization processes for which they cannot be blamed. But if so, one must surely ask, why should we be egalitarian liberals at all? If socialization makes us virtuous, and hence deserving, then the industrious and rational ought to deserve the product of their talents and ambitions domestically as well as internationally. Or, as Michael Sandel famously asked, who is it that owns or rightly benefits from the virtues of persons (Sandel 1982)? In *LoP*, Rawls comes very close to adopting Sandel's suggestion, that our moral powers are in an important sense the gifts of a *particular* community:

I believe that the causes of the wealth of people and the forms it takes lie in their political culture and in the religious, philosophical, and moral traditions that support the basic structure of their political and social institutions, as well as in the industriousness and cooperative talents of its members, all supported by their political virtues ... Historical examples seem to indicate that resource-poor countries may do very well (e.g., Japan), while resource-rich countries may have serious difficulties (e.g., Argentina). The crucial elements that make the difference are the political culture, the political virtues and civic society of the country, its members' probity and industriousness, their capacity for innovation, and much else (108).

The contrast between such statements and the moral tone of *A Theory of Justice* could hardly be more stark. And this passage should not be overlooked by those who seek to understand what Rawls means by a "basic structure." Whatever country-like thing he takes it to be, he assumes that it is supported by a culture, and not just any culture at that. Usually Rawls likes to portray culture as the *result* of democracy, "the fact that a plurality of conflicting reasonable comprehensive doctrines, religious, philosophical, and moral, is the normal *result* of its culture of free institutions" (131, my emphasis), as he says in *The Idea of Public Reason Revisited*. But, when Rawls focuses on the wider world and its variation, he is more open to the possibility that the causal arrow goes the other direction. Aren't institutions built by those who hold certain values? How do you provide values to persons holding opposite beliefs? How do you value such persons? And how, given these questions, do you interpret the egalitarianism and universalism of liberalism? Does the liberal nation have membership requirements after all?²⁸ And how can one be both communitarian and liberal at the same time, insisting both that human personality is universal and that it is culturally determined? These questions certainly linger, but before demanding straight answers, we should consider whether consistency is always preferable.

²⁸ Rawls appeals to Yael Tamir's *Liberal Nationalism*, very casually, during his brief discussion of how liberal peoples understand themselves as unified despite their lack of community, association, or non-arbitrary union. He simply "starts with the *need* for common sympathies, no matter what their source may be" (24, my emphasis). But Tamir is a critic of Rawls's conception of political union. "Rawls suggests that social unity and the allegiance of citizens to their common institutions are founded on an agreement regarding some guiding principles of justice. But this agreement is too thin, and is insufficient to ensure the continued existence of a closed community in which members care for each other's welfare, as well as for the well-being of future generations" (Tamir 1993, 118).

Cosmopolitan and Nationalist Alternatives

Contradictory and utopian as it is, Rawls's liberalism still appears practically sensible in comparison to the dogmatic consistency that seeks an even more robustly cosmopolitan theory. Cosmopolitan liberals, on the whole, take the line that their solution offers liberals a greater consistency, by sticking fast to the universal and individualistic premises of liberalism (Beitz 1979, Pogge 2006, Nussbaum and Cohen 1996). But their claims ring hollow once we discover that they, too, insist on having it both ways; they too, it seems, wish to defend both individualism and patriotism (Tan 2004, Nussbaum 2019). Not only are cosmopolitans incapable of producing a more consistent and coherent theory of their own, but their attempt to press liberal principles so far inevitably leads us places that we do not wish to go, places we cannot go, and places that are not even consistent with liberty. Rigorous moral cosmopolitans are in a bind, for their ideals imply the necessity of a world-governing state, but this is an entity that even they do not want to establish.²⁹ Hence cosmopolitans are in fact no more consistent than Rawls, whatever they may claim.³⁰ They, too, need "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" (ibid).³¹ Rawls's *The Law of Peoples* appears to be the only monograph that even attempts to give such an account.³² The employment of a conservative premise regarding the initial legitimacy of

²⁹ Almost all liberal cosmopolitans, like the allegedly conservative Rawls, "follow Kant's lead in *Perpetual Peace* (1795) in thinking that a world government ... would either be a global despotism or else would rule over a fragile empire ..." (Rawls 1999, 36, Beitz 1979, 199, 2000, 673, 677, Nussbaum 2019, 136). Yet they still tentatively suggest we pursue "a thin system of global governance with at least some coercive powers" (Nussbaum 2019, 319), as though sovereignty and the right to coerce could be shared among levels of government coherently.

³⁰ Indeed, "There is a serious question whether we currently have, and indeed whether we can have, a genuine cosmopolitan alternative to Rawls's theory" (Wenar 2006, 106).

³¹ While cosmopolitans demand "radical redistributive principles," they fail to explain how they justify "the most fundamental norms of global stability" that could possibly support that goal (Wenar 2006, 107).

³² For example, in his *Political Theory and International Relations*, Beitz confesses, "It is important to stress that I do not claim to provide a systematic theory analogous to those found in the familiar treatises on the political theory of the nation-state...I hope to...suggest the plausibility of a more cosmopolitan and less state-centered perspective" (Beitz 1979, 6). No cosmopolitan theorist that I am aware of, Martha Nussbaum not excepted (Nussbaum 2019), has

nation-states seems to be unavoidable for any such theory, however awkwardly that sits with the theory's ambitions.³³ The attempt to dispense with that premise leads cosmopolitans to denigrate and de-legitimate the very countries that they take as models for the world.³⁴

For a picture of the new vision, we do well to consider the works of Martha Nussbaum. Beginning with her essay against patriotism (Nussbaum and Cohen 1996), and continuing through works published just this year (2019), Nussbaum has been thinking through what changes she would have to make in Rawlsian contractualism (2006), and what changes she would have to make in ancient Stoicism (2019), in order to produce a theory that is cosmopolitan through and through. Cosmopolitanism attempts to make liberalism consistent by removing every last trace of the idea that the nation or country is a morally relevant home. There is only "reason and the love of humanity" (Nussbaum and Cohen 1996, 15). But in fact reason drops out, to a great degree, in Nussbaum's theorizing, and liberalism tends toward its opposite as result.

As Nussbaum shows quite clearly in *Frontiers of Justice* (2006), the conception of moral personality as reasonable and rational, i.e. the basis of equality that Rawls employs, hamstring efforts to think more globally, efforts that are set in motion by these very premises. To extend the frontiers of "justice," she would replace the liberal recognition of actual existing capacities with

gone any further, in the last four decades, than such hand-waving and gesturing when confronted with the real problems.

³³ Cosmopolitans routinely seek to avoid this consequence by appealing to the concept of ideal theory. As Beitz puts it, "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" (Beitz 2000, 681). That is true, but only if it is coherent to speak of moral appraisal by the light of standards that have no possible institutional instantiation. At the very least, cosmopolitans should spend more time showing how they would meet the institutional challenge, as Charles Beitz has begun to insist as well (Beitz 2019, 188).

³⁴ Cosmopolitans regularly suggest not only that states are in principle unjust, or that their legitimacy exists within a very narrow range, but also that the very states which they otherwise consider nearly just or most legitimate in themselves, that is, the constitutional democracies, are the least just from the global point of view (Nussbaum 2019, 50, Beitz 1983, 594, Pogge 2002). These sentiments are not less incoherent than those that animated Rawls, unless one wants to say that, for liberalism, self-consistency is equivalent to self-destruction.

the *provision* of capacities as a human entitlement to be fulfilled by government, underwritten by all individuals globally considered.³⁵ With regard to political rights, for instance, it would be the job of the government “to put them (citizens) in a position of capacity to function in this area” (2006, 287).³⁶ What does this stance entail? Very briefly, it would mean rejecting the priority of liberty over economic distribution and adopting a more Aristotelian and Marxian conception of our responsibilities to one another (Nussbaum 2006, 74, 85, 284-9). We would reject rights language because “rights language is strongly linked with the traditional distinction between a public sphere, which the state regulates, and a private sphere, which it must leave alone” (290), and replace rights with entitlements because “To say that people have a right to something is to say that they have an urgent entitlement to it” (303). And this means that people must be given their full “capabilities,” whether or not they want them or can use them. In fact, to be “truly cosmopolitan” means valuing “the worth and dignity of sentient bodies” (2019, 17). Human rights must be reinterpreted as animal rights, the rights that could be claimed even by a sentient body that cannot recognize rights in return. Nussbaum bravely draws the consequence that tigers must be prevented from hunting real gazelles and given toys in replacement (2006, 371).

In order to love humanity equally within the actual world of unequal capacities for freedom, the cosmopolitan must adopt the posture of the most political animal possible, a being who cooperates with others out of “a shared desire to produce a life worthy of human dignity”

³⁵ As mentioned above, Rawls had said, “Thus equal justice is owed to those who have the *capacity* to take part in and to act in accordance with the public understanding of the initial situation ... We see, then, that *the capacity for moral personality* is a sufficient condition for being entitled to equal justice” (ibid, 442, my emphasis). But he also said, “No one deserves his greater natural capacity nor merits a more favorable starting place in society” (ibid, 87). Nussbaum’s “capabilities approach” seeks to combine these two thoughts.

³⁶ In this passage, Nussbaum is thinking of women whose voting rights are ineffectual because the men of their culture do not permit them to leave the home and use violence to keep them there, which is of course unacceptable for liberals. But she interprets the dilemma as an opportunity to redefine all rights in terms of benefactions from others, positive gifts. In other words, she applies the problems of nonliberal countries to liberal ones, reinterpreting liberalism as a result. Thus, “The capabilities approach, we may now say, sides with the Indian Constitution and against the neoliberal interpretation of the U.S. Constitution” (ibid, 288).

(Nussbaum 2006, 45). Nussbaum thus thinks of the human community as a kind of global polis-life, devoted to a certain “open-ended” list (currently ten items long) of the ingredients in a good life that must be provided to everyone, whether they desire it or not (76-8). Her vision obviously requires homogeneity of culture and intense forms of mutual interest. In other words, it is not particularly “cosmopolitan,” let alone liberal, but rather joins hands with a mystical liberal nationalism, as is clear from Nussbaum’s focus on state-sponsored cosmopolitan education (Nussbaum and Cohen 1996, Nussbaum 1997).

Since rigorous cosmopolitanism relies on transcending any thought of selfishness or mutual advantage that might stand in the way of global altruism, Nussbaum urges us to model persons as possessing alternative motivations. “Although the approach does not employ a hypothetical initial situation... it envisages human beings as cooperating out of a wide range of motives, including the love of justice itself, and prominently a moralized compassion for those who have less than they need to lead decent and dignified lives” (2006, 156-7). Nussbaum notes that, since her conception of the person goes beyond Rawls in demanding a sense of justice, it also goes beyond Rawls in requiring education. The capabilities approach “demands a great deal ... very great sympathy and benevolence” (408-9). To make even Rawls’s society real “would obviously require extensive efforts of sentimental education” (411), and Nussbaum is aware that she requires even greater efforts. Yet she is also aware, if rather vaguely, that this must be done without “indoctrination and restrictions on freedom of expression” (412).³⁷ Her answer is that we can teach children political correctness and challenge their conceptions of manliness in “public

³⁷ More precisely, she asks, “How far could the public education of a liberal society cultivate sentiments that would complement and support the capabilities approach? And how could this education be arranged, *in a society whose principles abhor indoctrination and restrictions on freedom of expression?*” (ibid). This formulation leaves it an open question whether *Nussbaum* abhors these things or only feels them as the limits of the public culture she has to work with.

education and public rhetoric” (413). As a result, Nussbaum’s proposed education sounds very much like the education endorsed by David Miller, a liberal nationalist (Miller 1995, 179), and the path toward liberal consistency is also the path toward a doctrinaire or indoctrinating liberalism.³⁸ If Nussbaum is liberalism made consistent, it proves liberalism illiberal.

Conclusion

Rawls’s account of countries is open to objections of inconsistency on the one hand and of utopianism on the other. He sought to found a liberalism that made no bow to collectives of any kind. But he also faced the theoretical and empirical limits of his views.³⁹ These limits brought him back to an older part of his liberalism, a liberalism that does not forget the fragility of its foundations or its dependence upon a virtuous and somewhat patriotic, almost nation-like citizenry. (2001). But Rawls’s thought is the richer, one might say, for remaining within the twilight; absolute dedication to absolute equality is likely to backfire. If there is a better path, it probably requires us to go backward, at least initially. We cannot presume that Rawls’s ideal of justice is justified and ‘free-standing’ and then create whatever political forms we think it needs; rather, we should ask liberal theory to return to the task of describing and defending the legitimacy of political order in the light of achievable ideals and the real shape of the world.

³⁸ Miller argues that, after “an explicit public debate,” Britain should reach a new “constitutional settlement” that replaces all of its former compromises and institutional ambiguities (Miller 1995, 179). And Britain should then use “civic education as a means of transmitting the redefined and constitutionally embodied national identity to the incoming generation” (ibid). For the content of this education, Miller endorses a proposal to give “central place to the development of freedom and democracy in Britain and...to instil in pupils the attitudes of mind that support such achievements” (181n). These attitudes are, “respect for people of other cultures and from other backgrounds; an informed curiosity about the wider world; an understanding of how rights and liberties develop and how they may be threatened; some comprehension of what individual can do within society and under the rule of law” (ibid). One of the main reasons Britain must create such an education is in order to “adapt to new circumstances, especially to increasing cultural pluralism” (179). And the purpose of making the education requisite and public is so that “schools can act as a counterweight to the cultural environment of the family” (ibid). Cosmopolitanism and liberal nationalism are more alike than distinct in their goals for state education.

³⁹ Compare Beitz, who shrugs off the difficulty thus: “One might say that we are compelled to take a global view in matters of social justice by features internal to our conception of moral personality, however parochial it may be” (Beitz 1983, 596).

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