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Contents

The Flaws of Cosmopolitanism: On John Rawls’s Idea of Global Justice Hossein Houshmand	1
Etymology of Dikaiosune by the Plato’s Other: Cratylus 412D – 413D Mostafa Younesie	19
Weapons of Mass Destruction Prohibition: In Pursuit of Peace and Justice in International Relations and the Middle East Mansour Salsabili	25
More than Justice: “Friendship” in Phenomenology and Mysticism (Erfan) Abbas Manoochehri	36
Measuring Democracy and Justice by Public Reason: Towards a more Just Framework for Social Cooperation in Iran Seyed Alireza Hosseini Beheshti	48
Political Economy of Cash Subsidies in Iran (2005-2013) Masuod Ghaffari, Mehdi Abdi	59

The Flaws of Cosmopolitanism: On John Rawls's Idea of Global Justice

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Abstract

John Rawls's political philosophy is involved in what has been called constructive interpretation. It requires that a theory of justice be limited within the boundaries of political or social practices of any particular society, but not with the most abstract elements. A constructivist conception of justice represents the principles of justice not as part of some abstract moral rules known through theoretical reason, but rather as "the outcome of a procedure of construction" founded in practical reasoning. Given this Rawls' methodology in political philosophy, his conception of human rights is part of an answer to the question of what principles of justice must be applied in a global order. Contrary to the cosmopolitan egalitarians which claim that people everywhere should have the same rights as citizens of a liberal government claim for themselves, Rawls, in *The Law of Peoples*, expands his ideas on justice to the global society comprised of different "peoples" with different values and traditions. He proposes a conception of human rights, as a fundamental component of an idea of global justice for a culturally plural world. Rawls conceives human rights as the broad requirements of justice that are compatible with all reasonable political moralities, and so are not "peculiarly liberal or special to the Western tradition."

Keywords: Cosmopolitan Egalitarianism; John Rawls; Global Justice; the Fact of Reasonable Pluralism; Human Rights; Liberal and Decent Peoples

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I. Cosmopolitan Egalitarianism

A typical theory of global justice— actually the predominant mood among contemporary political philosophers – is cosmopolitan egalitarianism. According to this theory-as a “monistic” concept of morality - a single set of basic standards of justice always applies to individuals everywhere, regardless of background conditions (Cohen and Sable, 2005: 152). In other words, cosmopolitan egalitarian claims that “people everywhere stand to one another” in the same way that citizens of a liberal democratic society do: “they have the same rights and the same opportunities” (ibid: 153)¹

One of the most significant accounts of cosmopolitan egalitarianism is Charles Beitz’s theory of international politics. Beitz argues in favor of global application of the two principles of Justice as Fairness, the conception of justice which John Rawls presents in *A Theory of Justice*. He says that “it is wrong to limit the application of contractarian principles of social justice to the nation-state; instead, these principles ought to apply globally” (Beitz, 1999: 128).

But, as Rawls emphasizes, “justice as fairness is framed for a democratic society” (Rawls, 2001: 39)² and its primary subject is the basic structure (the major social and political institutions) of a domestic society. A just basic structure is a scheme of cooperation among free and equal individuals. In an initial situation – which

Rawls calls “original position” – representatives of free and equal individuals are sited in fair conditions for choosing the terms of social cooperation.

According to Rawls, two principles of justice would be selected in this original position. The first principle, namely, “the principle of equal basic liberties,” requires protection for liberty of conscience, free speech and freedom of association, liberty and integrity of the person, and rights of political participation. In other words, the first principle contains the requirement of political equality. The second principle indicates that social and economic inequalities are permissible only if they satisfy two conditions. First, conditions of “fair equality of opportunities”; the principle says that people who have similar talent and motivation should have equal chances to achieve desirable positions. Second, “the difference principle” states that social and economic inequalities ought to work to the greatest benefit of the least advantaged members of society. A just social order that secures equal basic liberties and fair equality of opportunity might yet suffer from significant inequalities. The difference principle tells us that inequalities are morally acceptable only if they bring the maximum benefit to the worst-off members of society

¹ J. Cohen and C. Sable, “Extra Rempublicam Nulla Justitia?” p. 153. See also David Miller, “Debate Caney’s ‘International Distributive Justice’: a Response,” *Political Studies*: (2002): 50 (6), p 976. And Simon Caney, “International Distributive Justice,” *Political Studies*, (2001): 49 (5), pp. 974-97. Caney describes “the *principal cosmopolitan claim*” as

follows: “given the reasons we give to defend the distribution of resources and given our convictions about the *irrelevance of people’s cultural identity to their entitlements*, it follows that the scope of distributive justice should be global” *Ibid*, p. 977.

² John Rawls, *Justice as Fairness: A Restatement* (Harvard University Press, 2001), p. 39.

(Rawls, 2001: 39).³ Justice as Fairness, as Rawls argues, is a theory for the institutions of the domestic society, but some cosmopolitan egalitarians include Charles Beitz and Thomas Pogge (Rawls's former students), believe that this theory should be extended to the global context. Accordingly, there should be principles of distributive justice in a global context similar to the principles of justice as fairness in domestic society. They argue that there is an international basic structure similar to domestic basic structure, with political and economic institutions associating citizens of different countries – as citizens of the world – together in a global scheme of social cooperation (Wener, 2006: 95-116)⁴.

In fact, the cosmopolitan egalitarians defend a global original position in which each “world citizen” has a representative. They argue that a “globalized difference principle” will be endorsed in this global original position – that is, socio-economic inequalities are permissible “only if these inequalities work to the greatest benefit of the

world's worst-off” individuals (Freeman, 2007: 442).⁵ Both Beitz and Pogge, particularly argue that the huge inequalities in global income and wealth require a significant change in the world's economic institutions (Beitz, 1999; Pogge, 2002).⁶

The central argument of Beitz's theory of global normative order focused on the criticism of a classical idea of morality of states. The argument indicates that the moral legitimacy of states does not derive from themselves, but from their role in achieving justice. In this way, Beitz assumes that principles of morality of state are founded upon the value of individual autonomy (Beitz, 1999: 81).⁷ He says:

“Assuming that it is part of the justice of institutions that they treat their members in some sense as autonomous persons, then the claim that unjust states should not be accorded the respect demanded by the principle of state autonomy follows from the claim that it is only considerations of personal autonomy, appropriately

³ See Rawls, *Justice as Fairness: A Restatement*, pp. 42-49; Rawls, *A Theory of Justice*, pp. 60-90.

⁴ See Leif Wener, “Why Rawls is Not a Cosmopolitan Egalitarian” in Rex Martin and David Reidy, eds., *Rawls's Law of Peoples: A Realistic Utopia* (Blackwell Publishing, 2006), pp. 95-114. For more statements of contemporary cosmopolitanism, see Brian Barry, “Statism and nationalism: a cosmopolitan critique,” in Ian Shapiro and Lea Brilmayer (eds), *NOMOS Vol. XXI*, 1999: Global Justice. pp. 12-66; Charles Beitz, “Social and Cosmopolitan Liberalism”, *International Affairs*, (1999):75, pp. 515-29; Simon Caney, “Cosmopolitan justice and equalizing opportunities,” *Metaphilosophy*, (2001): 32, pp.113-34.; Darrell Moellendorf, *Cosmopolitan Justice* (Westview Press, 2002); Martha Nussbaum, “Patriotism and cosmopolitanism,” in Joshua Cohen, ed, *Love for Country: Debating the Limits of Patriotism* (Boston:

Beacon Press, 1996); Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Harvard University Press, 2006), section.4-5; Onora O'Neill, *Bounds of Justice* (Cambridge University Press, 2000); Thomas Pogge, *World Poverty and Human Rights* (London: PolityPress: 2002); and several articles in Gillian Brock and Harry Brighouse, eds., *The political philosophy of Cosmopolitanism* (Cambridge University press, 2005).

⁵ Samuel Freeman, *Rawls* (Landon: Routledge, 2007), p.442. See also Leif Wener, “Why Rawls is Not a Cosmopolitan Egalitarian,” p. 98.

⁶ See Charles Beitz, *Political Theory and International Relations*, esp. part 3; Thomas Pogge, *World Poverty and Human Rights*, esp. chap. 8.

⁷ See Beitz, *Political Theory and International Relations*, p. 81.

interpreted, that constitute the moral personality of the state” (Ibid).⁸

Thus, Beitz argues that, not all states can claim a right of internal autonomy: “only states whose institutions satisfy appropriate principles of justice can legitimately demand to be respected as autonomous sources of ends” (Ibid).⁹ So state’s internal autonomy is limited and conditional, and its limits and conditions are determined by the principles of justice. It is important to note that, Beitz does not distinguish between principles of domestic justice and conditions of government legitimacy. Therefore, in his opinion, intervention in another state’s affairs for the sake of justice can be morally permissible. Beitz emphasizes that there may be “some warrant for interference in another state’s affairs when the state’s institutions are unjust according to appropriate principles of justice and the interference would promote the development of just domestic institutions within the state.”¹⁰

In a similar vein, Pogge in *Realizing Rawls*¹¹ argues that a Rawlsian liberal must endorse global application of the two principles of justice as fairness. He holds that these principles would be chosen by the parties in a global original position. Thus, justice as fairness should be globalized by “viewing the parties as immediately

addressing the world at large and dealing with the organization of national societies only within the context so provided” (Pogge, 1989: 241-42).¹² And he asserts that if we have “Rawlsian commitments,” in particular, if we share Rawls’s reasons for regarding all human beings as free and equal moral persons, and for focusing on the basic structure, then “we should assess the justice of our global institutional scheme by reference to the worst representative share it tends to generate” (Ibid: 259).¹³

Pogge presents his position as an interpretation and defense of Article 28 of the *Universal Declaration of Human Rights*: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized” (Ibid: 239).¹⁴ When assessing the global institutional framework from a moral point of view, we should be concerned, “first and foremost, with its least advantaged participants, those in our world who lack well protected fundamental rights and liberties (as stipulated for example, by the *Universal Declaration* or by Rawls’s first principle in its amended form)”. Pogge proposed an amendment to Rawls’s first principle as that it forbids radical social and economic inequalities involving extreme poverty. Therefore, he favors a global order under

⁸ Beitz, *Political Theory and International Relations*, p. 81.

⁹ *Ibid*.

¹⁰ Beitz, *Political Theory and International Relations*, p. 81-82. But critics say that external intervention – as empirical assumption suggest – might make things worse from the perspective of justice. Just because external agents usually are both less interested in and less familiar about the public interests of the countries in which they intervene than the people live there, therefore it is unlikely they will ever promote their

justice. *Ibid*, p. 85. See also Joshua Cohen, “The Terrain of a Global Normative Order,” ocw.mit.edu/NR/rdonlyres/Political-Science/17-000JPolitical-Philosophy--Global-JusticeSpring2003/.../0/Inclass_two1.pdf.

¹¹ Thomas Pogge, *Realizing Rawls* (Cornel University press, 1989).

¹² Pogge, *Realizing Rawls*, pp. 241-242.

¹³ Pogge, *Realizing Rawls*, p. 259.

¹⁴ Pogge, *Realizing Rawls*, pp. 239.

which basic rights and liberties would be better protected.

In his later works, Pogge make a distinction between legal (strong) and moral (weak) cosmopolitanism (Pogge, 2002: 169);¹⁵ indicates that strong cosmopolitans require that, as agents, we should admit equal duties or equal responsibilities to everyone in the world, while weak cosmopolitans suggest that people have special obligations to fellow nationals or fellow citizens (Miller, 2002: 84).¹⁶ As David Miller shows, the cosmopolitanism is in fact reduced to the claim that we owe people *something* as a matter of justice, regardless of national boundaries (Miller, 2002: 975).¹⁷ So,

cosmopolitanism in this weak sense is simply the claim that there are global duties of justice, duties owed by one human being to another that go beyond borders.¹⁸

Miller argues that the weak (i.e., moral) version of cosmopolitanism – which is formulated in terms of a principle of equal moral worth or equal moral concern – “can be accepted by almost anybody – excepting a few racists and other bigots.”¹⁹ Thus, one can say that John Rawls’s the Law of Peoples can be included in the moral version of cosmopolitanism (Freeman, 2007: 419).²⁰ Just because he insists the honoring of human rights and the duty of assisting peoples living under unfavorable conditions

¹⁵Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press, 2002), p. 169.

¹⁶ David Miller notes that the strong account of cosmopolitanism “only makes sense in combination with a political demand for global government. If we were truly world citizens, then equal responsibilities would certainly follow.” D. Miller, “Cosmopolitanism: A Critique,” *Critical Review of International Social and Political Philosophy*: Vol. 5, no. 3, 2002, p. 84.

¹⁷ See David Miller, “Debate Caney’s ‘International Distributive Justice’: a Response,” *Political Studies*, 2002, 5 (50), p. 975.

¹⁸ It is worth mentioning that Beitz and Pogge who in their earlier works were defended a Rawlsian account of global egalitarianism have eventually modified their theoretical claims: Beitz now emphasizing “the derivative rather than intrinsic arguments for greater global equality,” Pogge attaching his case for global economic shift on the principle of non-violation of human rights. See David Miller, “Against Global Egalitarianism,” in G. Brock and D. Mellendorf (eds), *Current Debates in Global Justice* (Springer, 2005), p. 57. See also Charles Beitz, “Dose Global Inequality Matter?” in Thomas Pogge (ed.), *Global Justice* (Oxford: Blackwell Publisher, 2001), pp. 106-122; Thomas Pogge, *World Poverty and Human Rights*.

¹⁹ David Miller, “Cosmopolitanism: A Critique,” p. 84. In somewhere else, Miller explains the political

distance between cosmopolitans and their opponents as follows: “whereas cosmopolitans advocate global principles of distributive justice, anti- cosmopolitans hold that distributive principles only apply within nations and other smaller communities. According to those in the second camp, global principles of justice are non-distributive in character: they may, for example, specify a minimum level of entitlement that applies to human beings everywhere, or they may specify procedures that should govern relationships between political communities, such as principles of reciprocity or mutual aid. In other words, cosmopolitans invite us to compare the shares of resources held by different people in different places, whereas their opponents focus on other aspects of the global order, typically on whether people’s basic rights and interests are protected, and on the terms on which political communities interact with each other. For one side, global inequality is a matter of concern in its own right; for the other, global inequality matters only insofar as it translates into poverty, exploitation, or other such non-distributive forms of injustice.” D. Miller, “Debate Caney’s ‘International Distributive Justice’: a Response,” *Political Studies*, 2002, 5 (50), p. 976.

²⁰ See also Samuel Freeman, *Rawls*, p. 419. Rawls’s “Society of Peoples” described here satisfies most of Pogge’s requirements for a just global order.

among the principles of justice that should govern “Society of Peoples.”

In the rest of this article, I will examine John Rawls’s account of global normative order or his idea of global justice. I will explain Rawls’s idea of a people and his distinction between liberal and “decent” peoples. Finally, I will briefly discuss the conception of human rights as a fundamental element of an idea of global justice.

II. The Society of Peoples

In *The Law of Peoples*²¹, Rawls argues against attempts of the Rawlsian cosmopolitans to extend his conception of justice – the two principles – to the global context.²² In contrast to the cosmopolitans’ assertion that the ultimate concern of their view “is the well-being of individuals and not the justice of societies,” what is significant to the Law of Peoples²³, Rawls says, “is the justice and stability for the right reasons of liberal and decent societies, living as members of a society of well-ordered Peoples” (*LP*: 119-20).

Rawls’s aim here is twofold: he wants to give an account of the role of human rights and of the form that toleration of non-liberal societies must take from the perspective of liberalism “extended to the law of peoples,” to prove that his liberal Law of Peoples is

acceptable globally– to both well-ordered liberal and non-liberal but decent peoples – and to prove that a society need not be liberal in order to respect human rights (Freeman, 2007: 431, 437).²⁴ Rawls describes the two fundamental motivating ideas of the Law of Peoples as follows:

One is that the great evils of human history – unjust war and oppression, religious persecution and the denial of liberty of conscience, starvation and poverty, not to mention genocide and mass murder – follow from political injustice, with its own cruelties and callousness. ... The other main idea, obviously connected with the first, is that, once the gravest forms of political injustice are eliminated by following just (or at least decent) social policies and establishing just (or at least decent) basic institutions, these great evils will eventually disappear (*LP*: 6-7).

Rawls’s the Law of Peoples includes three essential characteristics: first, the idea of people, second, the liberal and decent peoples, and finally the idea of global public reason. In the following pages I examine these characteristics.

1. The Idea of People

The “basic units of moral concern” in the global normative order might be understood in three ways: “global society as a society of

²¹ John Rawls, *The Law of Peoples* (Harvard University Press, 1999). I will refer to the book in the body of the text, using the abbreviation “*LP*”.

²²See *LP*, esp. part 2, section 16.

²³ The term “law of peoples,” relying upon John Vincent, *Human Rights and International Relations* (Cambridge University press, 1986), p. 27, derives from the idea of *jus gentium*. The phrase, “*jus gentium intra se*” indicates what all laws have in common. “Rawls’s use of the term “law of peoples” does not, however, have the same meaning. Rawls uses the term

“Law of Peoples” to refer to those principles that regulate mutual political relations among peoples, not among individuals or state as such, as was traditionally the case with natural law and law of nations theorists.” See David Boucher, “Uniting What Right Permits with What Interest Prescribes: Rawls’s Law of Peoples in Context,” in Rex Martin and David Reidy, eds., *Rawls’s Law of Peoples: A Realistic Utopia* (Blackwell Publishing, 2006), p. 23.

²⁴ See also Freeman, *Rawls*, pp. 431, 437.

individuals, a society of peoples, and a society of states” (Cohen, 2003:8)²⁵ Rawls supports the view that the basic unit in the global order is a society of peoples. A distinctive feature of a society of peoples is that there are the principles must be endorsed by the “agents” for the global order – what Rawls called the “Law of Peoples.”

The idea of a people, however, has three “basic features”: institutional, cultural, and moral. The first feature, the institutional feature, shows that a people has a government with a set of legal and political institutions that represents its people’s interests; “reasonably just ... government that serves their [people’s] fundamental interests”: protecting their territory; preserving their political institutions, culture, independence, and self-respect as a corporate body; and ensuring the safety, security, and well-being of their citizens (*LP*: 23–9, 34–5). The second feature, the cultural condition, indicates that each peoples are also culturally “united by what Mill called ‘common sympathies’”; Rawls clearly means by this an idea of nationality, generally based on “a common language and shared historical memories” (*LP*: 23–5). And finally, the people has a moral nature, meaning that the political society is regulated by a conception of justice, and that the people is prepared to cooperate with other peoples on reasonable

terms (*LP*: 23–5, 61–8). Rawls says peoples with these three features differ from the societies he refers to as states:

How far states differ from peoples rests on how rationality, the concern with power, and a state’s basic interests are filled in. If *rationality* excludes the *reasonable* (that is, if a state is moved by the aims it has and ignores the criterion of reciprocity in dealing with other societies); if a state’s concern with power is predominant; and if its interests include such things a converting other societies to the state’s religion, enlarging its empire and winning territory, gaining dynastic or imperial or national prestige and glory, and increasing its relative economic strength – then the difference between states and peoples is enormous (*LP*: 27–29).

Two characteristics of Rawls’s account of the idea of people are important. The first is that, peoples are considered as reasonable and not simply rational (*LP*, 25).²⁶ This idea is opposed to the realist assumption that states are merely rational actors that pursue their own interests (*Ibid*).²⁷ The second characteristic indicates that a significant interest of a people is not being treated with humiliation but with respect by other peoples: “altogether distinct from their concern for their security and safety of their territory, this interest shows itself in a people’s insisting on receiving from other

²⁵ See Joshua Cohen, “The Terrain of a Global Normative Order,” ocw.mit.edu/NR/rdonlyres/Political-Science/17-000/Political-Philosophy--Global-JusticeSpring2003/.../0/Inclass_two1.pdf. p.8.

²⁶ See also Joshua Cohen, “The Terrain of a Global Normative Order,” pp. 8–9.

²⁷ According to the realist’s account of global order, the principal actors are states, “who act rationally in

pursuit of their interests, above all their interests in security. Because global society is anarchic there is no central authority with the capacity to make and enforce rules in the global society, states must depend on their own devices. And because of their uncertainty about the intentions of other states, they must be constantly watchful about their own security.” Joshua Cohen, “The Terrain of a Global Normative Order”, p.1.

peoples a proper respect and recognition of their equality” (*LP*: 35).

As Rawls argues in *Justice as Fairness*, when citizens in a democracy consider the question of the justice of their society’s basic structure, they are to think of themselves and each other only as free and equal moral persons, and they are to offer terms of cooperation that they sincerely believe the others might reasonably accept (Rawls. 2001: 27-28).²⁸ Similarly, in the *Law of Peoples*, when determining what terms of cooperation would be fair, peoples are to employ a criterion of reciprocity appropriate to the kind of social cooperation in question (*LP*, 25).²⁹ Rawls writes:

“It is...part of a people’s being reasonable and rational that they are ready to offer to other peoples’ fair terms of political and social cooperation. These fair terms are those that a people sincerely believes other equal peoples might accept also; and should they do so, a people will honor the terms it has proposed even in those cases where that people might profit by violating them. Thus, the criterion of reciprocity applies to the *Law of Peoples* in the same way it does to the principles of justice for a constitutional regime” (*LP*: 35).

According to Rawls, each citizen of a well-ordered society would ideally have the two moral powers necessary to be cooperating members of society. These moral powers include a capacity for a sense of justice (to understand, apply, and act from principles of justice) and a capacity for a

rational conception of the good (to form, revise, and pursue a rational conception of the good). Rawls calls these powers the capacities to be reasonable and to be rational (Rawls, 1996: 19, 81, 103-4).³⁰ In a well-ordered democratic society, the citizen assumes that every member of the society is a free and equal moral person and thus regards each member of the society as entitled to the same basic political and legal rights as any other citizen. In *The Law of Peoples* the parallel of the idea of a citizen is the idea of a people: a people is well-ordered in accordance with a conception of justice and also is a non-expansionist non-aggressive society. Thus a people is motivated to take part in fair social cooperation among well-ordered societies. It requires that a people has the necessary and sufficient ground of entitlement to equal rights and respect.³¹

2. Liberal and Decent Peoples

The second essential characteristic of the *Law of Peoples* is a distinction between liberal and decent peoples. A liberal people holds a conception of justice that assigns equal rights – personal and political – to citizens, and that regards citizens as free and equal persons. By contrast, a decent people do not endorse a liberal conception of justice; instead, it is based on a “common good idea of justice” and regards individuals as basically members of groups (*LP*: 64-65). Although a common good idea of justice ensures basic rights to all members, it does not guarantee the same

²⁸ See Rawls, *Justice as Fairness: A Restatement*, pp. 27-28.

²⁹ See also, Freeman, *Rawls*, p. 436.

³⁰ See Rawls, *Political Liberalism* (Columbia University Press, 1996), pp.19, 81, 103-4.

³¹ See Rawls, *LP*, pp. 87-88. See also Freeman, *Rawls*, pp. 430-31.

rights for all individuals that we find in liberal democracies.

According to Rawls, in a characterized original position, which the parties representing liberal and non-liberal (but decent) peoples would endorse the eight principles of the Law of Peoples.³² He explains that,

“The basic idea is to follow Kant’s lead as sketched by him in *Perpetual Peace* (1795) and his idea of *foedus pacificum*. I interpret this idea to mean that we are to begin with the social contract idea of the liberal political conception of a constitutionally democratic regime and then extend it by introducing a second original position at the second level, so to speak, in which the representatives of liberal peoples make an agreement with other liberal peoples. ... Each of these agreements is understood as hypothetical and nonhistorical, and entered into by equal peoples symmetrically situated in the original position behind an appropriate veil of ignorance. Hence the undertaking between peoples is fair” (*LP*: 10).

The task of the eight principles is to regulate the peoples’ conduct in relation to each other. The principles are as follows:

- (1) Peoples are free and independent, and their freedom and independence is to be respected by other peoples.
- (2) Peoples are to observe treaties and undertakings.

(3) Peoples are equal and are parties to the agreements that bind them.

(4) Peoples are to observe the duty of non-intervention.

(5) Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense.

(6) Peoples are to honor human rights.

(7) Peoples are to observe certain specified restrictions in the conduct of war.

(8) Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime (*LP*:37).

These principles are “familiar and traditional principles of justice among free and democratic peoples” (*LP*:37). These principles apply to all such peoples, they apply to them as politically independent peoples, they assign the same rights and duties to them all. Furthermore, the function of the principles is to secure and advance the fundamental interests of all peoples, including their interest in recognition and respect as equals. Therefore the principles would be acceptable as fair by all peoples (*LP*:40-41).

The fundamental interests of free and democratic liberal peoples give them reason to seek the benefits of social cooperation among peoples. And they seek to gain these benefits by cooperating in accordance with a criterion of reciprocity. Thus liberal peoples are both rational and reasonable.³³

³² Rawls, *LP*, pp. 10, 32-33, 39-43, 58.

³³ Rawls makes distinction between a liberal people and a state: “A difference between liberal peoples and states is that just liberal peoples limit their basic interests as required by the reasonable. In contrast, the content of the interests of states does not allow them to be stable for the right reasons: that is, from firmly

accepting and acting upon a just Law of Peoples. Liberal peoples do, however, have their fundamental interests as permitted by their conceptions of right and justice. They seek to protect their territory, to ensure the security and safety of their citizens, and to preserve their free political institutions and the liberties and free culture of their civil society. Beyond these

“[L]iberal peoples have a certain moral character. Like citizens in domestic society, liberal peoples are both reasonable and rational, and their rational conduct, as organized and expressed in their elections and votes, and the laws and policies of their government, is similarly constrained by their sense of what is reasonable. 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 political justice in the first case and the Law of Peoples in the other” (*LP*: 25).

But, how the Law of Peoples can be extended to decent non-liberal peoples? Rawls says that decent societies are “well-ordered” and the parties representing these societies – in an appropriate original position – are “rational and moved by appropriate reasons,” (*LP*: 63). So they “do not engage in aggressive wars; therefore their representatives respect the civic order and integrity of other peoples” and thus would “accept the symmetrical situation (the equality) of the original position as fair.” He further explains that in virtue of their common good conception of justice, “the representatives strive both to protect the human rights and the good of the peoples they represent and to maintain their security and independence.” Furthermore, the representatives “care about the benefits of trade and also accept the idea of assistance among peoples in time of need” (*LP*: 69).

Thus, Rawls argues that if decent societies accept the above-mentioned eight principles, these societies should be considered by liberal societies “as *bona fide* members of a reasonable Society of Peoples” (*LP*: 84).

However, Rawls realizes that the particular societies may lack the capacities necessary for taking part in a Society of Peoples, or may commit crimes: these are “burdened societies” and “outlaw regimes”. “Benevolent absolutisms” seem to be an intermediate case, insofar as they pose no threat to other states and secure human rights domestically, yet are not well-ordered societies. Rawls describes benevolent absolutism as securing “human rights” or “most human rights” (but not rights of political participation) (*LP*: 4, 63, 92). Well-ordered Peoples may pressure the “outlaw regimes” to observe the Law of Peoples (*LP*: 93) and have duties of assistance toward the “burdened societies”. Here Rawls, in contrast with cosmopolitan egalitarians, argues that,

“It does not follow, however, that the only way, or the best way, to carry out this duty of assistance is by following a principle of distributive justice to regulate economic and social inequalities among societies. Most such principles do not have a defined goal, aim, or cut-off point, beyond which aid may cease. The levels of wealth and welfare among societies may vary, and presumably do so; but adjusting those levels is not the object of the duty of assistance” (*LP*: 106).

interests, a Liberal people tries to assure reasonable justice for all its citizens and for all peoples; a liberal

people can live with other peoples of like character in upholding justice and preserving peace” (*LP*, p. 29).

In so doing, Rawls limits duties to the burdened societies in helping them to build their own institutions,³⁴ he writes,

“The third guideline for carrying out the duty of assistance is that its aim is to help burdened societies to be able to manage their own affairs reasonably and rationally and eventually to become members of the Society of well-ordered Peoples. This defines the “target” of assistance. After it is achieved, further assistance is not required, even though the now well-ordered society may still be relatively poor” (*LP*: 111).

3. The Idea of Global Public Reason

The third essential characteristic of the Law of Peoples is the idea of public reason: the society of peoples is guided by reasons that can be shared by different peoples, and that its content is provided by the principles of the Law of Peoples (*LP*: 55- 57, 121). In order to determine that how the ideal of a peaceful world – in which the human rights of all persons are respected – could be realized, Rawls first rejecting the goal of a world state:

“I follow Kant’s lead in *Perpetual Peace* (1795) in thinking that a world government – by which I mean a unified political regime

with the legal powers normally exercised by central governments – would either be a global despotism or else would rule over a fragile empire torn by frequent civil strife as various regions and peoples tried to gain their political freedom and autonomy” (*LP*: 36).

He then tries to develop a conception of a just order of politically independent peoples which could, realistically, be achieved. It is a conception of peaceful relations among peoples, which each of them are both well-ordered by its own conception of justice and motivated to deal justly with other peoples. Since such peoples differ in their moral character from states, Rawls refers to them using the term “Society of Peoples.” Rawls maintains that they would follow the principles of the Law of Peoples as the basis of public political reasoning in their dealings with each other (*LP*: 55).

Rawls first considers the idea of a Society of Peoples in which all of the societies are liberal-democratic peoples. In *A Theory of Justice and Political Liberalism*, Rawls has argued that a just and stable liberal-democratic society is realistically possible, in *The Law of Peoples* he addresses the question

³⁴ The importance and causal efficacy of institutions – as an essential element of social and economic development – has recently gained sophisticated explanation by many economists and social scientists. For example, Amartya Sen in *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford: Clarendon Press, 1981), has concluded that “famines are economic disasters, not just food crises” p. 162. In other words, he argues that famines are not problems of food production, but political and socio-economic structure. For further inquiry about the importance of domestic institutions in current literature see, Mathias Risse, “What We Owe to the Global Poor,” in G. Brock and D. Mellendorf (eds), *Current Debates in Global*

Justice (Springer, 2005), pp. 81-118. He cites many references in this regard, for instance, Douglass North, *Institutions, Institutional Change, and Economic Performance* (Cambridge: Cambridge University Press, 1990); David Landes, *The Wealth and Poverty of Nations: Why Some Are So Rich and Some So Poor* (New York: Norton: 1998); Dani Rodrik, Arvind Subramanian and Francesco Trebbi, “Institutional Rule: The Primacy of Institutions over Geography and Integration in Economic Development,” (<http://ksghome.harvard.edu/~drodrik.academic.ksg/papers.html>); *World Economic Outlook 2003*, Chapter 3.

of whether just and stable relations among such societies would be realistically possible (*LP*: 11, 124-26). He presents two kinds of arguments in support of the claim that such a Society of Peoples would be realistically possible. The first argument – the argument of democratic peace – focuses to the empirical and historical facts explaining why well-established democracies have not gone to war with each other and probably will not do so.³⁵ The second argument aims to show that liberal peoples have reason to support peace and justice internationally by following the principles of the Law of Peoples. This argument makes appeal to the idea of public reason.

Public reason is a basis for political reasoning that all can share; it comprises “public justifications for political and social institutions – for the basic structure of a political and social world” – that can be offered to and accepted by all.³⁶ Rawls characterizes his own political conception of justice (Justice as Fairness) as giving one of various possible forms to the content of public reason for a constitutional democracy. Such form of public reason is a conception of justice that expresses political values that can be shared by all free and equal citizens, thus, a citizen can deliberate within framework of a conception of justice in the sincere belief

that the political values it expresses can be endorsed by other citizens.³⁷

The Law of Peoples specifies a form of public reason for a Society of Peoples, which has been termed “global public reason.”³⁸ Here the assumed just social world is not a well-ordered constitutional democracy, but an order of politically independent peoples. Peoples are well-ordered societies meeting various conditions including moral ones that Rawls calls the criteria of decency (*LP*: 23-25). Unlike states as described by Realist theories of international relations,³⁹ decent peoples are motivated to realize the ideal of a Society of Peoples by following its public reason, and their domestic institutions meet certain minimum moral standards, including respect for basic human rights (*LP*: 64-67).

Some important implications of the idea of global public reason are following: first, the public reason reflects the virtue of *toleration*. This indicates that liberal peoples do not insist that the content of the global public reason corresponds to the principles of a liberal conception of justice, that is, do not insist that those principles should be applied to all societies (*LP*: 59). The second implication is that the terms of argument among peoples would be shared; thus, the global public reason should not depend on a conception of citizens as free and equal persons. Therefore, its terms can be accepted

³⁵ See Part I, section 5 of *LP*. Referring to the historical studies (for example, Michael Doyle, *Ways of War and Peace* (New York: Norton, 1997), Rawls notes, “Though liberal democratic societies have often engaged in war against nondemocratic states, since 1800 firmly established liberal societies have not fought one another” *LP*, p. 51.

³⁶ John Rawls, *Collected Papers*, ed., Samuel Freeman (Harvard University Press, 1999), p. 607.

³⁷ See John Rawls, “The Idea of Public Reason Revisited” in *LP*, p. 140.

³⁸ See Joshua Cohen, “Is there a Human Right to Democracy?” in Christine Sypnowich, ed., *The Egalitarian Conscience: Essays in Honour of G. A. Cohen* (Oxford University Press, 2006), pp. 226-249.

³⁹ See *LP*, pp. 46-48.

by both liberal and non-liberal decent peoples (LP: 57). Finally, the idea of global public reason is a matter for treatment of other peoples – both liberal and decent non-liberal – as equal cooperators. It specifies cooperation within the principles of the Law of Peoples. Political societies are to apply the principles as practical guidelines and regulations for their conduct and institutions (LP: 42).

III. A Freestanding Conception of Human Rights

Given the above brief explanation of Rawls's account of normative global order, we can understand that why Rawls includes in the Law of Peoples a principle requiring respect for human rights. He proposes a conception of human rights, as an essential component of an idea of global justice for a culturally plural world. Rawls expands his ideas on justice to the international society comprised of different "peoples" with different values and traditions. So his conception of human rights is less extensive than that cosmopolitan egalitarianism endorses.

Rawls conceives human rights as the broad requirements of justice that are compatible with all reasonable political moralities. He holds that human rights are a "proper subset" of the rights of members recognized and secured in any society that is (at least) "decent." Decent societies are including those societies which are recognized by liberal democracies as "equal participating members in good standing of the society of peoples" (LP: 59). Rawls makes

a distinction between the conception of liberal justice and the idea of decency. "All liberal societies are decent, but not all decent societies are liberal. Human rights are common to all decent societies, whether they satisfy the requirements of liberal justice or not" (Beitz, 2006: 365).⁴⁰

Making this distinction, Rawls demarcates "human rights proper" from the conception that "simply expand the class of human rights to include all the rights that liberal government guarantee." These rights are fundamental to any "common good idea of justice" and so are not "peculiarly liberal or special to the Western tradition." Therefore, according to Rawls, human rights set minimal, necessary (although not sufficient from a liberal point of view) requirements of justice that apply to the basic structure of every society. Among the human rights which Rawls described as proper subset are as follows: "the right to life (to the means of subsistence and security); to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality ..." (LP: 65).

Rawls says that these rights are "a special class of urgent rights" (LP:78-81), and they are the *primary* and necessary conditions for social cooperation or as the requirements of membership in any well-ordered society. However, Rawls maintains that respect for human rights is not sufficient to make a society a well-ordered one. The other two conditions for domestic institutions must be

⁴⁰ Charles Beitz, "Human Rights as a Common Concern," in Robert Goodin and Philip Pettit, eds.,

Contemporary Political Philosophy: An Anthology (Blackwell Publishing, 2006), p.365.

met: first, political relationships between the government and the people, as well as the political relationships among the people, should be moral relationships, namely respecting the reciprocal duties of justice. Second, the members of the society should be granted “a meaningful role in making political decisions.” For that reason, Rawls thinks that *benevolent absolutisms* which honor human rights are not well-ordered “because their members are denied a meaningful role in making political decisions” (LP: 4). Rawls realizes that some other societies are not well-ordered as well; these are “burdened societies” namely “peoples living under unfavourable conditions that prevent their having a just or decent political and social regime” (which may lack the capacities necessary for taking part in international society), and “outlaw societies” (that may commit crimes).

Thus, Rawls believes that there is a significant moral difference between “decent hierarchical societies” that are well-ordered – that is to say, their basic structure of political and legal institutions recognize and secure human rights – and those that are not. Given the moral importance of these distinctions, Rawls maintains that if a non-liberal society is governed in accordance with a conception of justice that requires respect for its members’ basic human rights, and if its government seeks to benefit membership in

international society governed by a Law of Peoples,⁴¹ then that non-liberal society deserves full and good standing in the international society and is entitled to toleration by liberal peoples.

As we have observed that among the principles that Rawls sets for the Law of Peoples are the principles that specify moral reasons for restricting the permissible ends and means of war, as well as moral reasons for setting limits to the states’ sovereignty. Rawls believes that war is justified only for reasons of self-defence or in order to protect human rights in extreme cases, and that human rights specify limits to a regime’s internal autonomy (LP: 79). If a government systematically violates the human rights of its own people, it should be regarded as an “outlaw” and “may be subjected to forceful sanctions and even to intervention” (LP: 81) by the liberal and decent peoples. The idea of human rights is also restrictions on the “reasons for war and its conduct” (LP: 79). In a morally acceptable global order, war may be waged only against another state in self-defense or to secure human rights of the peoples as violated by their own state. Therefore, wars cannot justly be engaged in the interest of maintaining military superiority or access to economic resources, or to expand national territory,

⁴¹ The term “law of peoples,” relying upon John Vincent, *Human Rights and International Relations* (Cambridge University press, 1986), p. 27, derives from the idea of *jus gentium*. The phrase, “*jus gentium intra se*” indicates what all laws have in common. “Rawls’s use of the term “law of peoples” does not, however, have the same meaning. Rawls uses the term “Law of Peoples” to refer to those principles that

regulate mutual political relations among peoples, not among individuals or state as such, as was traditionally the case with natural law and law of nations theorists.” See David Boucher, “Uniting What Right Permits with What Interest Prescribes: Rawls’s Law of Peoples in Context,” in Rex Martin and David Reidy, eds., *Rawls’s Law of Peoples: A Realistic Utopia* (Blackwell Publishing, 2006), p. 23.

which historically have been the primary reasons for warfare (*LP*: 94-97).

Thus, honoring human rights is a significant standard should be satisfied by a reasonable Law of Peoples. According to Rawls, “the idea of human rights has three primary *roles* within the Law of peoples:

1. Their fulfillment is a necessary condition of the decency of a society’s political institutions and of its legal order.
2. Their fulfillment is sufficient to exclude justified and forceful intervention by other peoples, for example, by diplomatic and economic sanctions, or in grave cases by military force.
3. They set a limit to the pluralism among peoples” (*LP*: 80).

Because of the special roles Rawls ascribed to human rights for ensuring social cooperation within the Society of Peoples, he did not include among them all the moral rights of persons. The peoples who ensure only human rights but not all liberal rights satisfy a criterion of decency, even though they are not just from the liberal moral perspective (*LP*: 78, 83). But for Rawls, decency is an important subject of political morality, since it is sufficient for a people to enjoy the rights to self-determination and non-intervention (*LP*: 83). An implication of Rawls’s idea of global order is that the Society of Peoples can be just whether all of its members are just (from the liberal point of view) or not (*LP*: 70).⁴² As a result, the task of the Society of Peoples is

to ensure basic human rights of all peoples and not “to enforce the liberal rights of democratic citizenship among all peoples” (Freeman, 2007: 437). Achieving democratic justice should be left to the self-determination of each politically independent people (*LP*: 61, 85).

Conclusion

I have argued that Rawls’s idea of global justice presents a set of principles of justice and rights applicable to global order which, if followed, would lead to the creation of a just, stable and peaceful world. The resulting global order would be a *realistic utopia*: respect for human rights would be guaranteed by societies cooperating with each other in accordance with principles that secure and advance their legitimate interests. Such a world would be more just and peaceful than ours now is. And it is possible to realize such a global order given the realities of human nature and cultural diversity.

Rawls has shown that human rights as a constituent element of a conception of global justice can be justified by means of the analysis of idea of a well-ordered society. His arguments do not presuppose any particular comprehensive doctrine, nor do they presuppose any particularly liberal conception of justice. Instead, Rawls argues that the justification of human rights needs to be formulated in terms that can plausibly be shared. Given the fact of reasonable pluralism in the modern world, the idea of

⁴² In support of this idea, Rawls clarified that in certain matters, churches – for example the Catholic and the Congregational churches – might be treated equally, “even though the first is hierarchically organized, while the second is not.” As another example:

“universities also may be organized in many ways.... But the fact that universities’ internal arrangements differ doesn’t rule out the propriety of treating them as equals in certain circumstances” (*LP*, pp. 69-70).

human rights cannot meet the agreement of all reasonable peoples if it draws on secular or religious traditions that they do not share. Thus, human rights, here are understood as the broad requirements of justice that are consistent with all reasonable political moralities include “liberal” and non-liberal “decent” peoples. Rawls says that there is some hope that a freestanding conception of human rights can gain support of a global *overlapping consensus*.

The idea of an overlapping consensus– in this case – serves to show how a just and

stable global order is possible. In order to achieve this aim we should assume that “there are many reasonable comprehensive doctrines that understand the wider realm of values to be congruent with, or supportive of, or else not in conflict with, political values as these are specified by a political conception of justice.”⁴³ So, the idea of global justice does not mean that we think there is only one global set of answers appropriate to all contexts.

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نقدی بر جهان‌شهری برابری خواه: درباره نظریه عدالت جهانی جان رالز

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چکیده

نظریه عدالت جهانی در دهه کنونی موضوع فراگیر و مسلط در فلسفه سیاسی است: چه اصولی از عدالت (یا چه مفادی از حقوق) قابل تعمیم و اطلاق در افق جهانی است و چگونه می‌توان از آنها دفاع کرد؟ بر وفق نظریه رایج، یعنی جهان‌شهری برابری خواه - به منزله یک نظریه اخلاقی یگانه انگارانه - باید مجموعه یکسانی از هنجارهای مبتنی بر عدالت بر عموم انسان‌ها در هر شرایط و در هر زمان و مکانی (یعنی فارغ از بستر تاریخی و اجتماعی) اطلاق گردد. این نظریه بر این باور است که حقوق بشر مطابق است با تمام حقوقی که مفهوم عدالت (به معنای لیبرالی آن) متضمن است. از این رو، تضمین و تأمین حقوق بشر مستلزم یک نظام لیبرال دموکراسی است. اما، جان رالز می‌گوید که نظریه «عدالت به منزله انصاف» وی، فقط بر ساختار بنیادین یا نهادهای اساسی یک جامعه دموکراتیک اطلاق می‌شود و نمی‌توان آن را به جوامع غیر دموکراتیک تعمیم داد، چراکه ساختار بنیادین جهانی (یا دولت جهانی) وجود ندارد. رالز کوشیده است تا نظریه نحیف‌تری درباره عدالت که با تأکید بر اولویت حقوق بشر صورت‌بندی شده است را در افق جهانی عرضه کند. بر وفق نظریه رالز، مفهوم عدالت (به معنای لیبرال دموکراتیک) عام‌تر از مفهوم حقوق بشر است. به بیان دیگر، معیار مشروعیت نظام سیاسی محدودتر از معیار عدالت است: تحقق عدالت لیبرالی به یک نظام دموکراتیک وابسته است اما تأمین حقوق بشر منحصر به لیبرال دموکراسی نیست، بلکه هر نوع نظام سیاسی مشروع و مقبول باید متکفل و متضمن آن باشد. رالز با ارائه برداشتی خودبنیاد از حقوق بشر - به منزله جزء مؤلفه نظریه عدالت جهانی‌اش - می‌گوید که در جهان جدید که آمیخته از سنت‌های اخلاقی-دینی معقول و متفاوت است، امید است که این برداشت بتواند از سوی پیروان آنها تصدیق و تأیید شود و بنابراین، اجماع همپوش جهانی در باب حقوق بشر شکل گیرد.

واژه‌های کلیدی: جهان‌شهری برابری خواه؛ جان رالز؛ نظام هنجاری جهان؛ عدالت جهانی؛ واقعیت تکرر معقول؛ حقوق بشر

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