

The London School of Economics and Political Science

**The Coherence and Defensibility
of Rawls' Law of Peoples**

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DECLARATION

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ABSTRACT

In the last three decades, liberal political philosophy has been increasingly concerned with the nature and extent of the moral responsibilities of members of different political communities to each other. John Rawls contributed to this debate in his final book, *The Law of Peoples (LOP)*. There, Rawls refused to extend his account of domestic distributive justice to international politics and argued that some non-liberal (yet decent) peoples can be members *in good standing* of the international community. Many of Rawls' critics maintain that this evidences a double standard, and accuse *LOP* of being an incoherent extension of Rawls' political philosophy to global politics. In this thesis I show that the opposite is true. I start by underlining the main discontinuities between Rawls' accounts of domestic and international justice. I then show that these discontinuities can be explained by tracing the evolution of the idea of public justification in Rawls' work. Rawls' two theories of justice are the application of the same idea – public justification – in different political contexts. While the first three chapters are dedicated to the elaboration of this distinctive interpretation of *LOP*, the final two chapters address Rawls' accounts of international economic assistance and international toleration. The thesis surveys a number of critical arguments against Rawls' elaboration of his duty of assistance and his understanding of toleration based on reasonableness. It finds them all wanting, and strikingly off the mark: all seem premised on the idea that a just world is a substantively liberal-egalitarian one. Thus, Rawls' critics fail both to properly attend to our limited abilities to change the global political landscape (not to mention the risks associated with such attempts) and to understand the implications of any sustainable account of toleration.

CONTENTS

Acknowledgments.....	6
Introduction.....	8
I. Political philosophy and global justice	8
II. A sketch of <i>LOP</i>	10
III. The law of peoples and the problem of coherence.....	13
IV. Outline of the thesis	22
1 The Law of Peoples: Constructing Justice for Existing Practices?.....	26
I. Rawls and the relationship between practices and principles	28
II. <i>LOP</i> and practice-dependence	34
2 Rawlsian Liberalism and Public Justification.....	45
I. <i>TJ</i> and the problem of stability.....	48
II. A new account of the shared bases of justification.....	54
III. The Idea of Public Justification.....	61
3 The Coherence of Rawls' Work: (Rawlsian) Cosmopolitanism and the Law of Peoples Revisited	75
I. Problems of extension	77
II. Explaining <i>LOP</i> 's controversial features.....	88
III. The first objection: The effects of inequality	96
IV. The second objection: Peoples and value collectivism	104
4 Toleration in <i>The Law of Peoples</i>	112
I. Toleration in <i>LOP</i>	116
II. The charge of incoherence – again	122
III. Further problems: Horrible scenarios and asymmetry	131
IV. The curious case of benevolent absolutisms	142
5 Rawls' Duty of Assistance: A Defence and Re-Elaboration	154
I. Distributive justice (or lack thereof) in <i>LOP</i>	157
II. Debating the DOA	161
III. The real problem with the DOA.....	171
IV. A possible solution.....	178
Conclusion	187

I. The attitude towards the text.....	187
II. The argument of the thesis.....	188
III. What can we learn from the thesis?.....	193
IV. Future directions.....	195
Bibliography.....	197

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INTRODUCTION

I. Political philosophy and global justice

In the past few decades the idea of global justice has come to dominate the debate in political philosophy. (For overviews see Armstrong, 2012; Mandle, 2006; Valentini, 2011c; Risse, 2012; Ypi, 2012.) Economic, political, technological and social changes under the banner ‘globalization’ have created an ever-growing sense of interconnectedness in human relationships (see Gilabert, 2012). And, as the world has become more interconnected, moral and political philosophers have become increasingly concerned about the nature and extent of the moral and political obligations between different persons and political communities.

The current debates have also become more sophisticated and more specialized (see Armstrong, 2012). From the foundations of human rights to fair trade, and from immigration restrictions to climate change, numerous fields of argument have emerged, each with its own specificity, key texts and peculiar arguments (see Risse, 2012). Yet, accepting the complexity that such debates have undoubtedly reached, it is not implausible to claim that the intellectual preoccupations of global justice theorists have had two main issues at heart. The first relates to the very justification of the current international system. The division of today’s world into self-contained territorial units called states – a modern invention – is a historically contingent aspect of our global political history. The point, then, is to ascertain whether this current global political architecture can be granted justification in some form, or whether other forms of political governance, from systems of overlapping sovereignty to a more encompassing global state, are more desirable (see Pogge, 1992; Cabrera, 2004; Held, 2002; Kukathas, 2003).

The second and related debate concerns the nature of the distributive obligations between different persons at the global level (see Risse, 2012, ch. 4). At least since the publication of Rawls’ *A Theory of Justice* (1971), political philosophy (to the regret of some, it must be admitted) has been largely dominated

by discourses concerning distributive justice between members of the same political community. It is perhaps less than surprising, then, that the global justice debate itself has been, from the start, deeply marked by the desire to understand how the traditionally domestic idea of social and distributive justice could be extended to the global community. Here the choice we seem to face is between those that believe that conceptions of egalitarian distributive justice should apply beyond the boundaries of different political units (see Beitz, 1979; Caney, 2005) and, on the other hand, those who believe that any such extension would be unjustifiable (see Miller, 2008).

Rawls' *The Law of Peoples (LOP)* provides distinctive answers to these questions. In the next section of this introduction I will provide a more detailed overview of the contents of *LOP*, but, synthetically stated, Rawls' vision of global justice is one in which the international order based on distinct political communities is seen as at least potentially just, provided that political communities adapt their powers to recognize the importance of human rights and the political participation of their members, and respect each other's freedom and independence at the international level. *LOP* also provides an answer to the second fundamental question of global justice debates. It states that a conception of distributive justice, especially an egalitarian conception such as justice as fairness, would not be adequate to describe the reciprocal obligations of persons and political communities toward each other at the global level.

In this thesis, I will address both aspects of Rawls' international theory (although, as I state below, I will not limit myself to these two aspects) in attempting a vindication of the coherence and plausibility of Rawls' answers. By 'coherence' I simply mean the idea that the answers elaborated by Rawls in *LOP* are essentially a systematic continuation of his previous work at the domestic level as developed in his two major contributions, namely *A Theory of Justice* and *Political Liberalism*. Of course, claiming that *LOP* is a coherent extension of Rawls' domestic vision of political philosophy is not to claim that *LOP* provides perfectly conceived answers to all the questions it addresses. Rather, presenting *LOP* as a coherent component of the Rawlsian corpus means acknowledging the fact that the main ideas in *LOP* are reconcilable with the major insights that form the backbone of the evolution of Rawls' domestic thought.

In the same way, presenting *LOP* as offering plausible answers to problems in the global justice debate does not entail the idea that such answers are necessarily true, let alone perfect. The point is, rather, that by providing a coherent extension of one of the twentieth century's most developed accounts of liberal political philosophy, *LOP*, in my view, also acts as a distinctively convincing guide to address some of the more difficult questions in the global justice debate. Needless to say, Rawlsian liberalism is but one way to understand liberalism and *LOP*'s suggestions can be improved. However, assuming that all normative theories have their own problems and shortcomings, my claim is that *LOP* is perhaps more defensible than many of Rawls' critics have thought, and provides answers to our questions about global political morality that are sounder than most contributors to the global justice debate have claimed.

In the following section I briefly rehearse the main contents of *LOP*. Throughout the thesis I have assumed familiarity with Rawls' work and therefore provide only an overview of the main elements of Rawls' international theory. In the third section of the introduction I present the core of my argument and the substance of the contribution to the debate made by this thesis. First, it definitively puts to rest the idea that *LOP* is an incoherent extension of Rawlsian political philosophy to international relations; this task is carried out in the first three chapters of the thesis. Second, in chapters 4 and 5, the thesis rescues *LOP* from the accusation that it provides implausible and illiberal answers when it comes to the question of the extent of international toleration and international economic assistance. In so doing, the thesis also provides suggestions for modifications to the presentation of Rawls' ideas in order to strengthen their message and overall sustainability.

II. A sketch of *LOP*

The ideal theory of *LOP*

LOP provides a remodelling of the 'social contract' put forward by Rawls in *A Theory of Justice (TJ, 1971/1999)*. Rawls' domestic contract was primarily concerned with the justice of the basic structure of a self-contained social system.

The second contract, that presented in *LOP*, aims at the establishment of an international ‘Law of Peoples’. As with the domestic case, the signatories of the contract will make their choices under a ‘veil of ignorance’ (*TJ*: 118-123). The crucial difference at this stage in the international theory is that the parties in the original position are not representatives of individuals but representatives of peoples. Consequently, the characteristics of the veil of ignorance are shifted so as to correspond to the different nature of the parties. Peoples are initially framed as liberal societies, and Rawls sees the purpose of *LOP* as propounding an ideal of foreign policy for them. Liberal peoples are characterized by three main features: a) they have a political organization consistent with the model of a constitutional democracy; b) they are, internally, structured and united by ‘common sympathies’; and c) they all (that is, each separately) endorse a moral/political liberal conception of right and justice (*LOP*: 23).

As Rawls clarifies, *peoples* differ from *states* (*LOP*: 25). Peoples are reasonable and rational actors, while states are only rational. To be reasonable means, pre-eminently, to be capable of reciprocity, while to be rational means to be primarily guided by a conception of self-interest. Furthermore, Rawls also maintains that ‘decent Peoples’ should be able to join in the international social compact of liberal peoples (*LOP*: 62). Decent peoples¹ are peoples that, while not fully liberal, possess a set of what we can call threshold requirements: a) their attitude towards other political communities is non-aggressive; b) they respect a (restricted) set of human rights; c) they provide for proper forms of political participation; d) they are capable of sustaining a conception of justice that, while not liberal, is nonetheless oriented towards the common good (*LOP*: 64–5). Liberal and decent peoples together form what Rawls calls ‘the Society of Peoples’ (*LOP*: 61). Liberal and decent peoples, according to Rawls, would, under the veil of ignorance, choose eight laws to govern their mutual undertakings, namely:

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equals and are parties to the agreements that bind them.

¹ Rawls explicitly states that his overall classification of peoples is open-ended, or to put it more precisely, that there might be other types of decent peoples that he does not mention.

4. Peoples are to observe a duty of non-intervention.
5. Peoples have a right of self-defence but no right to instigate war for reasons other than self-defence.
6. Peoples are to honour 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 unfavourable conditions that prevent their having a just or decent political and social regime. (*LOP*: 37)

The nonideal theory of *LOP*

At this stage Rawls leads us from ‘ideal theory’ (how well-ordered peoples deal with each other) to ‘nonideal theory’ (how well-ordered peoples deal with other types of societies that are not well-ordered). According to Rawls, three kinds of political communities are not well-ordered: outlaw states, benevolent absolutisms and burdened societies (*LOP*: 90). The goal of well-ordered peoples is to live in a system of international politics in which all participants are well-ordered. Rawls believes that in the circumstances of the real world, nonideal theory needs to guide us toward that objective. There will be cases in which some political communities are unwilling or unable to follow the dictates of the law of peoples. In such cases liberal and decent peoples will need to sanction those who do not comply and help those who are unable to do so.

There are two parts to nonideal theory. The first deals with cases of ‘noncompliance’, and concerns outlaw states. Outlaw states show aggressive behaviour and actively refuse to abide by the prescriptions of the law of peoples that concern the use of force (the right to wage war, but also the projection of influence through power) in international relations. Well-ordered peoples should not tolerate the externally aggressive conduct of outlaw states. Severe violations of human rights (internal repression) might also be cause enough for legitimate interference or intervention and, overall, sovereignty is taken to be conditional on the protection of basic human rights and interests. The second part of nonideal theory deals with what Rawls calls ‘unfavourable conditions’, regarding burdened societies. Burdened societies are societies lacking the main tools (resources and/or human capital and/or political culture) to develop as a well-ordered people; Rawls states that well-ordered peoples have a ‘duty of assistance’ (DOA) towards these burdened societies (*LOP*: 90). Finally, we have benevolent absolutisms. The latter

are not outwardly aggressive, and also respect a minimal account of human rights, but they lack what Rawls calls a ‘consultation hierarchy’. The government of a benevolent absolutism does not represent in a liberal or decent way the will of its constituency and hence benevolent absolutisms cannot be considered well-ordered peoples. Benevolent absolutisms are non-aggressive and so have a right to self-defence (while outlaw states do not; *LOP*: 92). But they are not well-ordered and so cannot be parties to a law of peoples.

III. The law of peoples and the problem of coherence

Examining the basic tenets of *LOP* show it to be both a very traditional and very innovative account of international law and practice. It is traditional insofar as it takes political communities (of a special kind) to be the fundamental unit of analysis for international politics; in this way Rawls shares the framework of most international relations theory. It sees global politics as international politics, or at the very least as politics between corporate agents of some sort. Rawls also appears as a traditional thinker if we look at the content of most of the principles he proposes in his *LOP*. His focus on the self-determination of (what he calls) peoples and respect for human rights broadly reflects the core of the post-Second World War consensus that led to decolonization and the institution of the international human rights regime.

But this is as far as Rawls’ traditionalism goes. Rawls’ *LOP* refuses to consider states as the main actors in international politics and instead considers the idea of ‘peoples’, a different sort of collective agent, as the appropriate unit of analysis. Furthermore, Rawls’ account of how peoples understand their mutual undertakings is also peculiar from the standpoint of international relations theory. Rawls offers, in both cases, normatively laden reconstructions of these ideas. Peoples have a moral nature and are capable of setting limits to the pursuit of their interests. In a similar way, Rawlsian international politics is not driven by the balance of power or the concordance of interests but is founded on moral reasons. The inevitability of conflict and bargaining are replaced by a moral order based on mutual respect. Finally, while Rawls refuses to apply his domestic account of

distributive justice to international relations, he proposes a very conspicuous principle of assistance (i.e. the duty of assistance). This replaces international aid as a commitment to the welfare of individuals with a concern for the political autonomy of peoples. In so doing Rawls redefines our concept of international economic obligations by creating a middle ground between distributive justice and charity.

In other words, Rawls' *LOP* imagines a realistic utopia in which peoples, as moral agents, live together according to the (normative) dictates of a just law of peoples and achieve a form of peaceful coexistence founded on moral reasons. Most of Rawls' eight principles of the law of peoples remain faithful to a very traditional understanding of international law and practice. But his way of conceiving the collective agents that form the basic units of analysis for his theory, and his understanding of their mutual obligations, is not.

Can *LOP*'s eclectic mix of existing political structures and practices and its normatively laden reconstruction of them be portrayed as a consistent and integral part of Rawls' work as a whole? The tension between these two aspects of Rawls' theory has not escaped critical scrutiny. The initial reaction to Rawls' treatment of international justice has been, by and large, very critical (for an overview see Miller, 2006). The main problem for many (cosmopolitan) readers has been a sense of betrayal (see Wenar, 2001 for a discussion) based on the (alleged) inconsistency between Rawls' domestic and international theories. In a sense, many readers, and especially those who endorsed Rawlsian liberalism at home, were disappointed that Rawls' two principles of justice were not to form the backbone of a global morality based on liberal democratic ideals. Some were baffled by Rawls' (quasi-) silence concerning international institutions (Buchanan, 2000). Others strongly disapproved of *LOP*'s dismissal of the international economic order as a source of responsibility for existing international injustices (Pogge, 2002). Others still were unimpressed by Rawls' intervention-driven account of human rights (Tasioulas, 2002). Many were unconvinced by the lack of remedial provisions against the moral arbitrariness of the distribution of natural resources (Caney, 2005). More broadly, most liberal cosmopolitans were disappointed by the total lack of any distributive principles

whatsoever in *LOP* (Beitz, 2000).² And a number of scholars (see Tan, 2000) were upset by the extent of toleration granted to nonliberal peoples. In sum, the main thread running through the negative critical reaction is a rejection of Rawls' international justice project. One of the basic charges has been that whatever the merits of Rawls' work on international relations, it is inconsistent with the development of a moral theory of international relations based on justice as fairness (Pogge, 2004).

Having acknowledged this disappointment, it would be inaccurate not to attend to the many favourable appraisals of *LOP*. Defenders of Rawls have pointed out that his account of international justice takes place in ideal theory (Reidy, 2006a; Macedo, 2004). This could explain why Rawls' text seems so distant from the many injustices that we witness in the international arena. Existing international institutions and the current international economic order are no doubt based on power relations and economic interests. Yet, so the argument goes, they would clearly be different in a world in which all peoples duly complied with Rawls' law of peoples. Defenders also pointed out that it is incorrect to state that *LOP* features no real concern for individuals. Rather, it would be more accurate to state that such concern is mediated by the existence of collective agents. It is by setting limits to what peoples can do internally and externally that Rawls shows, albeit indirectly, concern for the well-being of individual human beings (see Freeman, 2007b for an overview). Those more sympathetic to Rawls have also argued that to require the extension of liberal rights to all human beings would be intolerant and would show a lack of respect for other cultures and political systems (see Macedo, 2004). Furthermore, the idea that we have to tolerate things that we do not like assumes that the internal political life of decent peoples is violent and oppressive, but Rawls' text does not support this assumption (see Freeman, 2007b). Finally, even if we disagree with Rawls' account of human rights and the very short list of what he calls 'human rights proper', we should be able to recognize that: a) Rawls' list is by his own admission incomplete (and hence could be further extended; see Reidy, 2006); and b) his account of human rights is geared to provide the necessary

² By 'distributive principle' I refer to a type of principle that does not have a cut-off point. If the duty of assistance is acknowledged as having a limit, then it cannot be a 'distributive principle' as characterized here.

requirements for on-going social cooperation, not desiderata for a liberal society (Freeman, 2007c).

Assessing the critical literature, one is surprised by the level of polarization that the debate has reached. In short, I believe, we find ourselves navigating two implausible conceptual waters. On the one hand, many of Rawls' critics believe that his *LOP* is not only flawed but also inconsistent with his broader political philosophy. On the other hand, Rawls' defenders seem to argue that *LOP* is not only a good approximation of what international morality requires of us but that it also poses no real discontinuity problem with regards to Rawls' justice as fairness. Both outlooks seem conceptually unattractive: we are asked either to believe that Rawls was not careful when drafting *LOP*, not even to foresee the implications of his domestic account of justice for international relations; or to simply endorse *LOP*, as if there were no shifts of particular significance between Rawls' domestic and international theories.

Two main discontinuities

While it is difficult to summarize all the existing differences between Rawls' domestic and international theories of justice (see Brown, 2002), we can point out two central features of *LOP* that create a conceptual gap between Rawls' theories (see Wenar, 2001; idem., 2006).

The first difference concerns the adoption, by Rawls, of peoples as the main unit of analysis for his international theory. The contrast with Rawls' domestic theory is sharp. The focus on individuals is a crucial part of justice as fairness. The whole idea of retrieving the contractarian tradition as a strong alternative to utilitarianism was ultimately based on the idea that the latter, as Rawls famously argued, 'does not take the differences between persons seriously' (*TJ*: 27). (For an in-depth analysis of this issue see: Pogge, 1989, part III; idem., 1992; idem., 2005; Kuper, 2000; Beitz, 1979; for a different approach see Wenar, 2001).

As a matter of textual analysis, one could reasonably argue that the principles of justice for the basic structure of society and the principles of justice between peoples have always had a different genealogy. In fact as early as *TJ* (see section 58) Rawls acknowledges these structural differences; his prescriptions for the 'law of nations' are entirely consistent with his later development of a 'Law of

Peoples'. However, we should be clear that what requires explanation does not concern the differences between *TJ* and *LOP*. We should focus instead on the extent to which the idea of justice seems to be developed in different ways for two different political contexts, namely the domestic in *TJ* and the international in *LOP*.

While it is true that as early as *TJ* Rawls acknowledges differences between the domestic and the international contexts, one should not overlook a crucial distinction of the complete version of his international theory as presented in *LOP*. The law of nations presented in *TJ* does not contain, among other things, decent peoples. The basic idea there is that individual rights and prerogatives are dealt with domestically by liberal states and their domestic conceptions of justice. In this view, a law of nations which mentioned individuals directly might be seen as being redundant, as the entitlements of individuals are guaranteed by their national membership. But in *LOP*, with the advent of decent peoples, even when justice has reached its appropriate normative goals, we simply have no certainty that individual rights and prerogatives as understood in liberal societies are secured: the ideal picture of *LOP* is not one in which all persons, albeit in different and culturally specific ways, are guaranteed the rights of free and equal democratic citizens where they happen to be.

Even if we were to reject this point as inconclusive, there is still the problem posed by a seeming discontinuity in Rawls' work. From the outset of *TJ* the main task that Rawls sets for himself is to provide a systematic alternative to the ethical tradition of utilitarianism. The fundamental problem of the latter, as Rawls famously argued, is that by extending to social choice principles that seem intuitively best fit for individual deliberation – that is, by permitting gains (in terms of utility) for some to balance losses by others – utilitarianism unjustly forgets to 'take seriously the distinction between persons' (*TJ*: 24). Even taking seriously the earlier acknowledgment of structural differences between domestic and international justice, one has to admit that to shift the unit of analysis from individuals to collective entities requires a robust justificatory refinement, given the conceptual boundaries implicitly set by providing an alternative to a theory that does not take seriously the differences between persons.

The second important difference between Rawls' domestic and international theory concerns distributive equality. A strong concern with inequality has always

been central to Rawls' theory of distributive justice. Such concern is expressed in domestic society by the adoption, most prominently, of the famous difference principle. According to the difference principle, inequalities are justified in society only insofar as they can be seen to advance the prospects of the least fortunate members to the social compact (*TJ*: part I). In contrast, *LOP* only develops an account of international economic obligations that is based on a DOA. Leaving to a side the issue of whether the DOA is a duty of charity or of justice (upon which there is real disagreement; see Freeman, 2007b; Valentini, 2011b), it is relatively clear that it is not an egalitarian principle. The DOA reflects the desire to provide for each member of the Society of Peoples to an adequate minimal standard.³ The DOA is sufficientarian, not egalitarian, in nature. It demands that each society be provided with the essentials of political autonomy – and the latter are not set by Rawls comparatively.

Rawls discusses the DOA as one case of nonideal theory. According to Rawls, certain societies (burdened societies), 'while they are not expansive or aggressive, lack the political and cultural traditions, the human capital and know-how, and, often, the material and technological resources needed to be well-ordered' (*LOP*: 106). According to Rawls, well-ordered peoples have a duty towards these burdened societies to assist them. Yet he does not believe that principles of distributive justice are the right instrument to do this, as they lack 'a defined goal, aim, or cut-off point, beyond which aid may cease' (*LOP*: 106). In a just Society of Peoples, as Rawls ideally sees it, peoples are not concerned with inequality in the same way as persons are concerned with it domestically. In the domestic case we are concerned not with inequality as such but with its consequences.⁴ Such consequences must not prevent the least advantaged members of society from acting as full citizens by obstructing the effective exercise of their rights. In the Society of Peoples, such requirement, Rawls maintains, is satisfied whenever all members are well-ordered internally (that is, when the DOA is fulfilled). Further, excessive inequalities in the domestic case can bring about the perception of unequal moral worth among different citizens

³ More precisely, the DOA is put in place to ensure that there are no peoples who are unable to become well-ordered and abide by the law of peoples for what we could call 'extenuating circumstances'.

⁴ Here I follow Scanlon (2003).

and hence degrade the self-respect of the least advantaged persons. In the international case, once the DOA is satisfied, varying levels of wealth among citizens of different societies is not a justified cause for diminished self-respect. Once all members of the Society of Peoples are well-ordered, each people ‘adjusts the significance and importance of the wealth of its own society for itself’ (*LOP*: 114).

The goal of the thesis

The two main differences between Rawls’ domestic and international theories highlighted above require some form of explanation. According to Rawls’ critics these differences are the main evidence for Rawls’ incoherence. In contrast, for most of those more sympathetic to Rawls’ overall project, those differences seem to require no systematic treatment. The goal of this thesis is to find a middle course between these alternatives. Rawls’ *LOP* is not without fault. But to discover what its limits really are from a conceptual point of view we need to put forward a coherent reconstruction of Rawls’ work that is at least able to explain his attempt to provide an account of international justice. In this thesis I will show that Rawls’ law of peoples is a coherent and defensible extension of his own political philosophy. The coherence of Rawls’ work will be based on the development of the idea that basic social and political arrangements require a shared and mutually acceptable form of justification.

This idea of a shared and mutually acceptable justification of basic social and political arrangements, I will claim, can capture one of the most important commitments in Rawlsian political philosophy, namely the commitment to public justification. Rawls’ domestic and international theories are guided by the desire to provide a public justification of the political order. In turn, by investigating the nature of the idea of public justification, many of the alleged inconsistencies in Rawls’ work, I believe, can be explained. Public justification, as Rawls himself declares in *Justice as Fairness: A Restatement (JAFR: 27)*, is not simply a deductive exercise. Rather, public justification starts from the public political culture of a political society and tries to make the shape of basic social and political institutions transparent to its citizens. Once we have grasped this aspect of public justification it also becomes clear that, given the changing nature of

political traditions, it is the idea of public justification itself that requires the adoption of different forms of political organization according to the milieu for which the public justification is constructed.

If that is correct, then, it is not surprising that Rawls refused to extend the content of justice as fairness to global politics. The global public political culture is not liberal democratic (see Wenar, 2006). It is thus hard to imagine that the public justification of the global political order could be provided by a liberal democratic conception of justice. On the other hand, one of the most enduring aspects of the global public political culture is that persons tend to think of themselves as members of political communities. This explains why, when constructing a conception of justice for global politics, persons would want to give meaning and protection to their political membership by ensuring the freedom and independence of the groups to which they belong. In other words, it is the very idea of public justification, and the fact that it should start from the public political culture, that explains the presence and relevance of political communities in *LOP*.

Acknowledging the centrality of peoples in the global public political culture is also important in understanding why distributive equality is less crucial at the global level. Distributive principles concern the distribution of resources that are supposed to be of value to the agents to which they apply. Yet the agents of *LOP*, peoples, are only interested in their freedom and independence and not in the realization of some unspecified collective conception of the good (see Wenar, 2006). In Rawls' view, economic resources are not the central feature of a people's political autonomy. For Rawls, and provided political communities respect each other, it is the quality of the political culture and of the virtues of its citizens that determine the political autonomy of a people, not the natural and economic resources to which it might have access through an egalitarian distributive principle.

An appreciation of the coherence of Rawls' work is also instrumental in defending *LOP* when it comes to two of the most controversial aspects of the theory, namely international toleration and international economic assistance. Many of his critics have argued that Rawls' views on toleration and international economic obligations are incoherent and implausible. I disagree. In the final part of the thesis I address a number of arguments that have been put forward to show

the alleged limits of Rawls' work, and show that none is convincing. Beyond the detail of such arguments and of my critique of their content, though, lies a broader point that I believe is worth emphasizing. The negative reaction to Rawls' work is, once again, often premised on some form of 'background incoherence' thesis. For instance, when it comes to international toleration, the critics almost always complain that *LOP* tolerates too much. However, this kind of argument is compelling only when we assume, to some extent at least, that certain aspects of justice as fairness (such as the basic liberties of the liberal democratic tradition) should be extended to global politics. In the same way, when discussing Rawls' treatment of international economic assistance, the default option for those who wish to criticize the Rawlsian position seems to be that the duty, as Rawls develops it, is not enough to capture the types of distributive obligations we have at the global level. Time and again, it seems that one of the justifications for this overall interpretive attitude is an assumption that distributive equality is the default option for a Rawlsian addressing issues of international economic obligations.

In both cases, then, it seems that the general trend of the literature attacking *LOP* (at least when it comes to international toleration and the DOA) is, once again, premised on the idea that *LOP*, by not extending the standard liberal egalitarian toolkit to global politics, fails to accomplish its mission. I believe, as I have explained in this section, that the opposite is true. And what is more, by focusing the critical scrutiny of Rawls' work on toleration and international economic obligations on the assumption that, in both cases, a simple extension of some of the content of justice as fairness would have been necessary, it also partially blinds commentators to some of the real weaknesses of *LOP*. These weaknesses – the role of benevolent absolutisms and the potentially excessive demandingness and paternalistic nature of the DOA – do admit of a sympathetic solution from within *LOP*'s conceptual resources. Yet to even see them, one needs a different interpretive stance towards *LOP*, beginning from an assumption of its coherence in order to analyse its cogency – not, as so many before have done, to question its coherence in order to take for granted its inadequacy.

IV. Outline of the thesis

The thesis begins by considering one of the most original solutions to *LOP*'s 'coherence problem', based on a methodological reconstruction of the Rawlsian enterprise and of *LOP* (see James, 2006). The methodological interpretation is founded on Rawls' (alleged) career-long concern with the construction of principles of justice for existing practices. In this picture it is the differing natures of international relations and domestic social cooperation that explains the discontinuity between *LOP* and the rest of the Rawlsian enterprise. In essence, according to the methodological interpretation, by applying the same method (that of constructing justice for existing practices) in two different cases (the domestic and the international), Rawls develops a coherent set of principles for two different domains. Chapter 1 of this thesis rejects the methodological interpretation, showing how it can provide only a superficial explanation for the continuity of *LOP* within the Rawlsian framework. The methodological interpretation can show the coherence of Rawls' domestic and international theory, but it is unable to justify the very element that explains this coherence: why Rawls is committed to the method of 'practice-dependence'. Since the latter is controversial and has significant moral consequences, what kind of argument beyond methodological preference can justify its outcomes?

Given the methodological interpretation's failure to solve the interpretive puzzle I have highlighted above, we need to put forward an alternative reading of *LOP*. Chapters 2 and 3 provide the basis for a fully coherent interpretation of *LOP* as part of the Rawlsian enterprise and of (or at least an understanding of) the liberal tradition. Chapter 2 examines the notion of public justification and how it has been developed in different ways within the Rawlsian paradigm. Public justification of the political order is based on the idea of respect for persons and is not a purely epistemic notion of justification. It requires shared premises, yet in a liberal democracy, given the fact of reasonable pluralism, the shared premises that are required to give content to the idea of public justification cannot be grounded in comprehensive doctrines. Instead, the shared premises for public justification are to be found in the public political culture of the political context for which public justification is developed. The chapter ends by claiming that although

Rawls' thinking about public justification was mainly developed to face the internal problems of liberal democratic institutions, the method of looking for a public justification of the political order is still valid when we assess nonliberal political traditions and contexts. Moreover, the chapter stresses that it is the very nature of public justification, and specifically its reliance on the public political culture, that explains why the content of public justification should change according to the context in which such justification is carried out.

Using the elaboration of the idea of public justification as a starting point, chapter 3 argues against a purely cosmopolitan egalitarian development of justice as fairness. The public justification of the global order depends on the global public political culture. Yet the global public political culture is not a liberal egalitarian one (here I follow Wenar, 2006). The global public political culture does not contain the ideas of citizens as free and equal, or of the world as a fair scheme of social cooperation. In other words, the global public political culture cannot be interpreted as including the main elements of liberal democratic citizenship. The chapter also provides a more positive argument. It claims that it is precisely by looking at what *is* in the global public political culture that we can explain the main discontinuities between *LOP* and Rawls' domestic theory of justice. The global public political culture is essentially internationalist in nature; this is why we have peoples rather than persons as the main unit of analysis in *LOP*. In the same way, the fact that the law of peoples is not an egalitarian theory of international relations depends on how Rawls interprets the idea of peoples' interests. Since, according to Rawls, peoples are not interested in acquiring more resources, they are not really concerned with inequality in *LOP*. By highlighting the link between Rawls' law of peoples and public justification, we are also able to fully show the continuity of *LOP* with the liberal tradition. *LOP* aims at the public justification of the international order, a goal which in itself is based on the idea of respect for persons. Thus, the chapter claims, *LOP* can be pictured as a form of moral cosmopolitanism which only uses peoples as unit of analysis without forsaking persons as unit of (moral) concern.

In chapter 4 I address *LOP*'s treatment of toleration. I start the chapter by outlining the main elements of Rawls' account. The chapter then deals with a number of critical objections to Rawls' view. The initial claim put forward by Rawls' critics is that, once again, Rawls does not develop his account of

international toleration in line with the development of his ideas in *Political Liberalism* (*PL*). The first objection is that while the latter tolerates comprehensive doctrines within the limits of liberalism, the former allows decent peoples to settle their own nonliberal ways of organizing political society (see Tan, 2000). The second objection alleges that taking the fact of pluralism seriously should have pushed Rawls to develop *LOP* along the lines of *PL*: to unite citizens under a single comprehensive doctrine requires the oppressive use of state power (see Neufeld, 2005). To the first objection I reply that the analogy between Rawls' two theories should be understood as one of method rather than substance; by investigating how Rawls builds the constituency of reasonableness in the domestic context we can find a rationale for the inclusion of decent peoples in the scope of toleration internationally. To the second I reply by outlining an important conceptual distinction: that between the use of state power and the oppressive use of state power. My claim, simply put, is that the mere fact of curtailing difference through state power does not, ipso facto, count as oppression. In order to call something oppressive we need a benchmark, and such benchmark is usually provided by a conception of justice. If we then assume that only a liberal political conception of justice is an acceptable benchmark, then we are presupposing the answer to the question of toleration rather than providing one.

The chapter then goes on to assess two further critiques of Rawls' account of toleration that do not allege any incoherence but rather criticize the theory's results and the method in which it is developed. The first critique, in basic terms, is that *LOP* permits oppression on a large scale given its loose criteria of what decency requires (see Caney, 2002). The second critique is based on the idea that the eight principles in *LOP* are exceedingly minimalist and are not plausibly represented as the result of the initial (liberal) original position of *LOP* (see Pogge, 1994). To the first I reply that there is ample textual and interpretive evidence to deny the equation between decency and oppression. Contra the second objection, I argue that not everything liberal people agree upon domestically can be ipso facto transferred in *LOP*. For one thing, this would mean essentially replicating the same entitlements within different levels of governance. Further, the transformation of domestic policy into a matter of international concern severely curtails the self-determination of peoples. In conclusion, the chapter

deals with one of the most neglected aspects of *LOP*: its treatment of benevolent absolutisms.

In chapter 5, the thesis takes a closer look at Rawls' DOA. The general reaction to the DOA has been by and large very critical. In essence, the critics have complained that the DOA 'is not enough' – in other words, that it is not sufficient to portray the content and extent of international distributive obligations. The chapter surveys a number of critical arguments concerning the DOA, and finds them all wanting. Most importantly, the chapter highlights the paradoxical nature of the critical attention that the DOA has received. Rawls' critics have often pictured *LOP* as being premised on the idea that levels of economic growth and development are endogenously determined, but they have not then fully appreciated the consequences of this idea. If levels of economic growth and development depend on the internal institutional structures of peoples, then it is precisely those internal institutional structures that will have to be altered by those committed to the DOA in order to rescue burdened societies from their fate. This idea exposes the real problem faced by Rawls' DOA. Taken at face value, the DOA is either too demanding practically, or paternalistic, as it places the international community under an obligation to essentially transform the political culture of certain societies. This seems a much more ambitious and controversial enterprise than many have appreciated. In conclusion, the chapter suggests a possible modification of the DOA in order to mitigate these concerns. I propose the division of burdened societies into two categories – those in which human rights are respected and those in which they are not – and to gear the DOA to reflect the latter distinction.

CHAPTER 1

The Law of Peoples: Constructing Justice for Existing Practices?

The Law of Peoples is a peculiar book, one in which continuity with existing political structures and the attempt to imagine a morally progressive international order are both at home. The tensions between these two dimensions of Rawls' international theory are deeply rooted in his broader philosophical project. His attempt to understand political philosophy as, among other things, the construction of a realistic utopia, signals his preoccupation, even in ideal theory, with the political world we presently inhabit.

But how far can we push this line of reasoning before the Rawlsian enterprise will become morally untenable from a liberal point of view? And how far can we seek a balance between continuity and change in the political world before conceptual coherence is forsaken? In this chapter I address one attempt to provide a coherent reading of Rawls' work along these lines. In '*Constructing Justice for Existing Practice: Rawls and the Status Quo*' (2005a), Aaron James puts forward an original and controversial interpretation of Rawls' overall philosophical project. James's interpretation invites us to rethink the relationship between first principles of justice and the practices that such principles are meant to regulate. According to James, Rawls is constructing justice for existing practices; first principles of justice and Rawls' original position reasoning are therefore guided, even in ideal theory, by the interpretation of existing political structures. Rawls' philosophical project is not guided by a traditional liberal desire to justify social and political arrangements to those who are subject to them, but rather by his methodological commitment to constructivism. For Rawls, 'the correct regulative principle for a thing depends on the nature of that thing' (*TJ*: 25). This explains why, for instance, *LOP* imagines an original position inhabited by representatives of peoples rather than persons. It is the nature of the practice of international relations itself that leads Rawls to picture global justice as justice between corporate agents.

James's interpretation of Rawls' work tries to resolve many of the tensions that I have mentioned in the introduction. First, it features powerful tools to explain the discontinuities between Rawls' international and domestic theories. Second, by portraying Rawls' work as, even in ideal theory, grounded in existing social and political practices, it formalizes Rawls' attempt to formulate principles that are related to the political world as we see it.

And yet, for all its merits, James's interpretation of Rawls' work is ultimately unsustainable. James explains Rawls' work through the lens of a methodological commitment to construct principles of justice for existing practices, but he is unable to explain why Rawls would have to adopt such method. By abandoning the centrality of one of the core aspects of Rawlsian liberalism – the desire to justify social and political arrangements to those who are subject to them – James's interpretation is structurally incomplete. While it is able to picture Rawls' work as coherent, it does not explain such coherence in a way that is (ex-ante) morally motivated and (ex-post) morally defensible. By forsaking Rawls' focus on the justification of social and political arrangements to individuals,⁵ it deprives Rawls' political philosophy of its central organizing moral ideal. Following James, *LOP* is redeemed as a coherent application of Rawls' overall philosophical project, but the price we pay is that its content seems morally incompatible with one of the foundations of Rawlsian liberalism.

In the first section of this chapter I start by providing a general overview of James's interpretation of Rawls' work (I.1). I continue by explaining the link between James's work and the Dworkinian idea of 'constructive interpretation' (I.2), and how this reading of Rawls contains the conceptual tools to explain the discontinuities between Rawls' domestic and international theories (I.3). I then go on to take a second look at James's explanation of Rawls' choice of peoples as the basic unit of analysis (II.1). I show that this is unsustainable because: a) it draws on a selective reading of Rawls' text (II.2); and b) it fails to provide any moral argument that could justify the method that James attributes to Rawls (II.3). Finally, I claim that to state that James's interpretation is unsustainable does not

⁵ Here I use 'the justification of social and political arrangements' as the basic tenet of Rawls' liberalism. I am aware that this represents a huge simplification and that the expression can refer to a great variety of circumstances. I provide further comments concerning this issue in the next chapter.

entail that there is no relevant place for existing practices in Rawls' political philosophy; rather, it simply implies that to find such a place we need to provide a moral justification for it (II.4).

I. Rawls and the relationship between practices and principles

According to Aaron James, *LOP* presents 'even the most sympathetic reader of John Rawls' with a problematic set of arguments and ideas (2005a: 300). We might have thought that one of the most significant accomplishments of Rawls' philosophical enterprise was to revive a tradition of thought based on the moral justification of social and political arrangements to 'free and equal persons'. And yet, James goes on to say, Rawls seems to provide us with no argument, in *LOP*, that would justify his choice of peoples as the main actors in his theory of international politics. Individuals, once the core of Rawls' domestic doctrine, seem to have faded in the background; peoples, a form of corporate agent, now stand centre-stage. It would be reasonable to imagine pragmatic reasons that would lead anyone to endorse the type of international order we currently have simply for the sake of peace and stability. Yet Rawls' peoples are there, so to speak, from the beginning: we start with ideal theory and in ideal theory we find peoples, not persons. We are then, James continues, faced with two broad exegetical options. One simply accepts that Rawls was unable to foresee the implications of his own work; *LOP* should have been a 'cosmopolitan law of persons', as Andrew Kuper puts it (2000), but Rawls was unable to proceed correctly from his domestic theory of justice to his theory of international law and practice. This, according to James, is too uncharitable. The other exegetical option is to look at Rawls' work more broadly and try to find a different unifying theme. If the justification of social and political arrangements to individuals cannot be the main thread of Rawls' work, then what can?

I.1. A different interpretation of Rawls' work

In 'Constructing Justice for Existing Practice: Rawls and the Status Quo', Aaron James advances a distinctive interpretation of Rawls' overall philosophical

project.⁶ James's reading of Rawls is based on a methodological revision of the relationship between existing practices and principles of justice. As Andrea Sangiovanni aptly put it, while it is uncontroversial that existing practices and institutions set limits and constraints to the application of principles of justice to the real world, it is far less evident what role, if any, such practices and institutions should play in the very formulation and justification of first principles of justice (Sangiovanni, 2008). Following this, we can state the general formulation, what Sangiovanni calls the 'practice-dependence thesis', namely:

Practice-dependence Thesis: The content, scope, and justification of a conception of justice depends on the structure and form of the practices that the conception is intended to govern. (Sangiovanni, 2008: 2)⁷

The practice-dependence thesis relies on the idea that the very content, scope and justification of any conception of justice will depend on the underlying object that the conception is intended to regulate. This means, concretely, that if we take practices A, B, C and so on, the appropriate conceptions of justice for such practices (JA, JB, JC, etc.) will, in some way, depend on the characteristics of A, B and C. Yet to say that conceptions of justice 'depend' on the practices they are meant to regulate is not enough to understand the relationship between the content, scope and justification of JA, JB and JC and A, B and C.

How can we shift from this meta-theoretical point (concerning the relationship between first principles of justice and social practices) to a more exact understanding of the relationship between a specific practice and a specific

⁶ The purpose of James's interpretation of Rawls is to explain Rawls' methodology when he constructs principles of justice. He does not aim at justifying the content of Rawls' position. In a similar way, while James's interpretation requires him to see the law of peoples as a coherent application of Rawls' method in a different context, James does not seek to endorse Rawls' conclusions in *LOP*. It must be acknowledged that James does not set himself the task of explaining the discontinuities between Rawls' domestic and international theory such as we have presented them in the introduction. Yet in order for his interpretation to be successful it is plausible to set the standards of its explanatory power accordingly. If this thesis has illuminated two major differences between Rawls' domestic and international theory, it is not too much to ask that an interpretation of Rawls that claims to see a deeper form of continuity in his work should be at least able to provide a defensible explanation of such shifts.

⁷ There are important differences between James's interpretation of the Rawlsian enterprise and Sangiovanni's understanding of practice-dependence. In this chapter I have employed Sangiovanni's general statement of the practice-dependence thesis insofar as it is the clearest formulation available in the literature. Whether or not the arguments presented in this chapter apply to Sangiovanni's preferred understanding of practice-dependence is not discussed, or suggested here.

conception of justice, within a Rawlsian framework? Here, James provides one of his most significant contributions: the elaboration of what he calls a *method of construction*. This can be summarized, in James's words, as follows:

- (1) Identify an existing social practice, including its point, or the goods it is meant to realize. Assume circumstances favorable to its continuance;
- (2) Identify the practice's participants. Assume general compliance with its terms;
- (3) Design a suitable original position. That is:
 - a. Represent each full participant in the practice as appropriately motivated, by an interest in the goods the practice is meant to create;
 - b. Draw a veil of ignorance, behind which (i) all parties have the same information, and (ii) no one has knowledge of the facts that would undermine the fairness of an agreement on terms for distribution of the relevant goods;
- (4) Determine which terms of organization such parties would choose (among a list of candidate principles). Treat these terms as necessary conditions for the practice's being justly organized, that is, as principles of social justice. (James, 2005a: 282)

As we have stated, to say that a principle of justice depends on the practices it is meant to regulate does not clarify the nature of the relationship between the two. James's method of construction provides a clearer picture of such relationship insofar as it represents the mechanics of the original position as the constructive procedure that mediates between existing social practices and their normative assessment from the point of view of justice. However, James's insight has a 'cost': 'On this characterization of Rawls' method, original position reasoning has no authority as such; it must be grounded in independent judgments about what social practices exist and what kinds of agents participate in them' (2005a: 301). Put differently, original position reasoning is not simply a device to generate the justification of principles of justice to 'free' and 'equal' persons. Rather, its shape and the validity of its outcomes will depend on the types of practices that we address. In different contexts (and *LOP* is a critical example here), different agents might be more directly relevant and the meaning of 'free' and 'equal' will have to be adjusted accordingly. This is why, for instance, we have persons domestically when we address the basic structure of a closed social system, and peoples internationally when we address the basic structure of international relations.

In sum, James's interpretation of Rawls' work abandons the centrality of the justification of social and political arrangements to individuals and replaces it with a methodological commitment to the construction of principles of justice based upon existing practices. Such principles are the result of original position reasoning. But, crucially, original position reasoning is not a once-and-for-all established procedure of construction that can be employed in each and every political context without important changes. Original position reasoning will reflect, in other words, the underlying object of interpretation.

I.2. Constructive interpretation and the method of construction

The 'method of construction' requires further explanation. For instance, if we look more closely the first step of the process – namely: 'Identify an existing social practice, including its point, or the goods it is meant to realize' – it is hardly a self-explanatory (or uncontroversial) enterprise. Take the examples of domestic and international societies as Rawls understands them. Rawls describes a (liberal) domestic society as a 'fair system of cooperation for mutual advantage' that is meant to provide 'primary goods' (*TJ*: 78-81). On the other hand he describes international society, or the 'Society of Peoples', as mainly characterized by international law and practice, and whose basic concern is to 'create goods of peace, national autonomy, and to uphold basic domestic justice, and to do so in a way that reflects mutual societal recognition' (James, 2005a: 300). Now these are far from being neutral descriptions of the practices for which we want to construct principles of justice; they are morally laden interpretations of such practices. Therefore what we need to clarify is how, according to James, Rawls is able to put forward such morally laden interpretations of social practices and how the latter feature in the method of construction.

James's answer is broadly centred on a specific conception of interpretation, namely constructive interpretation. According to Ronald Dworkin, the interpretive task is constructive insofar as we gradually build our interpretation in three different stages. In the first stage we try to *identify the object of interpretation*; thus, in the case of *LOP*, the object of interpretation is international society and its institutions as we see them. In the second stage, we try to *identify a purpose* for the kind of practice or object we have identified. By the 'purpose' of the object or

practice, Dworkin understands something that is close to what we do when we interpret some form of art or a painting, that is we try to attribute meaning to it. The kinds of purposes we will identify will change substantively according to the practice or object of interpretation. To interpret some form of art, for example, we will inevitably pay attention to the kinds of ideas and feelings that the work of art expresses, whereas if we try to interpret a social practice we will be driven to provide a justification for the way people act and the reasons they give to each other when they uphold the practice. The third and last stage of constructing interpretation is the critical stage: it is at this point we attempt to *develop some form of interpretive judgment* and construct proposals to reform the practice. Dworkin calls this stage post-interpretive or critical (1986/1998: 61).

Given the method of construction James has attributed to Rawls, and the three stages of constructive interpretation we have examined above, we might summarize the process as follows:

a) *Pre-interpretive and Interpretive stages*: Corresponds with stages 1 and 2 of James' method of construction. Here we choose the practice for which we want to construct a principle of justice. We must come up with an interpretation of, or a moralized interpretation of, the identified practice. This is when our project becomes controversial, since we are effectively assigning a given meaning to the practice we have chosen. This is the stage in which, for example, we describe the practice as a form of cooperation for the provision of certain goods. At this stage we also characterize the agents in the practice in a certain way. So in the domestic case we see the citizens of a liberal democracy as free and equal (and we specify our understanding of 'free' and 'equal'). In the international case we depict peoples and their fundamental interests and traits, stressing, for example, their desire for self-determination, or what it means to be well-ordered.

b) *Post-interpretive or critical stage*: Here we reach stages 3 and 4 of James' method of construction. We set up an original position. We construct such a position via the moralized interpretation of the practice. To do so we use the conception of the parties developed in stages 1 and 2 and we build appropriate constraints on information (the veil of ignorance). The final result of the critical or post-interpretive stage is the conception of justice for the practice we have considered (the one the parties have chosen in the original position).

I.3. Practice-dependence and the passage from domestic to international theory

We have described the most salient features of James's interpretation of Rawls' work. But James' interpretation would not be plausible if it did not contain (at least implicitly) the tools to explain the three main discontinuities between Rawls' domestic and international theories. Below, I provide a brief outline of such explanations. Here I follow James in elucidating Rawls' shift of the unit of analysis (from persons to peoples). I then go on to develop a putative explanation of *LOP*'s anti-egalitarian content based on the idea of practice-dependence.

First recall Rawls' definition of practice '... as a sort of technical term meaning any form of activity specified by a system of rules which defines offices, roles, moves, penalties, defenses, and so on, and which gives the activity its structure. As examples one may think of games and rituals, trials and parliaments, markets and systems of property' (*TJ*: 47). If we think of the domestic case as a form of social practice, we can see how society would be understood as a form of social organization in which these *rules* are institutionalized in what Rawls calls the basic structure. Crucially, in the domestic case, it seems plausible to imagine that the choice of starting with individuals is determined by the fact that the social practice we have in mind assigns roles, offices and positions, primarily to individuals (James, 2005a: 283). To refer now to international relations as a form of practice in the same way as with domestic society, we can say that, at least in some relevant sense, the primary focus on peoples is not totally misguided. Reasoning by simple analogy, we can come to see that *roles* and *offices* (but also penalties and defences) are, *prima facie*, assigned to political communities.

In the same way, considering the centrality of the original position in Rawls' constructivism, we can say that the nature of the parties – that is, peoples – can somehow work towards explaining their choice (or lack thereof) of principles of distributive justice. In a just Society of Peoples, as Rawls ideally sees it, peoples are not concerned with inequality in the same way as persons are concerned with it domestically. In the domestic sphere we are concerned not with inequality as such but with its consequences. Such consequences must not prevent the least advantaged members of society from acting as full citizens through the effective exercise of their rights. In the Society of Peoples, such requirement, Rawls maintains, is satisfied whenever all members are well-ordered internally (that is,

when the DOA is fulfilled). Further, excessive inequalities in the domestic case can bring about the perception of unequal moral worth among different citizens and hence degrade the self-respect of the least advantaged persons. In the international case, once the DOA is satisfied, differing levels of wealth among citizens of different societies is not a justified cause for diminished self-respect. Once all members of the Society of Peoples are well-ordered, each people ‘adjusts the significance and importance of the wealth of its own society for itself’ (*LOP*: 114). In short, it’s the very nature of the parties that explains their rejection of the egalitarian content of Rawls’ domestic articulation of justice as fairness. In turn, the nature of the parties depends on our interpretation of the practice of international relations and the types of features that members of the international community must possess in order to make Rawls’ realistic utopia possible (see also the introduction).

In sum, James’s interpretation restores the coherence between Rawls’ different theories of justice. The major discontinuities between Rawls’ domestic theory and his *LOP* are the result of the application of the same methodological viewpoint to different initial circumstances. Existing practices partially determine the nature of the principles of justice that are meant to regulate them. The practices that justice is meant to regulate at the domestic and international levels are strikingly different. As a result, the principles that will be best fit to regulate the practices will be radically different too. James’s interpretation is able to portray Rawls’ work as coherent and animated by a common thread, but is it possible to defend Rawls’ coherence from a moral point of view? Conceptual coherence is a good starting point, but unless we are able to defend such coherence from a moral point of view, our interpretation of Rawls will still be inadequate.

II. *LOP* and practice-dependence

In this section I show how James’s interpretation of Rawls is unsustainable. I begin by taking a second look at his explanation of Rawls’ decision to select peoples as the basic unit of analysis. In essence, I point out that depicting Rawls

as ‘constructing justice for existing practices’ appears to be untenable if we cannot provide any moral justification for the controversial results that such method implies. While I focus on Rawls’ choice of peoples as the unit of analysis in *LOP*, the basic argument can be extended to question the general interpretive approach provided by James. Eventually, my aim is not to argue that existing social and political practices play no role in Rawls’ political philosophy. Rather, my claim is that we need to make Rawls’ choice of method compatible with his broadly liberal preoccupation with the justification of social and political arrangements to all persons.

II.1 From persons to peoples, according to James

In what follows I will focus on Rawls’ choice of peoples as the main unit of analysis for *LOP*. There are four distinct reasons to do so. First, since we are addressing James’s interpretation of Rawls, and since James deals more explicitly with the differences between the domestic and the international original positions, there are good exegetical reasons to consider the choice of unit of analysis as pivotal to our discussion. Second, given the moral implications of such choice (see below), we need to ensure that what explains it is sound. Third, although the two main discontinuities between Rawls’ domestic and international theory are both relevant, we can argue that if James’s interpretation is unable to take into account and explain the first and perhaps most important discontinuity, then that casts serious doubts over its overall architecture. Fourth, the basic point made regarding the shift from persons to peoples can be reiterated in arguments concerning egalitarianism.

According to James:

Seeing Rawls as beginning from existing practices helps to explain how he could focus on persons in the domestic context and peoples in the global setting. He takes each context to require quite different judgments about what social practices exist and which agents participate in them ... In these terms, his focus on individuals in *A Theory of Justice* reflects his judgment that major domestic institutions assign offices and roles chiefly to individual persons. In the same way, his attention to whole societies in *The Law of Peoples* reflects his judgment that ‘international law and practice’ constitutes the basic structure of global society, and the participants in these practices are not individuals as such, but societies and their government representatives.

(James, 2005a: 283–4)

In essence, as we have seen above James is claiming that Rawls' reasons for opting for a collective unit of analysis in *LOP* are mainly interpretive. In this picture, faced with the 'international law and practice', Rawls selects peoples as his starting point in order to more plausibly reflect the nature of the practice that his principles are meant to address. Since, at the international level, the types of relationships that we witness are mostly ones that pertain to intergovernmental interactions, there seems to be good reason to believe that the principles that should guide such relationships will be addressed to, and meant for, the very agents that play the biggest part in them.

What are the consequences of changing the unit of analysis? First and most straightforwardly, given the method of construction we have examined in part I, the nature of the original position changes dramatically. In *LOP*'s international original position(s) only peoples are represented. As a consequence the types of reasons that are hypothetically presented in the original position for the Society of Peoples will be addressed to peoples, not persons. In the same way, the types of principles that will emerge from this hypothetical thought experiment will be justifiable to peoples. Such principles will reflect the way in which peoples see their mutual undertakings. As a by-product it will also be clear that the principles of *LOP*, at least in this interpretation, would be necessarily silent when it comes to the justification of social and political arrangements to persons. As James states, Rawls 'could have offered reasons why, in the global context, we owe to individuals only what we owe to the societies of which they are members'. And yet, according to James, 'Rawls provides no such argumentation' (James, 2005a: 280).

II.2 Textual support

Any interpretation of a philosophical work will rest upon two broad pillars. The first is textual support: a necessary condition for claiming that an interpretation is valid is that it must be able to draw support from the texts that it addresses. The second is interpretive charity: the explanatory power of any interpretation will depend not only on its textual support but also on whether we are able to look more favourably upon the author's arguments than existing available alternatives. As James acknowledges, 'the plausibility of seeing Rawls as reasoning from

existing practices depends in part *on whether we can cast such reasoning in a favorable light*' (James, 2005a: 285, emphasis added).

Here I comment on two specific instances in which James tries to draw textual support for his interpretation, demonstrating that his way of using Rawls' text is too narrow. This can be extended to other instances when Rawls' text seems to point us towards James's reading. I then go on to consider the issue of interpretive charity. I show that if we follow James's interpretation, we cannot cast Rawls' *LOP* in a favourable light.

Rawls' commitment to a given methodological outlook (namely, practice-dependence) can be supported by textual evidence. For instance, James quotes the following passage from Rawls' *Collected Papers*:

In justice as fairness the principles of justice for the basic structure of society are not suitable as fully general principles: they do not apply to all subjects, not to churches and universities, or to the basic structure of all societies, or to the law of peoples. ... It is the distinct structure of the social framework, and the purpose and role of its various parts and how they fit together, that explains why there are different principles for different kinds of subjects.

(Rawls, *Collected Papers* [CP]: 532–3; quoted in James, 2005a: 283)

But this type of quote is misleading. It only presents one side of the story. For instance, it does not seem to pay attention to the fact that, while there is some form of independence attached to the correct regulative principles for different types of subjects, there are also important constraints that political principles place on the content of principles for different practices within the basic structure of society. It is true that justice as fairness does not address, for example, the interactions between members of the Catholic Church; but it is also true that we deem such independence morally acceptable because we know that what the Catholic Church can do to its congregation is constrained by the principles of justice for the basic structure of society. The Catholic Church might have its own ways of dealing with its members, but in a free society it cannot burn heretics.

This line of reasoning, I believe, shows why it is misleading to treat Rawls' law of peoples in the same way as practices within a basic structure. While there clearly is an order of priority when we think of different social practices within the basic structure of a given social system (non-basic social institutions must respect the constraints set by principles of justice), such order of priority is not well defined for a law of peoples. While, from a conceptual point of view, we start

by constructing principles of justice for a closed and self-contained social system, it is also true that the principles of *LOP* define the acceptable boundaries for the types of conceptions of justice that all well-ordered peoples can adopt. For example, Rawls writes that:

In justice as fairness the question of justice between peoples is postponed until we have an account of political justice for a well-ordered democratic society. Observe, though, that beginning with the justice of the basic structure does not imply that we cannot revise our account for a democratic society (domestic justice) in view of what justice between peoples turns out to require. The two parts of a more complete political conception ... can be adjusted to each other in the course of working them out. (JAFR: 13–14)

This tells us that we cannot simply equate the principles for *LOP* to principles for social institutions inside a given basic structure. Because what makes the latter acceptable (their dependent status) is precisely the feature we are missing in the case of *LOP*. Principles for the organization of non-basic social institutions domestically are constrained by a prior set of normative requirements that are morally justifiable to all persons. The principles of *LOP* are not.

In sum, while there is textual support to indicate that Rawls was committed to the relative autonomy of social practices, it would be misleading to conclude that such autonomy is always granted independent of the context in which we operate.

James also makes reference to the idea that for Rawls, the correct principle for something depends on the nature of that thing. But, even then, looking at the context in which Rawls makes this remark in *TJ*, the centrality of Rawls' methodological commitment is less than clear-cut. Take the example of utilitarianism. Rawls argues in *TJ* that classical utilitarianism applies criteria that are fit for individual deliberation to social choice and in so doing does not take seriously the distinction between persons. Classical utilitarianism clearly violates a basic methodological commitment that Rawls sees as central to his view, namely that 'the correct regulative principle of choice for anything depends on the nature of that thing, and that the plurality of distinct persons with separate systems of ends is an essential feature of human societies' (*TJ*: 25). Now, clearly, this reading of what is wrong with classical utilitarianism is very much in line with practice-dependence. It is simply the result of our interpretive methodology, one that is grounded on the appraisal of the object to which principles of justice apply, that we reject the idea of shifting basic principles (such as the principle of

maximizing utility) from one context to another (that is, from personal to collective decision-making).

However, even in this case, it is hardly convincing that this is what Rawls meant when he argued that classical utilitarianism does not take the distinction between persons seriously. In the same section of *TJ*, Rawls writes that the lack of attention to the distinctiveness of persons is in contrast with our considered convictions and a good deal of our philosophical tradition. Furthermore, the fact that systems of social cooperation are made up of a ‘plurality of distinct persons with separate ends’ seems relevant only if, to some extent, we have already accepted the importance, from a moral point of view, of such distinct systems of ends. And this, in turn, seems to square more readily with our (liberal) considered convictions – namely the desire to justify social and political arrangements to all persons affected by them. Once again, while the methodological point is clearly relevant, we cannot isolate it from the broader moral theory that provides a fuller justification for the methodological point itself.

II.3 Interpretive charity

Let us turn to the issue of interpretive charity. Can we cast a favourable light on *LOP* if we follow James’s interpretation? Not really. Why? In a nutshell, because it is unclear how the methodological commitment to practice-dependence that James attributes to Rawls can be explained and defended.⁸ If a given ‘method of construction’ has relevant moral implications (in the case of *LOP*, among other things, the fact that the principles of justice for *LOP* do not provide justification for social and political arrangements to persons), how can we justify such implications without any reference to substantive moral arguments? Why should Rawls adopt practice-dependence? Once he has adopted it, what type of justification can he provide (beyond the statement of consistency) that, having led to controversial moral conclusions, the method itself is sound?⁹ What kind of

⁸ Let me reiterate that my focus is on James’s interpretation of Rawls and his view of practice-dependence. Other authors and different views concerning practice-dependence might not be subject to this problem, or not in the same way (see Sangiovanni, 2008; Ronzoni, 2010; Valentini, 2011b).

⁹ Note that, so far, we have used the example of Rawls’ choice of unit of analysis. But our criticism can be readily extended to incorporate the other major discontinuity between Rawls’

reasons can possibly motivate the adoption of the method in the first place? If we follow James, none of the answers to these questions are available to Rawls.¹⁰

Let me provide two examples. The first concerns the rejection of cosmopolitan principles in *LOP*. If we select the relevant agents for original position reasoning according to James's practice-dependent reading of Rawls, the reasons that led us to select such agents rather than others would be methodological. The choice of peoples would follow directly from the interpretation of a social practice. But the fact that we chose to follow an interpretive methodology in the first place would not be explained or backed by a moral argument. On the other hand, the choice of relevant agents does have important consequences for the outcome of the original position. For instance, it entails the fact that a 'global difference principle' that distributes resources between persons cannot be a valid principle for *LOP*. In fact the methodological choice has even stronger consequences. It tells us that *no principle of justice that addresses individuals directly can be a valid principle for LOP*. In this picture, any form of cosmopolitanism becomes a 'no-go area' simply for methodological reasons.¹¹ For the sake of argument, let us bracket the counterintuitive implications that this has for some cosmopolitan liberals. What remains striking, though, is that simply by adopting a given method we are able to completely disregard an entire set of principles of justice as even potentially valid. But how can we do this without providing a moral argument to that effect?

The second example concerns the way in which we imagine the original position as a justificatory device. If we follow James, we are unable to see how

domestic and international theory. Rawls' decision to construct an anti-egalitarian theory of international justice has relevant moral implications. If, following James, we picture it as the outcome of a methodological choice, we will face exactly the same problem as with Rawls' choice of unit of analysis: if our methodological orientation has substantive moral consequences, how can we justify our methodological choice in the first place?

¹⁰ Here I work under two controversial assumptions. I assume that if proposition P has normative consequences in the moral domain, then P counts as a moral proposition. I also assume that if P is a moral proposition then a moral justification has to be provided in order for P to be justified. On the other hand, I do not need to generalize these two assumptions beyond what is necessary. I can limit them to be: a) exegetical claims concerning my reading of Rawls (instead of fully general statements); and b) valid when we address fundamental moral issues such as the justification of social and political arrangements in the liberal tradition (and not the whole of morality). These remarks simply express the fact that, according to my interpretation of Rawls, if proposition P leads us to forsake the justification of social and political arrangements to individuals, P will require the backing of a moral argument.

¹¹ I have greatly benefited from Valentini's discussion of this particular problem (see Valentini, 2011b).

the original position can provide us with any guidance when we try to justify principles of justice. Here, I am not arguing that, according to James, Rawls provides no argument for the content of the eight principles of *LOP* that he puts forward. What I want to question is what we can call the ‘input parameters’ of the original position. The original position is, in Rawls’ view, a ‘device of representation’ to model and systematize some of our most firmly held considered judgments. One such judgment is that individuals are independent moral agents with distinct systems of ends. On the other hand, according to James, we start by assuming that, for largely methodological reasons, we can ‘package’ individuals in collectives, and do so without offering them any form of direct justification.

Is this plausible? Clearly, we can revise our considered judgments as part of the broader process of reflective equilibrium. But what seems difficult to explain is why we should *start* by feeding into original position reasoning assumptions that do not match our considered judgments. What seems to be unusual in this case is the fact that we start original position reasoning by not displaying, to the best of our knowledge, one of our most firmly held considered judgments. In the progressive search for reflective equilibrium, the original position serves us to map our moral sense and, in Rawls’ words, ‘to provide guidance where guidance is needed’. But the orientating role of original position reasoning seems to presuppose, in order to function correctly, that we start from something we deem, if not true, at least as less controversial than available alternatives. Does this require that Rawls construct a global original position? No, not necessarily. But it does entail that he provide a morally substantive reason that can be addressed to each and every individual in order *not* to do so.

Overall, the impression we get is that by adopting at face value James’s interpretation of Rawls, we are abandoning Rawls’ political philosophy in favour of a methodological standpoint that cannot justify its own consequences. James’s interpretation of Rawls restores the coherence between Rawls’ domestic and international theories, but it is simply incapable of providing a reconstruction of Rawls’ work that is morally defensible. Rawls is perhaps the champion of twentieth-century liberalism. Yet, by accepting James’s practice-dependent interpretation of his work, we are asked to abandon the liberal aspiration to justify social and political arrangements to individuals. Furthermore, we are asked to comply with this loss for methodological reasons – reasons, that is, that seem to

have no connection whatsoever to the moral standing of persons. James's interpretation of Rawls seems to argue that once we accept his practice-dependent reading of Rawls' work, the justifiability of social and political arrangements to persons as moral agents is simply a contingent feature of western political societies.¹² In this view, the fate of individuals appears to be secondary and hostage to the domain of activity we are considering. It is hard to imagine that this is the conclusion we want to draw when trying to explain the content and structure of *LOP*.

II.4 Practice-dependence: 'how' or 'why'?

Let me conclude this chapter by offering what I think is an important clarification as to what my goal has been so far. The point I have been trying to make in my critical examination of practice-dependence is that we need to separate two important types of question: 'how' and 'why'. 'How' questions are properly questions of method. James's work, and other accounts of practice-dependence in the literature (see for example Sangiovanni, 2008), tends to focus on these. The 'how' question asks the following: How can we get from existing practices to the content, scope and justification of the principles that apply to them? In order to do so, most accounts of practice-dependence feature some idea of 'interpretation' within them (so, for example, James's view relied on Dworkinian constructive interpretation and original position reasoning, see Part I). Instead, practice-dependence views are rather less outspoken about the other type of question, one that is antecedent 'how': 'why'. The 'why' question asks the following: What kind of moral arguments can support the adoption of a given methodological commitment? Without a clear answer to the 'why' question, the conclusions adopted as a result of practice-dependence are not morally defensible. They are

¹² But here, James could rightly point out that one of the lessons of PL seems to direct us along this path. Isn't Rawls' contention that justice as fairness is precisely something culturally contingent? This will be a central topic of the next chapter, but we can immediately state that if we draw a distinction between the 'content' of justice as fairness and the justifiability of social and political arrangements to individuals, things are less clear cut. If, as Rawls believes, 'justification is addressed to others', it might be the case that in different contexts, and for different persons, what makes a social practice justifiable will change (see part III in the next chapter and chapter 3 for further elaboration).

not necessarily wrong, either, but as I have tried to show, they are at best incomplete.

Note that the point I have made is *not* that Rawls believes that existing social and political practices are irrelevant when we want to provide the content, scope and justification of first principles of justice. There is good textual evidence that he believed political philosophy to be grounded in ‘the world as we see it or not at all’, to paraphrase Rawls himself. But the deeper question that remains unanswered once we have conceded that much is, quite simply, *why*? What remains to be seen is *why* facts (such as those concerning the features of existing practices) should matter at all when we provide content, scope and justification to first principles of justice. I have intimated that it seems unlikely that the answer to this question can simply be methodological. In other words, it seems unlikely that the reasons that led Rawls to ground the content, scope and justification of his principles of justice in existing practices can simply be one of method. Ultimately, the crucial point is whether we believe that it is the ‘method’ that drives the adoption of certain principles of justice (and the rejection of others), or independent moral arguments that push us to adopt a given methodological orientation, such as practice-dependence. It seems intuitively more plausible, in my view, to believe that moral arguments, not simply methodological ones, must be presented when moral conclusions are reached.

Conclusion

In this chapter I have explained and then criticized one of the most original interpretations of Rawls’ work that has appeared in the past few years. James’s interpretation sees the continuity of Rawls’ work through a commitment to practice-dependence. Practice-dependence is the idea that principles of justice depend, for their content, scope and justification, on the nature of the practices they address. In turn, this explains why Rawls’ international and domestic theories are so starkly different in the agents they see as relevant and the conclusions that they reach. If Rawls, as James maintains, is constructing justice for existing practices, the differences between the domestic and the international in Rawls are

mainly explained by the fact that the two practices he addresses have a different nature, point and purpose. While this reading provides a conceptually coherent reconstruction of Rawls' work, I have maintained that it is unable to explain its very foundations.

In order to do so I have challenged the textual support that James provides for his reading. Rawls' methodological remarks on the normative independence of different types of practices (such as institutions within the basic structure) and on how to match principles and practices (when he comments on the inadequacy of utilitarianism) are all premised on broader moral arguments. The first is premised on the constraints that non-basic institutions must respect within the basic structure, and the second on the moral relevance of individuals. In turn, these remarks highlighted the main problem with a purely methodological interpretation of the continuity of Rawls' work, namely: why should Rawls be committed to the method that James attributes to him? Since the methodological commitment has important moral consequences, there is simply no way of escaping the conclusion that it requires a moral justification.

In the following chapter, I will suggest a reading of the Rawlsian enterprise as a search for public justification. The latter reading will provide both the basis for a fuller interpretation of the continuity of Rawls' work and will place the relevance of existing practices within a framework based on the liberal idea of respect for persons expressed by a commitment to a shared and mutually acceptable justification of social and political arrangements to them.

CHAPTER 2

Rawlsian Liberalism and Public Justification

This chapter has two objectives. One is to provide a reconstruction of Rawls' work based on the liberal idea that basic social and political arrangements should be justified to those who live under them. This reconstruction has itself two distinct functions within the architecture of the chapter: it provides some background to the Rawlsian corpus prior to the publication of *LOP* and more specifically on how it evolved from *TJ* to *PL*; and it highlights the centrality of the justification of social and political arrangements to individuals, an aspect of Rawls' thought on which I have insisted in the previous chapter. The second objective of the chapter is to set out in greater detail the idea that best captures the Rawlsian commitment to the justification of basic social and political institutions, namely the idea of public justification.

In sections I and II of the chapter I present Rawls' domestic political philosophy as being defined by the search for a shared and mutually acceptable basis for the justification of the political order. In *TJ*, Rawls developed the idea of the social contract and, through the original position, provided one of the most compelling accounts of political and distributive justice in modern liberal theory. Yet *TJ* also put forward a peculiar and idealistic picture of how a society could 'hang together'. A society effectively regulated by justice as fairness is a well-ordered society, a society in which stability is always stability for the right reasons. A well-ordered society that is stable for the right reasons is a society in which there is a moral consensus upon matters of basic justice and in which citizens have a shared and mutually acceptable standpoint from which to justify basic social and socio-political arrangements to one another.

Unfortunately, the idealistic picture of moral consensus and stability for the right reasons provided by *TJ* was based on citizens' shared belief in a Kantian conception of their moral nature. And, according to the Rawls of *PL*, this was clearly an implausible assumption. Imagining persons to be united by the same comprehensive conception of liberalism is simply implausible given the results produced by human reason in the context of free institutions that *TJ* itself

recommends. Justice as fairness, seen as a comprehensive conception of justice, is incapable of generating its own support, and so is incapable of being stable for the right reasons even under the most favourable circumstances one can imagine: the fact that citizens might endorse it as the normative criterion ordering the basic structure of their society. In order to renew his commitment to a shared and mutually acceptable basis for the justification of basic social and political institutions, Rawls developed a new series of ideas that, paraphrasing *PL*, ‘were not needed before’. Justice as fairness becomes a political conception of justice, and stability for the right reasons is based on an overlapping consensus. The Rawls of *PL* also addressed the issue of the legitimate use of political power. In *TJ* issues concerning the legitimate use of political power are not developed at any length. Instead, in *PL*, Rawls stresses that the nature of political power is always coercive and that the citizens of a liberal democracy might be faced with (bounded) disagreement on the right, not simply the good. In order to address these issues Rawls developed a conception of political legitimacy. Even when it comes to political legitimacy, the basic idea conveyed by Rawlsian political philosophy is that we should always look for a shared and mutually acceptable set of reasons that justify the use of the collective power of the citizens over one another.

Section III takes up the second objective of the chapter, to further investigate Rawls’ attempt to find a shared and mutually acceptable justification of the basic social and political institutions of society. I claim that such goal (of finding a shared and mutually acceptable justification) can be effectively captured by the idea of public justification, and subsequently expand five features of the idea of public justification itself: a) its grounds; b) the notion of justification it employs; c) its method; d) its scope; and e) its relationship with the analysis of existing practices. In articulating what I see as the main features of the idea of public justification, this chapter also provides the trait d’union between chapter 1 and chapter 3 of the thesis. In the first chapter I criticized the interpretation of Rawls’ work provided by Aaron James. I have maintained that his view of Rawls makes it impossible to portray the latter as a liberal committed to the justification of social and political arrangements to individuals, because it does not provide a sustainable interpretation of Rawls’ commitment to the importance of existing social forms. In section III of this chapter I show that it is precisely when we take

Rawls' commitment to public justification seriously that we understand why existing practices matter in his philosophical framework. Section III also addresses the scope of the idea of public justification. *LOP* extends some of the toolkit of *PL* to international society, yet, as many liberal cosmopolitans claim, it might be perceived as doing so only imperfectly or reluctantly (if at all). In the final section of the chapter, I argue that public justification has universal reach. But, crucially, I claim that it is only the method of public justification that is universal, not its content. By setting out the distinction between the content and the scope of public justification I set the stage for chapter 3's critical examination of liberal cosmopolitan attempts to extend justice as fairness to global politics.

Before starting my exposition, allow me one caveat and one clarification. The caveat is that this chapter sets forth a reconstruction of Rawls' passage from *TJ* to *PL*, but does not provide a sustained argument about that reconstruction being the most accurate one. (For a different view, see Weithman, 2010.)¹³ My aim in this chapter is simply to highlight one component of this story, namely the continued attention in the Rawlsian corpus to the idea of finding a shared and mutually acceptable justification for basic social and political arrangements.¹⁴ The clarification I would like to make regards the way in which I present the

¹³ I will not address in any detail the alternative view of Rawls' political turn offered by Weithman (2010). According to Weithman, the essential task of the political turn is to provide a different solution to the collective action problems posed by large-scale political societies and to provide such solution without imagining what he refers to as a Hobbesian sovereign (2010: 7). Rawls, then, is looking for an account of stability that is 'inherent' rather than 'imposed' (2011: 44ff). Weithman also contrasts his reconstruction with what he calls the 'basic view' (2010: ch. 2). Finally, he rejects the idea, which I develop in section III, that Rawls' liberalism is guided by respect for persons (2010: ch. 11). I agree with Weithman that the basic view is wrong: the political turn is motivated by the problem of stability. I am less sure that the basic view as Weithman describes it is as popular as he maintains (see for example Cohen, 1994, and Freeman, 2007c, for authoritative understandings that do not correspond with the basic view). I am also unconvinced by the idea that inherent stability and respect for persons are not compatible. In the end, the good of inherent stability is not simply practical, but also deeply moral. My claim, then, is that the idea of inherent stability can be one effective way of expressing the relationship between citizens and political institutions. I see no reason to reject the claim that the appreciation of this state of affairs presupposes some idea that persons are to be respected and that this entails them being owed a justification for basic social and political arrangements.

¹⁴ Furthermore, even if the reader is not entirely convinced by my account here I believe the overall argument of the thesis remains valid. The thesis deals with the continuity of Rawls' domestic and international theory. Strictly speaking, whether there is a strong form of continuity between *TJ* and *PL* is not a problem I must necessarily resolve, or at least not a problem that forms part of the enquiry I am conducting. If we can assume that, at least in Rawls' eyes, *PL* and successive writings represent his final statement on the content and justification of his domestic theory of justice, then the coherence of Rawls' domestic and international theories is not premised on the continuity between *TJ* and *PL*. For a view that denies the continuity between *TJ* and *PL*, see Ackerman (1994).

progression of ideas in the chapter. Conceptually, the correct way of presenting one's results would be to start with the conclusions one wishes to draw and to use the body of the text in order to provide 'evidence' for the desired conclusion – in this case, the elaboration of the idea of public justification. However, the notion of public justification itself relies on the development of Rawls' ideas. A more reconstructive approach, one that starts from the elements of Rawls' work and then explains the meaning of the idea of public justification is, in my view, more fruitful.

I. *TJ* and the problem of stability

TJ is often praised for the argumentative strength and the intuitive moral appeal of the conception of justice that it presents. Yet, in my view, the most intriguing and at the same time idealistic element of *TJ* is to be found in the basic idea of how a society should hang together. This is, in Rawls' terms, the idea of a well-ordered society. A well-ordered society achieves what Rawls calls stability for the right reasons. This is not stability driven by political compromise, nor stability obtained through the coercive use of political power. Rather, it entails a deep form of social unity: it is based (as we will see below) on everyone possessing the same comprehensive conception of justice based on the value of autonomy. This moral consensus on a conception of justice also implies that a fundamental aspect of *TJ* is that citizens of a well-ordered society have a shared and mutually acceptable standpoint from which to judge and justify the shape of their basic social and political institutions. This, at least in *TJ*, is Rawls' argument. However, as we shall see, the idea of reasonable pluralism creates problems for this happy picture. If we take reasonable pluralism seriously, the fact that all should support the same conception of justice (for comprehensive reasons) is an unreasonable ideal. It is unreasonable, because even in the best of foreseeable conditions it cannot sustain itself. What makes social unity of the type Rawls imagines in *TJ* a worthy ideal – that is, the fact that it is achieved in a context in which the basic freedoms of the democratic tradition are protected (see Cohen, 1994) – also makes it unlikely that such social unity will persist. By stressing the themes of a well-ordered society, of

stability for the right reasons, and of normative consensus, I hope to show that the idea of a shared basis for the justification of social and political arrangements is part of Rawls' philosophical enterprise from the start.

I.1 *TJ* and the well-ordered society

According to many, *TJ* presents an attractive ideal of society as a form of social cooperation between free and equal persons. It secures the basic rights and liberties familiar from constitutional tradition and gives them priority over the claims of the general good. It provides a defence of equality of opportunity that shows how the initial starting points we have in the social world are morally arbitrary and should not determine the likeliness of our success in life. It defends a vision of economic inequalities that are justifiable only if they are to improve the lot of those who fare the worst and in so doing presents a vision of economic efficiency that is not based on individual greed but on reciprocity and solidarity. No doubt these are considerable achievements. But perhaps Rawls' work, even in *TJ*, provides a more encompassing and even more attractive moral ideal.

Rawls' *TJ* projects a vision of society in which the personal freedoms of all individuals are not simply defended against the possibility of coercive intervention by the collective, but are founded on the reasoned agreement of all free and equal persons that participate in social cooperation. The normative ideal that Rawls presents in *TJ* does not limit itself to the content of the principles of justice but extends to the way in which we imagine the society governed by those principles. A society that adopts justice as fairness is not simply regulated by it, but structured according to its principles in a very peculiar sense. According to Rawls, principles of justice specify fair terms of social cooperation. Social cooperation is not 'merely socially coordinated activity ... social cooperation is guided by publicly recognized rules and procedures which those cooperating accept as appropriate to regulate their conduct' (*JAFR*: 6).

The society imagined in *TJ* is 'effectively regulated by a public conception of justice'. According to Rawls this means that it is a well-ordered society. To be termed 'well-ordered' conveys three essential elements for Rawls. First, it is a

society in which ‘everyone accepts, and knows that everyone else accepts, the very same¹⁵... conception of justice ... moreover, this knowledge is mutually recognized: that is, people know everything they would know if their acceptance of those principles were a matter of public agreement’ (*JAFR*: 8). Second, the basic structure complies with the conception of justice that is publicly known. Third, ‘citizens have a normally effective sense of justice, that is, one that enables them to understand and apply the publicly recognized principles of justice’ (*JAFR*: 9). Eventually, according to Rawls, ‘in a well-ordered society ... the public conception of justice provides a mutually recognized point of view from which citizens can adjudicate their claims of political right on their political institutions or against one another’ (*JAFR*: 9).

The ideal of social cooperation presented by Rawls entails a certain normative consensus¹⁶ between all participants on social cooperation in which everyone possesses a similar if not identical sense of justice. Normative consensus is not simply agreement on the shape the basic structure should have, but also on the reasons that lead each and every person to believe that justice as fairness is the best way to organize social cooperation between free and equal citizens.

Why does Rawls emphasize this ideal of normative consensus?¹⁷ A normative consensus of a moral nature concerning morally fundamental ideals is important and desirable for at least four discrete reasons. First, the stability of a society’s allegiance to a conception of right and the conformity of its institutions to such conception is greatly enhanced by the presence of a normative consensus on matters of basic justice. Second, ‘assuming that norms of justice are not motivationally inert, consensus on them increases social trust and harmony, supports social peace, simplifies decision-making, reduces monitoring and enforcement costs ... and ... reduces alienation from public choices because citizens embrace the norms and ideals that guide those choices’ (Cohen, 1994: 1516). Third, moral consensus on norms of justice makes possible the reconciliation of individual plurality with social unity. It helps create a society in

¹⁵ Here in the text of *JAFR* Rawls includes, crucially, the term ‘political’, which already incorporates the solution to the problem addressed in *PL*. For reasons of presentation I omit the term. This should not substantially change the nature of a well-ordered society as viewed in *TJ*.

¹⁶ Here I follow Joshua Cohen’s review of *PL* (Cohen, 1994).

¹⁷ In this part of the chapter I follow Joshua Cohen’s treatment of what he calls the internal problem of *TJ*.

which the personal freedom and autonomy of citizens is not understood as being in opposition to social and political institutions, but is founded on their existence. Fourth, when a moral consensus on matters of basic justice is achieved, a basic form of mutual respect is possible. When moral consensus is reached, ‘each offers as reasons for a decision only considerations that others who are subject to political power take as reasons, and state power is exercised only within the bounds set by these reasons’ (Cohen, 1994: 1517).

In sum, a well-ordered society, one that achieves stability for the right reasons, is based on the willing support of its members and their social unity is, in turn, based on the fact that they share the same (in *TJ*, comprehensive) justification for the conception of right that orders their political community. Such a well-ordered society that is stable for the right reasons presents a case of moral consensus on matters of basic justice where citizens have a shared and mutually acceptable standpoint from which to justify the shape of basic social and political arrangements.

I.2 A problem of stability?

While consensus clearly is (at least for Rawls) a desirable feature for a political society, we must be careful in declaring, ipso facto, that any route toward the latter is acceptable. All of the virtues of consensus we have laid out in the previous paragraph take for granted something important: that the consensus we are dealing with is not reached through manipulation, inculcation or force (see Cohen, 1994). Social trust, mutual respect and many other values cannot be the historical result of the use of power. At least, this is not the means by which Rawls believes, from a normative point view, a desirable and lasting consensus on matters of basic justice should obtain in a liberal democratic society. Only under conditions that make individual and collective deliberation possible can a normative consensus be called ‘free’ and not a form of imposed uniformity (see Cohen, 1994). And this is where we can start to understand the main problem that justice as fairness must face. If consensus is to be achieved in the correct way, we know that it must come about in conditions of free personal and collective deliberation. Such conditions, in order to be even partially realized in society, require the protection of certain basic associative and expressive liberties. But, in

turn, such liberties are historically associated with pluralism concerning moral, religious, and philosophical views. So, the problem Rawls needs to address is whether, in a context of pluralism created by the protection of basic associative and expressive liberties, normative consensus on justice can be achieved and be stable.

Rawls' initial solution is presented in part III of *TJ*. According to Rawls, a conception of justice is stable if, once it has been adopted as a regulative ideal for the basic structure, it can come to generate its own support. Stability for the right reasons comes about when 'the forces that support it are primarily its members' moral motivation and their sense of justice' (Freeman, 2007c: 244). Rawls' initial case for the stability of the society regulated by justice as fairness is based on two fundamental arguments. First, that in the society regulated by justice as fairness those who live under it can come to develop, by a gradual process of moral learning, a desire to support just institutions. This argument is meant to show that there is nothing in human nature that makes the stability of justice as fairness impossible. Second, Rawls tries to show that to support just institutions is not only right and possible according to nature but also part of what is rationally desirable for persons: the development of their sense of justice is thus congruent, to use Rawls' famous term, with their good.

Now, in a context of pluralism – that is, the type of context that emerges once basic expressive and associative liberties are protected – both arguments seem to face significant challenges. I will focus here on those faced by the second argument for stability – that is, for congruence.

One of the basic arguments for congruence maintains that, as free persons, to act according to principles of justice and to express our human nature are one and the same thing. What Rawls maintains, and his argument for congruence is meant to show, is that a conception of right (the same, in fact, for all persons in society) can take centre-stage in persons' motivational set and that it can be a regulative ideal even for individuals with differing conceptions of the good. But how can that be possible? Here Rawls states that to act according to a conception of right is the same thing as to express our nature as autonomous moral agents.

In short, what needs to obtain for the society of justice as fairness to be stable along the lines presented in part III of *TJ* is that:

members of a well-ordered society will develop a conception of their nature as free beings, will regard the expression of that free nature in their own conduct as a fundamental good, and will understand ... that such expression requires acting from the principles of justice that would be chosen in the original position, giving those principles a special regulative role. (Cohen, 1994: 1519)

This would happen, ideally, because persons come to realize that to act according to principles chosen in the original position is basically the same thing as to act from rational principles that we have given to ourselves. Other motivations and conceptions of the good, while not necessarily irrational, cannot have the same pedigree. In the original position we are represented as free moral persons, so to act from principles chosen in the original position is basically to vindicate our nature as those free moral persons.

Clearly, however, the fact that our representation in the original position expresses our moral nature as free beings is a matter upon which persons are bound to disagree. Persons will reasonably (to use a term we will explain later in greater detail) disagree that the original position expresses our nature as free beings. They will also reasonably disagree that, as a matter of fact, our nature must be understood to have such moral content. Lastly, persons will reasonably disagree that the respect for such nature should always have a regulative role.

This creates a problem, because it means, among other things, that even in the best of foreseeable conditions – that is, even if society adopts justice as fairness as its conception of justice – that very same society will not be able to remain stable for the right reasons. Persons who live under free institutions come to have different conceptions of their moral nature, both its content and its regulative force, and hence the case for the stability of justice as fairness cannot be based on the congruence argument: we cannot assume that to act from principles of justice expressing ‘our’ nature as free moral beings is part of ‘our’ rational good. If stability for the right reasons cannot be achieved, what are the consequences for the society of *TJ*? Stability for the right reasons requires for Rawls, at least in *TJ*, a deep form of consensus on both the conception of justice that orders society’s basic structure and the (comprehensive) reasons that lead citizens to enduringly support such a conception. This consensus is deep because it requires that all members of society possess the same sense of justice based on the Kantian ideal

of autonomy. In *TJ* the ideal of public justification is realizable only by assuming a very strong common ground between citizens.

Here, I believe that the relevance of the idea of a shared and mutually acceptable basis for the justification of basic social and political arrangements can be fully perceived if we analyse how Rawls reacted to this problem in part III of *TJ*. The common ground citizens are supposed to share in *TJ* is a very Kantian one and resonates strongly with the modern liberal tradition. It could have been easy for Rawls to accept, perhaps, that the ideal of a well-ordered society that is stable for the right reasons should be side-stepped, and that the idea of finding a shared and mutually acceptable basis for the justification of the political order should be forsaken and replaced by a (comprehensive) liberal justification based on the values of moral autonomy as expressed by a Kantian interpretation of justice as fairness. Instead, in *PL*, Rawls addressed the issue of pluralism more deeply. He argued that a well-ordered liberal society stable for the right reasons is not possible if we are committed to a comprehensive conception of liberalism. In so doing, he traded what he saw as the most compelling justification of a conception of justice for a modern liberal, with one that was capable of successfully gaining the willing support of all reasonable citizens of a liberal democracy. By this means, in my view, Rawls clearly signalled an order of priority for his political philosophy.

II. A new account of the shared bases of justification¹⁸

In *PL*, Rawls takes up the problem of the stability of justice as fairness and develops a new way of understanding stability for the right reasons. A central element of this strategy is to transform justice as fairness into a political

¹⁸ For reasons of space, I cannot here address the issue of the validity of the account of public justification that is implicit in Rawls' political turn. A number of important concerns have been raised about this account (see for example Barry, 1995; Raz, 1990), but I do not see how they impinge upon the interpretive task of reconstructing the continuity of Rawls' domestic and international theories of justice. They might, perhaps, affect our evaluation of the liberal cosmopolitan alternative to Rawls' view. But, as we will see in the next three chapters, not all the arguments that are meant to reject such view are premised on accepting the content of the arguments offered by my reconstruction of the political turn in Rawls' work.

conception and to imagine a different form of social unity, one based on overlapping consensus. *PL* also deals more explicitly with the issue of coercion. In *TJ*, the word ‘coercion’ does not appear in the book’s analytical index. In fact, Rawls is at great pains to imagine why coercive political power might be needed, if at all, given that all share one and the same sense of justice ‘all the way down’. In *PL*, on the other hand, the issue of political power, which now, according to Rawls, is always coercive power, takes a much more prominent role. If the problem of stability in *TJ* was linked to the appreciation of reasonable pluralism concerning the good, one could add that the issue of legitimacy arises from Rawls’ acknowledgment of the coercive nature of political power and the possibility of (bounded) disagreement on the right itself. If this is correct, one of the central issues of *PL* becomes this: in a context of (reasonable) pluralism, how can we use the collective power of the state, which in a democratic polity is power equally shared by all citizens, to decide and enforce the content of the laws by which persons live? For Rawls, the answer to this question concerns the issue of political legitimacy. In short, in *PL* Rawls is looking for a sounder basis for the stability of a liberal society and an account of the legitimate exercise of state power.

Even in *PL*, I believe, the issue of finding a shared and mutually acceptable basis for the justification of basic social and political arrangements is crucial. The idea of stability for the right reasons based on overlapping consensus is simply the transposition of the goal of finding a shared, mutually acceptable justification for basic social and political arrangements in a context in which citizens are seen as being more divided on fundamental moral, philosophical and religious issues. In the same way, the test of reasonable acceptability for the use of political power signals the fact that even when we vote (as we cannot reach full consensus), or use the power of the state to enforce the terms of social cooperation (as the state claims this ultimate form of power in a political community), we should always aim for political power to be used according to a shared and mutually acceptable set of reasons.

II.1 Stability and reasonable pluralism

In order to fully appreciate the nature of Rawls’ proposed solution to *TJ*’s problems with stability we need to introduce a new family of ideas that, as Rawls

himself has it, were not needed before. We must provide a more detailed account of the idea of pluralism, and to describe, at least superficially, what Rawls takes to be the context of his enquiry in *PL*. According to Rawls, the ‘political culture of democratic society is characterized ... by three general facts’ (*PL*: 36).¹⁹ First, in a democratic society there will be an enduring pluralism of what he calls reasonable comprehensive doctrines (more on this below). Second, Rawls believes that the oppressive use of state power is required in order to eliminate such pluralism. Third, the continuity in time of a democratic regime, one not divided by doctrinal strife and hostility between its citizens, requires that a substantial majority of the latter are prepared to support it freely and willingly.

What is a comprehensive doctrine? What makes pluralism reasonable? According to Rawls a doctrine is comprehensive when ‘it includes conceptions of what is of value in human life, as well as ideals of personal virtue and character that are to inform much of our nonpolitical conduct (in the limit our life as a whole)’ (*PL*: 175). In a free society, over time, different and incompatible comprehensive doctrines will develop: this is the fact of pluralism. What is more, such pluralism is, in Rawls’ view, not a mere accident nor something to be regretted. It is the result of human reason under free institutions and generates conceptions of what is of value in life which are not simply incompatible but also reasonable. Reasonable pluralism and pluralism as such are not the same thing. The fact that persons tend to disagree because, for instance, they represent different class interests, is not what Rawls means by reasonable pluralism. The latter describes disagreement concerning fundamental moral, philosophical and religious ideas which stems from what Rawls calls the burdens of judgment. Rawls holds that: a) citizens of a liberal democracy are reasonable when, among other things, they recognize the burdens of judgment; and b) that reasonable comprehensive doctrines are comprehensive doctrines held by reasonable citizens. The fact of reasonable pluralism is, then, characterized as the development and endurance of different and irreconcilable reasonable comprehensive doctrines under free institutions.

How can citizens (seen as free and equal, reasonable and rational) who disagree on fundamental moral, philosophical and religious questions come to

¹⁹ Rawls assumes that such facts hold (see *PL*: 36).

agree on one and the same conception of justice for their society? This is the problem of stability²⁰ highlighted in previous pages. We know that *TJ*'s account of stability is, according to Rawls' own view, unsuccessful. It cannot fully take into account the fact of reasonable pluralism. So how can Rawls proceed to solve this problem?

Rawls' reply requires the elaboration of what he calls a political conception of justice. A political conception is political in a very peculiar sense. According to Rawls a conception of justice is political when: a) it is freestanding, that is it can be presented without presupposing the endorsement of any particular comprehensive doctrine; b) it is restricted to the domain of the political (it applies to the basic structure of society); c) its main ideas are drawn from the public political culture of society. All three features of a political conception of justice are meant to reduce the scope of disagreement between citizens. Its freestanding nature implies that persons believing in different reasonable comprehensive doctrines can endorse the political conception without forsaking their non-public reasons. The restriction to the basic structure implies that the political conception does not address the private and associational life of citizens (it does not dictate their conduct in those domains, but it does of course constrain their associational lives). The fact that its main ideas are drawn from the public political culture assumes that such ideas are widely available and shared as they represent ideas implicit in a common political tradition for all citizens. In light of these new ideas, Rawls states that justice as fairness – more precisely, the way in which it is presented in *TJ* – is a comprehensive doctrine.

Many conceptions of justice can be political in Rawls' sense. But only a subset of them can also be liberal (see *PL*: 5–6). All liberal political conceptions share three basic features. Firstly they specify a list of basic rights, liberties and opportunities that are familiar from the history of constitutional democracy. Rawls

²⁰ More precisely, as we have seen above, the problem of stability 'involves two questions: the first is whether people who grow up under just institutions ... acquire a normally sufficient sense of justice so that they generally comply with those institutions. The second question is whether in view of the general facts that characterize a democracy's public political culture, and in particular the fact of reasonable pluralism, the political conception can be the focus of an overlapping consensus' (*PL*: 141). This presentation of the problem of stability is the same as in *TJ*, but in *PL*, Rawls' reply to these two questions has shifted: he provides a different account of moral psychology and replaces the idea of congruence with the idea of an overlapping consensus. In this thesis we have dealt mainly with the second part of the problem of stability – one reason being that the congruence argument makes the deficiencies of *TJ*'s account of stability more apparent.

does not provide a complete list, but central to these features of a constitutional regime are the associative and expressive liberties that make a normative consensus on justice both desirable and difficult: freedom of speech, freedom of conscience and association, freedom of occupation and so on. Secondly, all liberal conceptions must specify an ‘assignment of special priority to those rights, liberties, and opportunities, especially with respect to claims of the general good and of perfectionist values’ (*PL*: 5). Thirdly, all liberal political conceptions must specify adequate measures to ensure that all can make effective use of their basic rights, liberties and opportunities, and that those are not simply formal. But, as Rawls goes on to say, ‘[t]hese elements can be understood in different ways so that there are many variant of liberalisms’ (*PL*: 5). Among liberal political conceptions of justice, justice as fairness expresses a particularly egalitarian form of liberal conception. It does so because: a) it protects the fair value of the political liberties; b) it promotes fair, and not simply formal, equality of opportunity; and c) because it endorses the difference principle.

Having introduced the idea of a political conception of justice we can now provide Rawls’ answer to the question of stability. A well-ordered liberal democratic society can be stable if all citizens, divided by their reasonable comprehensive doctrines, can come to support the same political conception of justice from within their own framework of reasons. If this occurs, then an overlapping consensus on justice obtains. An overlapping consensus is not a compromise between existing reasonable comprehensive doctrines in society. Rawls is clear that that would make it ‘political in the wrong way’. Rather, Rawls believes that by first developing a political conception of justice (with all the features that are meant to narrow down disagreement) and only then conjecturing whether the conception can gain the support of a sufficient number of reasonable comprehensive doctrines, we can arrive at a political (moral) consensus on matters of basic justice. In sum, the ideas of a political conception of justice and of overlapping consensus reframes Rawls’ search for a shared and mutually acceptable basis for the justification of basic social and political arrangements in light of his appreciation of the problem of stability created by reasonable pluralism.

II.2 From stability to legitimacy

In *TJ*, Rawls deals with the coercive power of the state as a problem of assurance. His remarks feature in section 42 of *TJ* and are linked to the idea of public goods (*TJ*: 236–7). There he writes that ‘[t]he need for the enforcement of rules by the state will exist even when everyone is moved by the same sense of justice. The characteristic features of essential public goods necessitate collective agreements, and firm assurance must be given to all that they will be honoured’ (*TJ*: 236). Although in a well-ordered society the level of sanctions will be ‘mild’ and they ‘may never be applied’, Rawls maintains that ‘the existence of such devices [i.e. coercive power] is a normal condition of human life even in this case’ (*TJ*: 237). In a large-scale community, mutual trust can never develop to the point at which enforcement is completely unnecessary (*TJ*: 237).

In *PL*, the fact of reasonable pluralism entails that persons will not share the same sense of justice in the same way as Rawls imagined they would in *TJ*. The best we can hope for is that all will agree on the same liberal political conception of justice and some elements its justification. But here things get more complicated. Rawls, as we have seen, presents his justice as fairness as one particularly egalitarian liberal political conception. But there is more than one liberal political conception. As long as a liberal political conception meets the three standards provided above, it is a reasonable conception of justice for a liberal democratic society. But, if that is correct, then persons who endorse different liberal political conceptions of justice might, and perhaps realistically will, ‘disagree about what counts as just within a liberal framework’ (Estlund, 1996: 6). Although Rawls finds justice as fairness as the most justified liberal political conception of justice, other forms of political liberalism are also reasonable interpretations of what justice requires in a liberal regime. But, if liberals disagree about what counts as the most reasonable liberal political conception, then, what do they agree about? Persons who endorse different political liberalisms ‘agree that citizens share in political power as free and equal’. In essence, Rawls’ answer is that they agree about a conception of political legitimacy (Estlund, 1996: 6).

A conception of political legitimacy, for Rawls, is a conception of the proper use of political power. By legitimacy, following Jonathan Quong, I refer to ‘a complex moral right’ or ‘the moral power of one agent to impose duties on

another agent, and also to a right of the former agent to use some degree of coercion to enforce those duties' (Quong, 2011: 108). In turn, political legitimacy is just a special case of this broader definition that sees the state as the agent imposing the duties and the citizens as those who are under a duty to obey the state by following legal norms. According to Rawls, in a liberal democratic regime, the political relationship between citizens has two special features. One is that we enter it by birth and leave it only by death: 'Political society is closed: we come to be within it and we do not, and indeed cannot, enter or leave it voluntarily' (*PL*: 136).²¹ Secondly, and more relevantly here:

political power is always coercive power backed by the government's use of sanctions ... this power is regularly imposed on citizens ... some of whom may not accept the reasons widely said to justify the general structure of political authority ... or when they do accept that structure, they may not regard as justified many of the statutes enacted by the legislature to which they are subject. (*PL*: 136)

While overlapping consensus is possible, Rawls cannot guarantee that all members of society will agree on the very same conception of justice (nor that there will be agreement on how to interpret the same conception of justice in all relevant cases). Many conceptions of justice are reasonable even from a liberal point of view. But this creates a problem. We know that citizens are free and equal, reasonable and rational. We also know that they hold different and incompatible reasonable comprehensive doctrines. Furthermore, we know that they can still disagree on which interpretation of liberal justice is the most appropriate for their society. Yet we recognize that even when disagreement is reasonable, society cannot function by way of unanimity and requires a single shared system of laws.²² So the question arises: on which bases can we coerce

²¹ This is of course an abstraction. Rawls comments that 'the appropriateness of this assumption rests in part on the fact ... that the right of emigration does not make the acceptance of political authority voluntary in the way that freedom of thought and liberty of conscience make the acceptance of ecclesiastical authority voluntary' (*PL*: 136).

²² This requirement need not be understood simply as a practical one, though of course it would be practically unsound to require unanimity on justice as a necessary condition for the legitimacy of a state. As Quong notes (2011: 135), we can imagine persons to be under a natural duty of justice, and we can further imagine that citizens are evenly divided on the question, for example, of what is the most just system of property laws. Imagine further that the state decides to enforce one among the different (yet reasonable) system of property laws that only a subset of the citizens believe to be the correct or just one. If all those who do not share the state's action also believed that the state was acting without legitimacy then they would have grounds for resistance; at the very least, the system of property law proposed by the state would be unlikely to be sustainable in

other citizens in a liberal democracy? According to Rawls, the answer is contained in what he calls the 'liberal principle of legitimacy':

our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason.

(*PL*: 137)

Rawls' liberal principle of legitimacy provides a standard for the use of political power in a liberal democracy. It provides citizens of a liberal democratic polity with a shared and mutually acceptable standard for the justification of the use of their collective political power and expresses the need to make sure that this power, which according to Rawls is the power of all citizens (in which they share equally) as a corporate body, can only be exercised correctly if those who are coerced can reasonably be expected to accept the reasons they are offered for such coercion. In other words, the use of coercive political power in a liberal democracy must follow what Rawls calls the criterion of reciprocity. The latter states that 'our exercise of political power is proper only when we sincerely believe that the reasons we offer for our political action may reasonably be accepted by other citizens as a justification of those actions' (*PL*: xlv). Legitimacy, in this framework, is a much weaker standard than justice. Legitimacy only provides the bounds within which political conceptions of justice must fall for citizens to be under a duty to follow the law. Certain laws and policies will not be considered fully just by some citizens, but provided they fall within the bounds set by legitimacy, they are nonetheless legitimate and can command the obedience of citizens.

III. The Idea of Public Justification

Thus far in this chapter I have shown that one of the most enduring commitments of Rawls' political philosophy has been to find a shared and mutually acceptable

the long run (no laws can survive on coercion only). This would then create a difficult situation in which, by claiming that an unjust law is also ipso facto illegitimate, no system of property is established thus making the prospect of meeting the natural duty of justice even more remote than if what many perceived to be an unjust system of property was accepted.

justification for basic social and political institutions (and, in *PL*, for the justification of collective political power). In this final section of the chapter I want to say more about the Rawlsian justificatory commitment. I believe that the commitment to a shared and mutually acceptable justification for basic social and political arrangements can be expressed effectively as a commitment to public justification. In what follows, I analyse the idea of public justification in greater detail and specify five of its central features: its grounds (III.1); the notion of justification that it implies (III.2); its method (III.3); its scope (III.4); and its relationship with existing practices (III.5). Explaining these features of public justification will provide both a clarification of the idea itself and the foundations for exploring why and how such idea matters for understanding *LOP*.

III.1 The grounds of public justification

Liberalism takes the moral standing of each and every individual seriously: it embodies an ideal of respect for persons (see Larmore, 1994; idem., 1996; idem., 1999; but also Ackerman, 1994).²³ In recent years, many authors have argued that the commitment to respect for persons and their standing implies that *all persons are owed a justification* for at least the most basic features of the political order.²⁴

²³ This claim is, in my view, general enough to be applied to most forms of liberalism and most liberal authors. Nonetheless it is beyond the remit of this thesis to try to justify this idea: we cannot here address the basis of respect for persons in liberal theory. If the reader feels uncomfortable with the extrapolation, he can perhaps accept it as an interpretive claim about Rawlsian liberalism; though reducing the generality of my contention this would not greatly affect the role it is meant to play in the thesis: both Rawls and the majority of his cosmopolitan critics seem to accept the premise of respect for persons. Here I say ‘respect’ and not ‘equal respect’ because I want to avoid the misunderstanding that ties the idea of respect for persons to an egalitarian conception of social and political justice (see the conclusion for a short discussion of this issue). I am here indebted to Carter (2011) for this conceptual clarification. In the literature it is also commonplace to refer to Stephen Darwall’s distinction between ‘recognition respect’ and ‘appraisal respect’ (see Darwall, 2006). The former is linked to Darwall’s understanding of dignity and is an attribute of moral personality generally, while the latter is a form of judgment of a person’s moral character. In terms of Darwall’s terminology, then, I am here referring to recognition respect. Note, though, that I need not also endorse the same type of justification for what grounds recognition respect as in Darwall’s work.

²⁴ See for instance Jeremy Waldron: ‘liberalism rests on a certain view about the justification of social arrangements, and that this view helps us to understand some of the differences and some of the similarities between liberalism and other ideologies ... liberals are committed to a conception of freedom and of respect for the capacities and the agency of individual men and women, and ... these commitments generate a requirement that all aspects of the social should either be made acceptable or be capable of being made acceptable to every last individual’ (Waldron, 1987: 128). See also Gaus (1996); Bird (1996); Macedo (1990); Forst (2011); and Weithman, 2012).

As Rawls himself stated, ‘to respect another as a moral person is to try to understand his aims and interests from his standpoint and to present him with considerations that enable him to accept the constraints on his conduct’ (*TJ*: 338). This is the defining feature of what has been labelled ‘justificatory liberalism’ (see Gaus, 1996; Eberle, 2002: 51).

Some might object that the Rawlsian political turn is often seen as an attempt to present a freestanding conception of justice which citizens holding different comprehensive doctrines will be able to endorse. To premise such freestanding conception on the idea of respect might seem to be self-defeating, yet for two reasons I do not believe it to be so. The first, as we have seen in the previous chapter, and as Larmore himself declares, is because without some moral grounding the very idea of looking for a freestanding conception of justice seems inexplicable. In criticizing Aaron James’s interpretation of Rawls, one that sees Rawls as ‘starting from existing practices’, I have precisely lamented the lack of a moral explanation to back the methodological outlook attributed to Rawls. Similarly, in this chapter I have stressed the longstanding centrality of the idea of public justification in the Rawlsian corpus and more specifically how it was precisely this commitment that lead Rawls to reformulate his account of the stability and legitimacy of justice as fairness. It therefore begs the question to simply assume that the Rawlsian commitment to public justification cannot be further elucidated or backed by some form of moral consideration. In Larmore’s words:

we may intelligibly ask why liberalism's response to [reasonable pluralism] should be a reformulation of its principles. Why should liberalism become political, in the sense that Rawls and I intend? Why should liberal thinkers not instead dig in their heels and, observing correctly that no political conception can accommodate every point of view, maintain that liberalism stands or falls with a general commitment to [a specific comprehensive doctrine]? (Larmore, 1999: 605)

The second reason is that to ground Rawls’ political turn on respect for persons is not the same thing as to ground it in a particular comprehensive doctrine. Respect is something that can be specified in different ways. Different conceptions of the person inspired by different moral, philosophical and religious doctrines will provide different grounds to understand why respect matters (see Larmore, 1990: 349). Respect, at least in the way in which it is understood here

(see Sangiovanni, 2012, for a detailed exposition) does not require or presuppose adherence to a particular comprehensive doctrine, nor does it specify a particular set of rights and entitlements.

III.2 The notion of justification employed

With the grounds of public justification in hand, we are now in a position to state the nature of the idea of justification endorsed by justificatory liberals. As we have seen, and Rawls is no exception, those committed to justificatory liberalism believe that respect for persons requires the justification of social and political arrangements to those who are subject to them. But what does it mean to provide a justification? What makes something ‘justifiable’ to a person? A traditional view of justification tends to stress its nature as ‘an essentially philosophical or epistemic enterprise seeking to get it right’ (Chambers, 2010: 893). This search for epistemic correctness – or, in everyday language, for truth – is a key feature of the traditional account of what can be labelled ‘rational justification’ (see Eberle, 2002: 61). Yet Rawls believes that the model of rational justification cannot fully express respect for persons.²⁵ As early as *TJ*, Rawls wrote that ‘justification is argument addressed to those who disagree with us ... being designed to reconcile by reason, justification proceeds from what all parties to the discussion hold in common ... mere proof is not justification [since] ... a proof simply displays logical relations between propositions’ (*TJ*: 508).

The idea of shared premises is essential to public justification. As Rawls states in *JAFR*, ‘[p]ublic justification proceeds from some consensus: from premises all parties in disagreement, assumed to be free and equal and fully capable of reason, may reasonably be expected to share and freely endorse’ (*JAFR*: 27). Public justification is not simply justification according to the most accurate reasons available. Or, to put it in Rawls’ own words:

Public justification is not, then, simply valid argument from given premises (though of course it is that). Valid argument is instructive in setting out the relations between statements: it joins basic ideas and general statements with one another and with more particular

²⁵ For a more epistemologically informed account of the necessity of public justification see Gaus (1996, ch. 8) and Eberle (2002: 61ff).

judgments; it exhibits the overall structure of conceptions of any kind. By connecting the elements of a conception into an intelligible and perspicuous whole, it serves as a mode of exposition. But when the premises and conclusions are not acceptable on due reflection to all parties in a disagreement, valid argument falls short of public justification. (JAFR: 27)

Following Stephen Macedo we can say that public justification has a dual role as it seeks 'reflective justification (good reasons), but also ... reasons that can be widely seen to be good by persons such as they are' (Macedo, 1990: 281). Public justification acknowledges the permanent fact of pluralism and recognizes that such pluralism is reasonable given the burdens of judgment. Public justification, then, 'plays a representative role: mediating, in effect, between philosophy and the citizenry' and in so doing 'embodies the philosophical impetus toward critical reflection in a qualified form' (Macedo, 1990: 283).

III.3 The method of public justification

Public justification has no specific content. In other words, the commitment to public justification is not a commitment to any particular policies or to any particular argument to sustain such particular policies, but rather to the normative constraints that are attached to the presentation of arguments in favour of one's views in political life. According to the idea of public justification, 'each citizen should so discipline herself that she supports only those laws for which she enjoys the appropriate kind of rationale, where what makes a given rationale appropriate is a function, in crucial part, of the acceptability of the that rationale to the members of the public' (Eberle, 2002: 52).

However, while public justification has no pre-defined content, the constraints set by the idea of justification developed in the previous section determine a method for generating such content. As we have seen, epistemic correctness is not necessarily what makes something 'justifiable to others'. In a political context, and given the role of public justification, the epistemic correctness of any argument cannot be said to be sufficient to require that those to which the argument is addressed should accept it. If epistemic correctness is not the hallmark of what makes an argument acceptable, where shall we find the shared premises that can turn our 'proof' in a '(public) justification'? In a liberal

democratic context, no comprehensive doctrine can serve as the basis for public justification (Scanlon, 2003). Grounding our justification of social and political arrangements upon a comprehensive doctrine will make our reasons unacceptable to those who do not share that same comprehensive doctrine. In order to count as a shared and mutually acceptable basis for the justification of basic political arrangements, the reasons we offer cannot simply rely on the fact that we believe their content to be correct. They also have to be able to reach across the reasonable comprehensive doctrines that develop in a liberal society.

In a liberal democratic society, a shared set of beliefs and experiences that could constitute the basis for the justification of social and political arrangements is hard to come by. Citizens do not believe in the same comprehensive account of what is good or of value in life, and so we cannot appeal directly to their non-public reasons in order to construct public ones. But then, how could we proceed? We need a starting point, a shared set of ideas and values that *can* constitute the basis for public justification. Intuitively, when we address a certain group of persons, shared premises that could form the basis of a reasonable argument for the justification of social and political arrangements will have to be found in something to which all those affected can substantively relate – something they will understand and that is part of their system of thought. But if comprehensive doctrines cannot fulfil this role, what remains is precisely the *public political culture* of a society, its political tradition as expressed in major legal texts, institutional practices and the ideas that have been used to analyse them. The latter is the only reservoir of shared ideas that can indeed be found.

According to Rawls the public political culture of a (democratic) society ‘comprises the political institutions of a constitutional regime and the public traditions of their interpretation (including those of the judiciary), as well as historic texts and documents that are common knowledge’ (PL, 13–14). Yet such texts and traditions of legal reasoning will undoubtedly not ‘speak for themselves’. They will not provide clear guidance on the problem in hand. There is no direct and uncontroversial sense in which the public political culture of a society already contains the principles of justice that are meant to order its basic structure. In other words, the public political culture can only provide a starting point for our process of public justification. It is, then, the role of philosophy,

when it aims at the public justification of the political order, to interpret these shared premises, and to develop their content into a (political) conception of justice that is capable of fulfilling its social role in a context of pluralism.

III.4 The scope of public justification

This type of reasoning can be symmetrically shifted to the case of international justice; that is, the idea of public justification can be extended beyond the liberal democratic tradition and can apply to Rawls' understanding of *LOP*. There are two different ways in which such extension can be carried out and it is important to note the difference between them. The first is to claim that the content of liberal conceptions of justice should be universally applied to the world at large. Justice as fairness, or perhaps some other liberal political conception, should then be adopted as a way to structure global politics (for instance, by claiming that all human beings should enjoy the same types of liberal democratic rights). This is not what I am suggesting. The second way, the one I endorse, is instead to affirm that it is the method adopted by Rawls' political philosophy (the idea of seeking a public justification for the political order) that is more fruitfully universalized and applied to a larger sphere than a liberal society.

For instance, Rawls imagines that the institutions of a decent but nonliberal society will be structured according to a common-good conception of justice (see *LOP*: 64-67). A decent society can be stable for the right reasons and the use of political power by its government can be pictured as legitimate. A decent society aims at and in fact does achieve public justification (see chapter 3). Clearly, in such a society the problem of pluralism might be less acute than in a liberal society and its citizens might be united by a partially comprehensive doctrine. In such a context, the content of public justification might itself include elements of a comprehensive or partially comprehensive doctrine. It will include them because its public political culture, its main legal texts and their traditions of interpretation will also include elements of that comprehensive or partially comprehensive doctrine as well. Yet, in the same decent society, the main elements associated with the liberal tradition are not widely shared and so cannot plausibly constitute the starting point for the public justification of the political order.

Some might retort that for Rawls the idea of public reasoning is ‘characteristic of a democratic people’ (see *PL*: 213, quoted in Freeman, 2007b: 220). Freeman goes on to state that ‘the mere fact that people in a society commonly accept and reason in terms of some common religion or other comprehensive doctrine does not make that doctrine part of public reason’ (Freeman, 2007b: 220). Even if one were to agree with Freeman, the arguments presented here are not framed in terms of public reason, but rather in terms of public justification. As Vallier and D’Agostino (2012) correctly argue, public justification is the genus while public reason is the species. Public justification provides a vision of a political society that is stable for the right reasons and in which political power is legitimately used. The idea of public justification itself has greater reach than liberal democratic institutions. Yet the type of values and ideas that can fulfil the requirement of public justification will vary according to the political context.²⁶

Take the example of the Society of Peoples. In *LOP*, stability is always stability for the right reasons and not a *modus vivendi*. Rawls’ hope is that those who grow under (reasonably) just institutions (in this case the just institutions of a law of peoples) will support them through the development of a sense of justice and ‘a reasoned allegiance to those institutions sufficient to render them stable’ (*PL*: 142). Reasoned allegiance is not compromise dictated by power, nor is it agreement dictated by temporary coincidence of pre-determined material interests. In the Society of Peoples all well-ordered peoples endorse the law of peoples as their shared conception of justice that serves the end of regulating their mutual relations. In affirming the principles of *LOP*, well-ordered peoples do not believe that such law is merely the best option for them as dictated by the furthering of their interests or required by the present distribution of power. Rather, their allegiance is of a moral nature. Well-ordered peoples endorse the content of *LOP*. They believe that the principles of *LOP* constitute a conception of fair cooperation

²⁶ For instance, Rawls writes that ‘[t]o act reasonably and responsibly, corporate bodies as well as individuals need some recognized way of reasoning about what is to be done. This holds for government and its citizens as a corporate body and also for associations such as firms and labor unions, universities and churches. *We say the recognized ways of reasoning of associations are public with respect to their members, but nonpublic with respect to political society, and so nonpublic with respect to citizens generally*’ (*JAFR*: 92, emphasis added). This seems to imply both that the publicity condition in the idea of public justification is meaningful even if not applied to liberal democratic institutions, and that the content of public forms of reasoning can vary according to the political context to which they apply.

that both liberal and decent peoples can affirm in light of their own reasons, and that it expresses their mutual respect. The eight principles of *LOP*, in short, constitute a focal point, a shared basis for making mutually acceptable claims between peoples, and thus provide content to the idea of public justification between corporate agents at the international level.

The same reasoning applies to legitimacy in the Society of Peoples, in which free and equal peoples have to agree on the limits of their political autonomy. Establishing the limits of a people's political autonomy entails placing restrictions on its conduct (both external and internal) and making use of political power in order to render these restrictions effective. This is the nature of the limited sovereignty that Rawls imagines for all well-ordered peoples. The problem arises, then, of how to justify such restrictions over the pluralistic constituencies of free and equal peoples. We are therefore confronted with essentially the same problem that we have addressed in the liberal democratic context. Or, to put it more accurately, we are confronted with two different problems with a similar structure, in which the exercise of political power needs to be publicly justifiable to pluralistic constituencies. Given that the two constituencies are not identical, the solution of the problem will not be identical, but given that the structure of the problem is similar, then the method of searching for a public justification remains in place.

It could be said that Rawls' own use of the expression 'public justification' ties it to the idea of democratic politics. In fact, Rawls himself declares that 'the aim of the idea of public justification is to specify the idea of justification in a way appropriate to a political conception of justice for a society characterized, as a democracy is, by reasonable pluralism' (*JAFR*: 26). While Rawls develops his terminology by paying attention to the idea of reasonable disagreement in a liberal democratic polity, his analysis is not necessarily restricted to the latter. For example, in a decent society citizens are seen as decent and rational. 'Persons are decent when they are ready to abide by the terms of a decent scheme of social cooperation even at the expense of their own interests, given that others are also willing to do so' (see Wenar, 2004: 272). Decent persons do not necessarily agree on all matters of public policy and justice. A decent society might be less divided on moral, philosophical and religious questions than a liberal one, but is not a homogenous and monolithic whole. A decent society will be ordered according to

a common good conception of justice and such conception will, as its name suggests, take into consideration, by definition, the good of all citizens. Not only is a decent society attuned to the good of all citizens, and not monolithic, but the way in which a decent society treats the dissent of some of its members is, for Rawls, a central aspect of how we judge the internal legitimacy of that society. In other words, a decent society tries to offer a shared and mutually acceptable basis for the justification of basic social and political arrangements to its citizens by ordering its basic structure according to a common good conception of justice that takes the interests of all into consideration. In the same way, a decent society does not use political power every time it meets disagreement and dissent. Thus, even a decent society admits pluralism and sees its internal legitimacy as based on the (albeit partial) recognition that such pluralism cannot be simply met with the use of state power.

III.5 Public justification and existing practices

Understanding the grounds, method and scope of public justification also helps to explain the relevance of existing practices for achieving public justification. It is precisely the idea of taking respect for persons seriously that provides the basic justification for the relevance of the public political culture of society. In a (justificatory) liberal framework, one whose self-understanding is orientated towards the goal of public justification, political tradition is the only starting point for the stability and legitimacy of the political order. Putting the argument in a more open form we have:

- a) (justificatory) liberalism starts with the idea of respect for persons (although it leaves open what grounds such respect);
- b) a requirement of respect for persons is that a justification must be provided for the political order to all who live under it;
- c) however, the notion of justification employed is one that requires shared accessible premises;
- d) this in turn entails that starting points (such as comprehensive doctrines in a liberal democratic framework, or liberal rights in a decent society), which are not widely shared, cannot be valid;

e) the only other available alternative is the public political culture of society, this being the only available reservoir of shared premises for the public justification of the political order.

The argument laid out this way also has an important, though often underappreciated, consequence:

f) achieving public justification requires the adoption of different ideas according to the changing nature of the political tradition of a given political context.

I believe we can now also provide a general answer to the central question we raised in the last chapter (see chapter 1, section II). Why should existing practices and institutions play any role when we construct the content, scope and justification of principles of justice that are meant to regulate such practices? What type of argument, beyond simple methodological preference, could we put forward in order to justify our focus on existing social and political structures? As we have just seen, a central theme in Rawls' work is clearly the justifiability of social and political arrangements to each and every person. According to Rawls, public justification is addressed to others and hence requires shared elements and building blocks. Existing social and political institutions express the content of the public political culture. They implicitly contain shared public values. In short, they are the only shared starting point we have. In this picture, the fact that the content of principles of justice depend on the practices they are meant to regulate is not simply a methodological claim; it is the one way we have to tailor the justification of social and political arrangements to the diversity of a pluralistic society. The appeal to existing social and political structures reflects our desire to justify social and political arrangements to those that are subject to them. Continuing the argument stated above we can then say that:

g) attention to existing practices is not the result of a pragmatic compromise with reality, nor of a methodological commitment to the primacy of existing social forms; rather, it is required for the very practice of public justification, itself based on the liberal ideal of respect for the moral standing of individuals.

Existing practices are a stepping-stone in the process of public justification. Respect and its corollary of public justification are themselves relatively empty notions. By 'empty' I simply mean that without reference to a specific political

tradition they cannot be action-guiding and they cannot provide us with clear instructions on what we should or should not do. It is only when we refer to the specific ideas presented by each political tradition that we can somehow *start*²⁷ to fill the empty shell of respect and public justification with the substantive ideas that are part of the public political culture of different societies. In a liberal democracy, the content of public justification depends on the practice of liberal democracy and on its vision of citizens as free and equal. In a nonliberal and nondemocratic political tradition and for all political systems generally, the content of public justification will depend on how such systems interpret the shared fundamental ideas that are part of their political traditions.

Having grasped the situatedness of public justification, one could legitimately ask: Why should liberals be committed to the importance of the public political culture in circumstances where such public political culture expresses ideas, values and principles that do not correlate with acceptable liberal standards? Take the example of slavery. Why should a public political culture that permits slavery play any role in specifying the idea of justice in any given society? We might call this objection the ‘garbage-in-garbage-out’²⁸ challenge to the role of a public political culture in the idea of public justification.

This is a difficult question and an adequate reply would take us too far from the central concerns of this thesis. Nonetheless, it is possible to provide the general orientation that such reply could take. From the perspective of liberalism as a political doctrine aimed at the public justification of the political order, the first normative task is not to show that freedom, equality, autonomy or democracy are universal values that should be adopted by all persons and political systems independently from their historical experience, but rather to define, if there are any, the limits that all systems of social cooperation must conform to if they are to show their commitment to respect for persons (see Shklar, 1998). As members of a political tradition, we are certainly committed to the idea that certain ways of organizing the social world are, in Rawls’ words, ‘good in themselves’ (*LOP*: 111). But the real question we face, when committed to public justification, is

²⁷ Here I emphasize ‘start’ because public justification is not simply a mirror for the fundamental ideas that are implicit in the public political culture, but instead uses such ideas as shared premises.

²⁸ I owe this terminology to Leif Wenar, who provided me with the actual wording in a conversation held in April 2012.

whether certain ways of organizing society are so flawed that no idea of respect for persons is even possible within them. In short, the universality that is claimed by Rawlsian liberalism is premised on *avoiding the worst rather than requiring the best*. Looking at it a different way, while it is impossible to state what respect for persons requires without referring to the specific political circumstances in which persons live, it is perhaps easier to imagine social and political arrangements that clearly do not respect each and every person and that cannot plausibly aim at a public justification of the political order.

Of course, to precisely state where the line (between acceptable and non-acceptable systems of social cooperation) should be drawn is certainly a hard task, and one that is likely to depend, at least in practical terms, on judgment rather than ‘theory’ alone. Yet even in this case, Rawls’ *LOP* is useful in guiding us towards a more concrete specification for locating the relevant threshold for acceptability. As we will see more in detail in the following chapter and, subsequently, in chapter 4, Rawls’ account of decent peoples and of toleration based on reasonableness seems to signal that the defence of human rights and the permitting of meaningful political participation and dissent are important discriminating factors in understanding whether the ideas of respect for persons and public justification are possible within any system of social cooperation.

Conclusion

One of the great ideals in both *TJ* and *PL* was the attempt to achieve a political society in which citizens have a common set of principles and ideas to make their basic institutions justifiable to one another. Rawlsian liberalism has always been marked by this search for a shared and mutually acceptable justification of basic social and political arrangements. If we were to capture the thrust of this commitment to the justification of a basic structure (and, from *PL* onwards, of collective political power), we could depict it, as I claimed above, as a commitment to public justification. The idea of public justification is a central element of Rawls’ political philosophy, and in the final section of the chapter I highlighted several important features of it. One of the most relevant for our

purposes is that public justification starts from shared premises, and is not simply the result of a deductive exercise from immutable ideas of person and society. An important consequence of this dependence on shared premises is that these may, and most probably will, vary according to the political tradition that one is addressing. These reflections clearly provide a way of relativizing the validity of justice as fairness to one particular tradition. Justice as fairness starts from the basic ideas that are implicit in the public political culture of a liberal democratic society. By interpreting and systematizing these ideas, it constructs a conception of justice that is capable of attracting the willing support of its members and providing a public justification of the political order. Yet when the method of searching for a public justification of political society is based on different premises – that is, when the public political culture from which start is not liberal democratic – the content of public justification is unlikely to yield the same results. As we will see in the next chapter, it is precisely this type of reasoning which can explain why certain cosmopolitan extensions of Rawls’ theory are inadequate, and why by paying attention to Rawls’ idea of public justification we can explain the continuity of *LOP* with the rest of his work.

CHAPTER 3

The Coherence of Rawls' Work: (Rawlsian)

Cosmopolitanism and the Law of Peoples Revisited

In the previous chapter I argued that both *TJ* and *PL* were, among other things, attempts to construct public justifications for the political order. Chapter 2 also concluded that the very idea of public justification is based on a different account of justification, one that did not rest on purely epistemic reasons. Public justification requires shared premises and those premises can only be found in the public political culture for which the public justification is constructed. The latter idea clearly relativizes the extent to which the content of liberal values is applicable beyond the scope of liberal institutions. Portraying liberalism as a two-level moral and political doctrine, we can say that the standard content of liberal conceptions of justice (i.e. the standard account of liberal rights) is closely linked to liberal institutions. On the other hand, what remains universal, or at least what claims universality, in the liberal moral doctrine is the goal of public justification. Looking at *LOP* from the perspective of this division – between what is universal about liberalism and what is not – best captures its main ideas.

The chapter begins by showing how a direct extension of justice as fairness to the realm of global politics would clearly be impossible (section I). On the other hand, if we take Rawls' commitment to public justification seriously, we can explain the two main discontinuities between Rawls' domestic and international theory (section II). The fact that Rawls considers peoples as the basic unit of analysis stems from the idea that the global public political culture is not equipped to provide enough guidance on the relationships between individuals worldwide. A better and more promising alternative is to start from peoples and the international public political culture, or, in other words, the rich tradition of the law of nations. Only by focusing on these features of the global order can we justify the latter to its members. In turn, once we adopt this perspective on 'global justice' the non-egalitarian nature of *LOP* also becomes more clearly justifiable. Conceptions of justice, at least in the Rawlsian story, are chosen (under appropriate conditions) on the bases of the interests of those to which they apply.

Peoples, as moral corporate agents, have no interests in the relative distribution of income and wealth and so their representatives do not see any given distribution of resources as intrinsically desirable.

In final sections of the chapter (sections III and IV) I address two significant objections to my interpretation of *LOP*. The objections provide critical scrutiny on the two controversial elements of *LOP* outlined and discussed in section II. The first concerns the consequences of inequality in *LOP*, and whether such inequality is really compatible with the political autonomy of peoples. Many have argued that since there are no limits to the amount of inequality in *LOP*, and given that inequality affects political processes, the basic structure of the Society of Peoples will be inevitably skewed toward the representation of richer peoples. While this objection is not without merit, I claim that it forgets how Rawls understands peoples and their interests. Peoples are not interested in acquiring more wealth and income, and so their propensity to influence to their own advantage the basic structure of the Society of Peoples is less relevant than it is often claimed. Furthermore, even if we were to accept a different portrait of peoples' interests (more acquisitive, say), the only other tool available to neutralize the effects of inequality on the Society of Peoples – the redistribution of resources between peoples – would have counterintuitive consequences. The second objection contends that even if we can explain the choice of peoples as the main agents of *LOP* (following my interpretation in section II), this cannot really alleviate the impression that Rawls' theory is committed to some form of value collectivism. My reply is that, properly understood, *LOP*'s commitment to peoples is simply a consequence of its commitment to public justification: that such commitment is a consequence of respect for persons, and that peoples in *LOP* represent the basic unit of analysis, not the basic unit of moral concern. Ultimately, I claim, *LOP* should be considered as a form of moral cosmopolitanism founded on the idea of providing a shared and mutually acceptable justification of the global political order to all individuals.

I. Problems of extension

In this section I show how taking Rawls' political turn seriously implies rejecting a straightforward extension of justice as fairness to global politics. The argument I provide is not a logical refutation. Rather, I start from the interpretation of some major concepts that are part of the Rawlsian toolkit and show that we cannot directly extend them to global politics.

I.1 A global original position?

LOP starts by imagining an international original position where representatives of peoples, behind a veil of ignorance, decide which conception of justice should determine their mutual undertakings. This starting point, as many have noticed, is not uncontroversial. In fact, some of Rawls' early critics have found his insistence on this two-level strategy as lacking any principled defence (see Richards, 1982; Barry, 1973; and 1989: 183–9, 234–41; Pogge, 1989; Moellendorf, 2002). Many have argued that, by starting from peoples as corporate agents, Rawls does not even consider the possibility of a global original position and in so doing takes for granted that some form of internationalism must be the appropriate conception of justice for global politics. Here I concentrate on Thomas Pogge's famous attempt to argue in favour of a global original position. I do so because Pogge's treatment of the argument is arguably the best developed in the literature. However, an important caveat should be acknowledged. Pogge's *Realizing Rawls* was published in 1989 – that is, previous to the publication of *PL*, or of either version of *LOP*. Since my interpretation of *LOP* is based on the continuity of Rawls' international theory with, broadly speaking, the whole of Rawls' political philosophy (thus including aspects of his so-called 'political turn'), it would seem rather unfair to criticize Pogge for something that he could not have taken into consideration. I accept this point. The purpose of this section of the chapter is not, then, strictly speaking to criticize Pogge's view; rather, I use Pogge's work as an illustration of how the development of Rawls' ideas has made straightforward cosmopolitan extensions of the original position impossible.

In *Realizing Rawls*, Pogge puts forward three possible ways of extending the original position to international (or global) politics. The first two employ the

original position device twice: once at the domestic level, and once at the international or global level. According to what Pogge calls the first reading (R1 in Pogge, 1989: 242), in the second original position we find representatives of ‘persons’. According to what Pogge calls the second reading (R2 in Pogge, 1989: 243), we find representatives of states. Finally, Pogge proposes his own alternative original position (G in Pogge, 1989: 246ff). G is a fully global original position. It is clearly distinct from R2 since in G we find representatives of persons rather than states. But it is also different from R1 since it does not presuppose that the original position should be applied twice, first in domestic societies and second in the global arena. Instead, in G, we start from a global original position and then use the framework of original position reasoning in order to decide which political structures and principles of distribution are more appropriate for global politics. G, in other words, provides a moral baseline from which to assess the entire international architecture, with its system of states and of international institutions.

In arguing in favour of G, Pogge mentions a number of issues that will become central features of academic debate concerning *LOP* and global justice more broadly, such as the arbitrariness of nationality, the extent of permitted inequalities and of how such inequalities affect global background justice. Pogge should be given ample credit for the penetrating nature of his critique. I will try to respond to some of Pogge’s objections in the following sections of the chapter, but at this juncture it is worth noting how, when considering *LOP* from the vantage point of Rawls’ political turn, it is the very idea of imagining a global original position on the model of G that seems problematic. Simply put, the problem with G is that it is a transposition of the original position to global politics which lives intact the main features of Rawls’ domestic original position, and yet, at least from *PL* onwards, it is increasingly evident that the features of the original position that Pogge assumes we can globalize are to be understood as features of liberal democratic institutions.

Let me provide some examples. How would Rawls design a global original position? What types of ‘goods’ would representatives of persons be called to assign? What type of knowledge would be available to representatives of individuals in the global original position? Original position reasoning is premised on a precise understanding of ‘persons’. In Rawls’ domestic theory, persons are

seen as free and equal. As free and equal, persons are said to possess two moral powers: a capacity for a sense of justice and a capacity for a conception of the good (*JAFR*: 19). These moral powers, in *TJ*, provide the content of moral personality (see *TJ*: 10–19). Yet, at least from *PL* onwards, Rawls is clear that the conception of the person that provides the basis for his theory is not to be considered as a permanent feature of persons qua persons. In other words it is not a way of portraying human beings generally. As Rawls states, ‘it is important to keep in mind that justice as fairness is a political conception of justice’, and this implies also that ‘the idea of the person, when specified into a conception of the person, belongs to a political conception’ and it is ‘both normative and political, not metaphysical or psychological’ (*JAFR*: 19). According to Rawls, ‘the conception of the person is worked up from the way citizens are regarded in the public political culture of a democratic society’ (*JAFR*: 19), and hence is emphatically not a way of confronting the deeper issue of how to characterize persons generally. The analogous task we face at the global level, then, is to find a political conception of the person that can be the starting point for conceiving of the idea of global politics as a form of social cooperation between certain types of political agents. Even if we were to grant the possibility of this exercise, there would be no certainty that the results would be analogous to Rawls’ views in the domestic case. Rawls’ conception of persons as free and equal is the result of his interpretation of the public political culture of a liberal democratic society. Yet the global public political culture is not liberal democratic (and, in fact, one might be excused for thinking that it is precisely the fact that the world is not a Rawlsian liberal polity that seems to drive the reformist zeal that guides so many cosmopolitans).

Note how the latter problem has important consequences for the type of ‘goods’ that representatives of the parties will assign in the original position. In Rawls’ domestic theory, representatives of the parties are required to choose between different conceptions of justice that would distribute what Rawls calls social primary goods between individuals. In *TJ* Rawls maintained that primary goods are ‘things which it is supposed a rational man wants whatever else he wants’ (*TJ*: 79). But, once again, from *PL* onwards Rawls clarifies that the content of the list of primary goods is to be specified in accordance with a conception of citizens in a liberal democracy, not of persons generally. Primary goods are suited

for ‘the normal circumstances of human life in a democratic society’ (*JAFR*: 57–8). They are not things that it is rational to desire independently from one’s context of life. Rather, they are ‘needed and required by persons seen in light of the political conception of persons, as citizens who are fully cooperating members of [a democratic] society, and not merely as human beings apart from any normative conception’ (*JAFR*: 58). A global original position would be lacking this type of specification. It would not have a basic ‘currency’, since according to Rawls the latter is mediated by our understanding of liberal democratic citizenship.

In this respect the problem for those who wish to globalize the original position is rather similar to what David Miller has called the ‘metric’ problem (Miller, 2007: 62–8). In his *National Responsibility and Global Justice* Miller discusses the problem of extending the idea of equality of opportunities to global politics. The main difficulty in doing so, according to Miller, is that we would lack the cultural understandings that are presupposed by the very attempt to delineate what the principle of equality of opportunity requires in the abstract (2007: 65–6). In a Rawlsian framework the problem is rather similar. Considering primary goods as a currency that can be distributed according to principles of justice chosen in the original position, we need to recognize that the very idea of primary goods is dependent on the institutional characteristics and the public political culture of a democratic society.

1.2 The veil of ignorance and the arbitrariness of political membership

Original position reasoning is also premised on the idea that representatives of the parties will choose ‘rationally’ under fair deliberative conditions. The veil of ignorance is used as a screen for selecting the appropriate type of information that can help representatives of the parties to determine their choice of principles of justice. By excluding ‘morally arbitrary’ features of persons, such as class or ethnicity, the veil of ignorance ensures that the choice of the conception of justice in the original position is a fair one. Many cosmopolitans often cite Rawls’ veil of ignorance as one of the most important buttresses to their argument against the internationalist picture of the world order. Surely, they maintain, being members of a given political community cannot be something that is morally relevant about

persons. It is just a further deep form of moral contingency in persons' lives that persons happen to belong to a political society. In fact one could go as far as to say that the arbitrariness of national membership is one of the clarion calls of cosmopolitan egalitarians (see Pogge, 1989: 247; Caney, 2001: 125; Moellendorf, 2002: 55–6; Tan, 2004: 27–8; and Tan, 2012: 172ff). The main point is that if we exclude from original position reasoning, through the veil of ignorance, features of persons' circumstances that are arbitrary from a moral point of view (such as race, or social class), then we have no reason not to exclude national membership or membership of any group for which individuals cannot be held accountable. In this picture, 'nationality is just one further deep contingency ... one more potential basis of institutional inequalities that are inescapable and present from birth' (Pogge, 1989: 247). In a global original position, then, persons would not be represented as belonging to a political community. And it is from that vantage point that the political organization of the world order, with or without political communities, would have to be justified, rather than simply taken for granted.

This argument encounters an important problem. Once again, in order to see it we need to investigate Rawls' passage from *TJ* to *PL*. Let us imagine that a solution has been found to the aforementioned issues regarding a global original position, so we might ask how we would construct a veil of ignorance appropriate to the case in hand. The central question seems to be the following: How would a veil of ignorance for a global original position deal with the issue of membership in a political community? *TJ* does not fully develop the basis for discriminating between morally relevant and morally irrelevant information available to the parties (see Cohen, 1994). For instance, it was unclear why representatives of persons in the original position would be able to know that they represented persons with certain moral powers but not the types of conceptions of the good which these persons held. This furthered the impression, in *TJ*, that the distinction between what is morally relevant and what is morally irrelevant (again, from the standpoint of the original position) was the result of the endorsement of a liberal comprehensive outlook. Instead, in *PL*:

the point of the distinction ... is to present a conception of the person that will play a role in a political conception of justice, and so [Political] *Liberalism* underscores that the conception of the person is itself political ... Thus, *irrelevant* should not be understood absolutely, metaphysically, or in terms of a general moral view, but only as

implying that a feature of a person is not important for the purposes of political argument – in particular, not important for political argument aimed at specifying the requirements of justice for a society in which members are understood as free and equal. (Cohen, 1994: 1523)

However, deciding what is relevant for political argument is clearly not the same as deciding what is morally arbitrary or irrelevant about persons. To understand the difference between claiming that something is morally irrelevant and that it is irrelevant for political argument, what is crucial is that the latter requires some form of prior determination of the type of political context being addressed. To claim that something is irrelevant for political argument cannot be established *ex-ante* without reference to the political context the argument is meant to address.

Let me try to elaborate. If we refer to the idea of public justification discussed in the previous chapter, we can recall that respect for persons: a) requires public justification; b) that public justification requires shared premises; and c) that shared premises can be found in the public political culture of the political milieu we are addressing. When we devise a global original position, in my view, it would not be implausible to start with a conception of the person as being characterized by political membership. A conception of the person is a central aspect of the process of public justification as it provides the basic understanding of who are the relevant addressees. A globally plausible conception of the person, one that builds upon the global public political culture, would thus, I claim, recognize that membership in political communities is a defining feature of how the vast majority of persons understand themselves (at the global level). Note that I am not claiming that representatives of the parties in the global original position would know the specific political membership of those they represent. Rather the point is that the existence of such memberships as such could in the first place be a general feature of how we see the parties. For example, we could say that we view them as reasonable, rational and as having an interest in political membership without specifying the actual characteristics of their real-life affiliation to a given political community. This is a crucial distinction, and unless we take it into consideration we cannot respect the constraints set by a defensible veil of ignorance appropriately constructed (see *LOP*: 30–5).

Once again, it is instructive to compare this line of reasoning with Miller's arguments concerning the moral arbitrariness of nationality (2007: 33ff).

According to Miller, national membership is clearly arbitrary insofar as it is not generally understood as being a chosen trait of persons, but it does generate special obligations and therefore can have a role in determining persons' entitlements. Membership in a political community can thus be arbitrary but not morally irrelevant. This is so for Miller because not every un-chosen trait of persons should, ipso facto, be excluded from having an influence on said person's entitlements. In the same way, we can say that the distinction between what is relevant for political argument and what is not, need not rely on whether the element under scrutiny is a chosen trait or not. It will instead depend on whether, given the political conception of the person we can plausibly decipher from the global public political culture (if there is one), that element can be part of that culture or not: if being member of a political community is something that characterizes persons in the global public political culture then there is no reason to exclude this type of information from a global original position.

I want to conclude my discussion with a revealing quote from Rawls' 1993 article 'The Law of Peoples':

the law of peoples might have been worked out by starting with an all-inclusive original position with representatives of all the individual persons of the world. In this case the question of whether there are to be separate societies, and of the relation between them, will be settled by the parties behind a veil of ignorance. Offhand it is not clear why proceeding this way should lead to different results than, as I have done, proceeding from different societies outward. All things considered, one might reach the same law of peoples in either case. The difficulty with an all-inclusive, or global, original position is that its use of liberal ideas is much more troublesome, for in this case we are treating all persons, of their society and culture, as individuals who are free and equal, and as reasonable and rational, and so according to liberal conceptions. This makes the basis of the law of peoples too narrow. (CP: 549–50)

At first sight, one might be puzzled by the idea that a global original position would yield the same results as the two (international) original positions in *LOP*. Yet we should not forget that the parties in the domestic original position are framed under the assumption that society is closed and self-contained. They thus cannot show any interest in the self-determination of their political community and of their ways of life as a whole, simply because they already take for granted that these goods are a given. The point, then, is that in a global original position the assumption that societies exist and are self-determining breaks down, as it is

precisely the matter of the type of political organization for global politics that the global original position tries to establish. If we want to plausibly delineate persons' interests we cannot exclude the idea that living in a self-determining political community forms part of their fundamental political interests. In fact, we can say that such interest is already latently present in the domestic original position in *TJ* and simply required no discussion given that it was taken for granted. Not only would a global original position yield similar results as the two international original positions in *LOP*, but it would also be unsustainable given the account of toleration provided by *LOP* (see chapter 4 for a more detailed discussion). As I have insisted in the preceding few pages, certain ways of conceiving of persons is characteristic of citizens in a liberal democracy, and we cannot assume that we can extend such understandings to the world at large.

I.3 A global difference principle?

It would appear that we can definitively put to rest the idea of a global original position. Some liberal cosmopolitans, however, might remind us that even if we cannot construct a global original position, there remains the substantive problem of distributive justice. The global order, they claim, is much like a domestic basic structure; it determines how the burdens and benefits of global cooperation are distributed and profoundly affect the life prospects of individuals. This position has found popularity among cosmopolitan liberals, perhaps the paradigmatic statement of this point of view being Charles Beitz's *Political Theory and International Relations* (1979/1999), with similar accounts in works by Allen Buchanan (2000) and Thomas Pogge (1989; 1994). The main idea shared by these writers is, at heart, rather simple: if there is a global basic structure, then we need a global conception of distributive justice in order to assess its effects on the life of individuals worldwide. But Rawls fails to commit to the idea that there is a global basic structure, and thus fails to acknowledge that *LOP* or any international theory developed from within justice as fairness requires a conception of global distributive justice. Not only that, but since Rawls' preferred solution to the problem of distributive justice at home is to require primary goods to be distributed according to the difference principle, one could further imagine that

even at the global level, given the existence of a global basic structure, a global difference principle is the most appropriate response to the problem in hand.

Is the idea of a global basic structure sufficient to contend that Rawls should have prescribed a global difference principle? I think not, but the reasons that can lead us to this conclusion should not, in my view, be focused on empirical debates concerning the relevance of global institutional structures. Part of the intellectual dispute between those who have argued for and against a globalized difference principle has focused on whether there is a global basic structure in the first place (see Freeman, 2007b; Heath, 2002; Meckled-Garcia, 2008). Unfortunately for those who are more sympathetic to Rawls' position, not even conclusive proof that there is no such thing as a global basic structure would be enough to put liberal cosmopolitan critics to rest. And for one essential reason: a basic structure cannot be an existence condition for a conception of distributive justice. As writers such as Arash Abizadeh (2007) and Miriam Ronzoni (2009) have shown, the idea that principles of distributive justice require a basic structure to be applicable is not sustainable. The fact that we need a basic structure to trigger obligations of distributive justice exposes the very idea of justice to a status-quo bias. Problems of distributive justice arise whether or not we have a basic structure in place: how to distribute the benefits and burdens of social cooperation is a meaningful question even if we do not have the same type of institutional structure described by Rawls in his domestic theory. In fact, the best reply to the (hypothetical) observation that there is no global basic structure is simply that we should create one, and ensure it is organized according to the correct principles of distributive justice.

Does this mean that those sympathetic to Rawls' *LOP* have no argument against the liberal cosmopolitan idea that we should accept a globalized difference principle? Not quite. The difficulty of the liberal cosmopolitan position can be grasped if we return to Rawls' political turn. I have claimed above that the idea of a basic structure cannot be considered as an existence condition for principles of distributive justice. So, even if we can demonstrate that there is no global basic structure, liberal cosmopolitans can always claim that there should be one and that it should be organized according to their preferred conception of global distributive justice – for example, a globalized difference principle. Yet what this reply does not seem to appreciate is the problematic nature of creating a global

basic structure in the first place. It is not enough to simply state that we should create 'a' global basic structure if we lack one. Those who seem to favour this solution will also have to tell us how they imagine such a structure. Furthermore they will also have to explain why, once this newly created global basic structure is in place, it should feature a globalized version of the difference principle. These two issues cannot be simply resolved by maintaining that a global basic structure and its associated conception of global distributive justice would have to mirror what we normally see as justified within liberal democracies. The difference principle is part of a *liberal* political conception of justice. And as we have seen in the previous chapter, the content of liberal political conceptions of justice is something that is appropriate for liberal democracies, not for political systems generally.

More broadly, liberal cosmopolitans, perhaps inspired by Rawls' political turn, should also consider that the philosophical task of Rawlsian liberalism is not exhausted by simply proposing a principle of distributive justice. One has also to examine its stability and whether its enforcement could be legitimate. And on neither count would a global liberal conception of justice containing a global difference principle fare well. For Rawls, in any political domain, stability is always stability for the right reasons. A society, of whatever kind, can never be a just society if its members are simply coerced into obedience. But reasonable pluralism makes an achievement of this stability very difficult. Rawls addresses the issue of stability first in a liberal democratic society. He assumes that such society is closed and self-contained. His solution, for a liberal society, to the problem of stability is to develop the idea of a political conception of justice. A political conception of justice has three main characteristics: a) it is a conception for the basic structure of society; b) it is freestanding; and c) its main ideas are drawn from the public political culture of the society. All three features, as we have seen in the previous chapter, serve the purpose of narrowing the terms of disagreement between persons when it comes to the conception of right that will structure their society. Once a political conception of justice is developed, we then ask: Can it support an overlapping consensus of reasonable comprehensive doctrines? If an overlapping consensus is at least possible, then the idea that society is stable for the right reasons is at least possible. In other words, given

favourable conditions, the idea of stability for the right reasons is not a self-defeating one.

The first task of those who wish to extend the content of Rawls' ideas concerning distributive justice to global politics, then, is to elaborate the content of a political conception of justice so that the latter can be presented in a global original position as one of the available options for representatives of the parties. (Here I leave aside the aforementioned difficulties in even imagining a global original position.) A crucial component of a political conception of justice, in order to be properly political, is that it must draw from ideas that are implicit in the public political culture of society. But here we face a startling problem: which society? We cannot simply assume that the liberal political tradition is better than all others. We cannot simply maintain that the appropriate political tradition, by reference to which we must construct a political conception of justice, is a liberal one. And how can a political conception of global justice taken from ideas that are implicit in a type of public political culture that represents only a subset of the persons of the world be the focus of a global overlapping consensus?

Looking at the same issue from the perspective of legitimacy, the problems faced by a cosmopolitan conception of global distributive justice are analogous. According to Rawls, the idea of legitimacy is linked to the idea of the proper use of coercive political power. The question for Rawls is always: How can we use political power in a way that is reasonably acceptable by those on the receiving end? However, as we have seen in the previous chapter, reasonable acceptability is not a description of perfectly impartial and impersonal reasons whose content is completely independent from the persons that are addressed. So, as with justice, we face the same problem here: what types of agents are we addressing when constructing a conception of the proper use of political power at the global level? Can a liberal conception of the use of political power between citizens of a liberal democracy be appropriate? How are we to satisfy the criterion of reasonable acceptability? Rawls is clear that justice and legitimacy share the same building blocks: their content must make reference to ideas that are implicit in the public political culture of society. But then, once again, we face the same problem: Which society? Which public political culture?

The point is not that these questions have no definite answers. Ultimately one could simply say: 'global society', the 'global public political culture'. But, while

correct, this reply obscures the type of problem we are highlighting here: even if we appealed to a ‘global society’ and to a ‘global public political culture’ their contents would not plausibly be considered to incorporate or mirror liberal ideas. The global public political culture does not seem to feature an idea of persons as free and equal citizens, nor an idea of the world as a single fair scheme of social cooperation. Furthermore, when we look at the relationships between persons and the institutions that they live in, the global public political culture will not be plausibly based on some version of democratic equality. But these are precisely the elements that seem to motivate the adoption of the difference principle domestically. Therefore, even if we apply the same method that Rawls seems to recommend to deal with reasonable pluralism domestically, we are unlikely to get to the same conclusions in the global context.

II. Explaining *LOP*'s controversial features

In the previous section I have shown that by trying to directly apply the content of Rawls’ basic ideas to international society we are bound to encounter some insurmountable problems. The content of Rawls’ ideas, at least if considered from the vantage point of *PL*, are not plausibly ‘globalized’. They are meant to address questions that are internal to a liberal democratic society, not to the way in which persons relate to each other at the global level. Yet, crucially, this does not mean that Rawls’ ideas cannot be fruitfully applied beyond the bounds of a liberal democratic polity. Rather, the more modest suggestion made above is that given the link that Rawls’ ideas have to the political context for which they are elaborated, changing the political context of reference will also change the content of the ideas. In this part of the chapter, by analyzing the two major discontinuities between Rawls’ domestic and international theories presented in the introduction, I purport to show precisely that. By thinking about the global political context and its associated public political culture, we can see how the search for a political conception of justice, its stability and its legitimacy, lead Rawls to a non-egalitarian law of peoples rather than to a global liberal and egalitarian law of persons.

II.1 Recalling the Discontinuities between Rawls' two theories of justice

In the introduction we referred to two axes of discontinuity in Rawls' work. One of the main goals of this thesis is to provide an explanation for these apparent incongruences between Rawls' domestic and international theory. To briefly restate these two elements of discontinuity:

L1. The Loss of Individualism: The focus on individuals is a crucial part of *TJ*. The whole idea of retrieving the contractarian tradition as a strong alternative to utilitarianism was ultimately based on the idea that the latter, as Rawls has famously argued, 'does not take the differences between persons seriously' (*TJ*: 27). (For an in-depth analysis of this issue see Pogge, 1989: part III; idem., 1992; idem., 2004; Kuper, 2000; Beitz, 1979.)

L2. The Loss of Egalitarianism: A strong egalitarian concern has always been central to Rawls' theory of distributive justice. Such concern is expressed in domestic society by the adoption of the difference principle. According to the difference principle, inequalities are justified in society only insofar as they can be seen to advance the prospects of the least fortunate members to the social compact (*TJ*: part I). (For criticism of this specific point see Pogge, 2004; Beitz, 2000.)

II.2 From persons to peoples

PL introduced the idea of reasonable pluralism. This required a revision of the account of stability in a liberal well-ordered society and the elaboration of a proper criterion for the use of coercive political power. Reasonable disagreement on fundamental moral, philosophical and religious doctrines imposes a constraint on how: a) we construct our conceptions of justice; b) we picture their stability; and c) we justify their enforcement. The basic point that emerged from our analysis is that, in order to respect the nature of these constraints, we can only build on fundamental ideas that are already latent in the public political culture.

Yet, the global public political culture does not contain strong elements stating that individuals are part of it as primary subjects, nor does it provide enough elements to state that it sees them as the bearer of reciprocal obligations (simply

as individuals) individually.²⁹ Even when texts such as human rights covenants and declarations express a concern for individuals, they do so as a way of providing a benchmark for how political communities should treat their own members, not to characterize the reciprocal obligations of individuals worldwide (see Wenar, 2001: 62). Globally, persons do not picture each other as free and equal members of a world political community, and it would be fundamentally wrong to force them to do so.

Furthermore, in the global public political culture the diversity of persons' comprehensive doctrines, with their baggage of irreconcilable beliefs about the nature of the good life, is even more radical than within a single society. At the same time, note also that in the global public political culture we find fewer indications from which we can draw our basic ideas for a political conception of justice, and the traditions of interpretation of its main texts are less expansive and developed. In other words, the 'circumstances of global stability and legitimacy' present Rawlsian political philosophy with a more difficult test: what keeps us apart is stronger (global pluralism), and what can potentially bring us together (global public political culture) is weaker. This is true, especially if we believe that one of the fundamental roles of a public political culture is to provide

²⁹ What constitutes part of the global public political culture is, of course, bound to be controversial. In the domestic case, when assessing the particular domain of a liberal democratic polity – the one that Rawls' work addresses more extensively – we have greater confidence in identifying the constitution and its traditions of interpretation as the central part of the public political culture for a particular liberal democratic polity. At the global level, at least comparatively, we are probably less confident on demarcating these boundaries. Nonetheless there is some evidence that the Charter of the United Nations (available at www.un.org/en/documents/charter/) and the Universal Declaration of Human Rights (available at www.un.org/en/documents/udhr/index.shtml) would form the bedrock of any plausible individuation of the global public political culture. In the same way, while the tradition of interpreting these two documents has slowly evolved, we can plausibly claim that at least four principles are consistently located at the heart of these two documents: a) the end of colonial rule as a legitimate form of political relationship between different political communities; b) the limited nature of state power over its citizenry and the link between the legitimacy of state rule and respect for basic human rights; c) some form of political control by the people over their government; and d) a basic presumption against outside interference in the political life of members. More principles could be mentioned, but these seem to be most relevant in substantiating the core of the argument in this section of the thesis. Two further remarks are in order. First, these principles are widely recognized to be conflicting unless some attempt to further specify their content is provided (the classic case being the conflict between human rights protection and political independence). It is thus clear that starting from the global public political culture cannot simply entail mirroring its contents: to do so would be to accept normative gridlock. Second, note that individuals are a central concern in these documents, a point which this thesis never denies: the problem is not whether there is concern for individuals but in what capacity individuals are seen and how such concern is consequently expressed.

guidance on how individuals regard each other and what fair cooperation means between them, again, as individuals (see Wenar, 2006). To put it yet another way, the global public political culture is 'weaker' when we analyse it from the perspective of national public political cultures, with their ideas on how citizens individually are the primary benchmark or unit of analysis.

Instead, what the global public political culture does contain is a great number of ideas concerning how political communities should deal with each other. In other words, the global public political culture is better equipped if we interpret and read it using a different unit of analysis: political communities. In Wenar's words:

The global public political culture contains few ideas about how persons living in different societies should relate directly to one another. However, the global public political culture contains a wealth of ideas concerning how *Peoples* ought to relate to one another. The principles governing relations among the members of liberal and decent societies must therefore be principles regulating conduct not among persons, but among Peoples. (Wenar, 2004: 273)

This fundamental shift in the unit of analysis provides us with a richer starting point on which to draw, and more material for a legitimate and stable law of peoples, notwithstanding the acuteness of global pluralism (L1). In order to proceed in a way that is compatible with the insights provided by Rawls in *PL*, our unit of analysis must change from persons to corporate agents (L1). The natural choice, in international relations, would be states. But Rawls believes that the history of the Westphalian system disqualifies the term and makes it unusable for a moral conception of international law and practice. He elaborates the idea of peoples: corporate agents with a moral nature and limited powers of sovereignty.

II.3 Equality in a realistic utopia

Thus far we have only explained the idea that peoples should be the basic unit of analysis in *LOP*. But why should peoples, as free and equal moral corporate agents, not select an egalitarian distribution of income and wealth in the original position of the Society of Peoples? An important element of original position reasoning is that its ability to provide a determinate choice in favour of a given set of principles (the principles of justice) is dependent, beyond the vision of agents

as free and equal, on the depiction of their interests (what Rawls calls a thin conception of the good; see *TJ*: 347–50). Persons have a fundamental interest in being able to further their conception of the good life. Their representatives in the original position know this and the desire to acquire more income and wealth (and other primary goods) relies on the assumption that, when one's intent is to pursue a self-chosen path of life, the more means available the better.

In the global arena we have peoples, and the main tenets of a law of peoples will provide the content of the fair terms of cooperation among them. Peoples see each other as free and equal, but, crucially, their fundamental interests are different (Wenar, 2001: 66). In the Society of Peoples, peoples as corporate agents do not have a conception of the good to further. And here lies the crucial distinction (see Wenar, 2006). Agents in the second (and third) original position do not represent individuals, but peoples. Yet, as Rawls tells us, peoples do not possess the same fundamental interests as persons. Most importantly, peoples do not have a (collective) conception of the good to further, and hence they do not see income and wealth as a means to that end. Peoples only see income and wealth as a necessary component of their being well-ordered (hence the reason that they agree to a duty of assistance, see chapter 5 for a fuller treatment), but once such requirement is reached they lose interest in having more. Equality is a relational criterion; political autonomy, at least in Rawls' eyes, is not. Rawls' duty of assistance ensures that the threshold of resources necessary for the proper organization of all peoples is reached. In Rawls' view, unfavourable circumstances can make an internally well-ordered society unachievable. Once enough resources can be effectively directed to secure the means for each society to be well-ordered, then there simply is no other (justifiable) reason for those who are part of that society to want more or to ask more from the Society of Peoples.

II.4 The full picture of *LOP*

In the previous two sections I have explained how the continuity of Rawls' domestic and international theories could be established. The two major discontinuities between Rawls' domestic and international theories are the inevitable result of applying the same concepts Rawls developed in his domestic theory of justice in a context where the public political culture is different and

where the agents themselves have very different interests. In this section I show how addressing Rawls' international theory from the same standpoint also provides, at least implicitly, all the answers to the main questions that *LOP* addresses and that we have so far discussed. These are questions concerning the stability of the Society of Peoples and its bases, the political conception on which that stability is grounded, and the account of legitimacy that it entails.

LOP and its eight principles are a conception of justice for the basic structure of the Society of Peoples. *LOP* does not seem to address the issues of stability and legitimacy directly, but its deeper structure – the way in which it is organized around peoples and their mutual undertakings – can be better understood if we see it as reflecting Rawls' domestic theory of justice, and in particular, the development of his ideas in *PL*. Since Rawls does not provide a clear picture of how we should link *LOP* and *PL*, much of this section will be based on a more constructive approach to the interpretation of his work. Such interpretation will show the continuity between *PL* and *LOP* and in so doing, will shed considerable light on some of the apparent inconsistencies that many critics have highlighted.

PL, as we have seen, deals with two overarching issues: stability and legitimacy. It provides appropriate solutions to two questions: 1) how can a liberal society marked by the fact of reasonable pluralism be stable (for the right reasons) in the long run given that its members believe in different incompatible yet reasonable comprehensive doctrines? and b) how can the coercive power of the state be legitimately used given that such power, in a liberal democracy, is the equal power of the citizens as a corporate body? By now we should be at least partially familiar with Rawls' answers to these two questions (see chapter 2, section II).

PL is also based on what we can call two underlying assumptions. Firstly, Rawls assumed that political society is closed. The political relationship between citizens of a domestic society is based on the assumption that we enter such society by birth and we can exit only by death. The other assumption that works in the background of *PL* concerns the type of society Rawls is addressing. *PL* assumes that its principles and arguments are valid for a liberal democratic society. Such society is seen as a fair scheme of cooperation between citizens as

free and equal, reasonable and rational and as characterized by the fact of reasonable pluralism. If we relax³⁰ both assumptions, Rawls' theory needs to deal with two distinct sets of issues. The first concerns the scope of international toleration: How can we articulate appropriate moral limits for the way in which all societies, both liberal and nonliberal, can be politically organized? The second concerns the relation between different peoples: How can we determine the content and justification of a moral conception that can regulate the mutual undertakings of peoples? In terms of justice, legitimacy and stability we then face six (related) questions:

Q1. What is an appropriate conception of justice for a well-ordered Society of Peoples?

Q2. What conception of justice for the Society of Peoples can be stable (for the right reasons) over time given the great diversity of comprehensive doctrines and political traditions in international society?

Q3. What conception of legitimacy can justify the use of coercive political power between the members of the Society of Peoples in a way that is consistent with the self-perception (which is reasonably acceptable) of those on the receiving end of such coercive power?

Q4. What type of conceptions of justice is most appropriate for peoples whose political tradition is not liberal and whose past may not be as marked as that of liberal societies by a history of free institutions?

Q5. What is the appropriate notion of stability for a nonliberal society?

Q6. When is political power legitimately used in societies who are not liberal democratic?

Rawls' answers to these questions can all be found in *LOP*. The eight principles of *LOP* are the appropriate conception of justice for a Society of well-ordered peoples (Q1). Its principles reflect the core of the public political culture from the second half of the twentieth century. The public political culture of international relations in the UN era expresses the desire to provide a normative basis for two important phenomena. One is the idea of decolonization. The political autonomy and the right to self-determination of peoples, both forming the

³⁰ I use the term 'relax' as it is often used in differential calculus where it refers to the progressive questioning of the validity of a given proposition.

backbone of Rawls' eight principles of *LOP*, are part of the material that translates the political consensus on the injustice of colonial domination into a moral consensus on the political independence of certain groups. The second part of the post-WWII consensus is the idea of human rights. The UN system embodies (albeit imperfectly) the idea that absolute sovereignty (in its internal dimension) is unacceptable: states, or any other group, do not have a free hand when it comes to dealing with their constituencies. Although Rawls' list of human rights and his rationale for protecting them is debatable, human rights are squarely in place in *LOP*.

Since the eight principles of *LOP* are drawn from the public political culture of international society, its precepts can, hypothetically, be adopted by all well-ordered peoples. In a Society of Peoples, the principles of *LOP* can be the locus of an overlapping consensus in which all peoples endorse their shared law from within their own framework of reasons (Q2). In fact, by imagining two international original positions (one populated only by liberal peoples and the other with decent well-ordered peoples) Rawls conjectures that all would agree to the same principles of justice to regulate their mutual undertakings. The Society of Peoples can be well-ordered and stable for the right reasons because its law does not impose a single moral, philosophical or religious tradition. In the same way, in the Society of Peoples, the coercive power of free and equal peoples is only used according to ideas that all peoples as free and equal, decent or liberal can reasonably accept, as these principles do not presuppose any moral, philosophical or religious tradition to be decisive in their justification (Q3) (see Wenar, 2001).

All types of societies, in order to be plausibly legitimate in the eyes of their citizens, must be organized around four universal requirements of political legitimacy (Q6). Such requirements specify the idea of decency: a) a decent society secures human rights (albeit the minimal list that Rawls calls human rights proper); b) beyond the respect of human rights all societies must make sure that their laws impose bona fide legal duties; c) the citizens of a decent society must be given a meaningful role in political decision-making (but democracy is not required); and d) its public officials must sincerely believe that when they create and enforce the laws of their society, they are in fact doing so according to what Rawls calls a common-good idea of justice (see Wenar, 2001).

No society, in order to be well-ordered, can be based on command by force. At the very least, a decent society requires its basic structure to be organized by a common good conception of justice (Q4). A common good conception of justice is in place if the first two criteria of decency hold. If basic human rights are respected and if the legal system only imposes bona fide duties and obligations, then we can maintain that the interests of all citizens are at least taken into consideration and their continued allegiance to their society is not the result of threat or manipulation. A common good conception of justice is a conception of justice that is not necessarily political in Rawls' domestic sense. Decent peoples do not possess a political tradition of free institutions so the problem of stability in their own societies is not as difficult to solve as in liberal ones. In a decent society, we can conjecture, all citizens can be reunited under the same comprehensive or partially comprehensive philosophical doctrine. Insofar as this is true, some form of overlapping consensus can be more readily available (Q5) as it can draw on what liberal societies would regard as comprehensive or partially comprehensive reasons. Thus, in a decent society, stability for the right reasons, albeit different from its liberal democratic equivalent, is possible.

The universal requirements of decency and the idea of a common good conception of justice are minimal requirements. They provide absolute constraints on what political communities can do to their citizens and how they should be organized in order to elicit the citizens' enduring support. Such requirements specify the bounds of toleration. But beyond toleration, political communities must lay down more extensively the types of principles, reasons and ideals that will provide a fuller justification for the organization of their basic structures (see Wenar, 2001). As political traditions differ, so the principles, ideals and reasons that can serve the purpose of public justification in different contexts will change.

III. The first objection: The effects of inequality

In this section I wish to deal with a different objection to *LOP*. The objection I will discuss below does not state that Rawls' *LOP* is incoherent; rather that it is

unable to achieve the goals it sets for itself. As we have seen, in *LOP* peoples are not interested in acquiring more resources. This explains why they do not see egalitarian principles of justice as appropriate in the second original position. Yet peoples are clearly interested in their self-determination. The basic criticism of *LOP* that many thus levelled (even those most sympathetic to *LOP*; see Miller, 2006; 2007) is that, given the inequalities that are likely to develop in the Society of Peoples, there is no way to guarantee that the eight principles of *LOP* taken at face value can guarantee the self-determination of peoples. If differences in wealth and income can affect political institutions domestically, the critics maintain, surely they will have the same effects in the international arena. The best reply to the latter objection is in my view twofold. First, we can go back to the interpretation of *LOP* we have provided in sections II and III of this chapter and note that given an accurate representation of peoples' interests (as Rawls understands them), the problem we face in the Society of Peoples is less acute than is maintained by its critics. Second, given the internationalist outlook embraced by *LOP*, the real problem with the 'effects of inequality objection' is that the only credible alternative to Rawls' solution yields counterintuitive results.

III.1 Equality in *LOP*

As Rawls acknowledges in *JAFR*, '[t]here are many kinds of equality and many reasons for being concerned with it' (*JAFR*: 130). First and foremost, large inequalities in wealth and income can seem especially pernicious in a context riven with poverty, destitution and sickness. It seems morally objectionable that some may starve when others can thrive. It seems morally objectionable because extreme inequality means, concretely, that those who are starving could in fact be saved: there are enough resources, given the extent of inequality, to provide at least some form of relief for those who are faring worse. If, as most believe, human life should be considered of some intrinsic value, the unnecessary loss of life can seem morally disturbing. Strictly speaking, the idea of equality plays no role in this type of concern for inequality (see *JAFR*: 130). The same reasoning, according to Rawls, holds for *LOP*. He states: 'Similarly, in the basic structure of the Society of Peoples, once the duty of assistance is satisfied and all peoples have a working liberal or decent government, there is again no reason to narrow the gap

between the average wealth of different peoples' (*LOP*: 114). By this Rawls means that in the Society of Peoples, when the duty of assistance has been fulfilled towards burdened societies, all well-ordered peoples have enough resources to meet the basic needs of their citizens and to provide adequate means for them to make intelligent use of their basic rights (be them liberal or decent).

A second reason for being concerned about large inequalities relates, mainly, to the self-perception of those who are on the 'wrong' side of economic wealth. The basic idea is that, at least when placed in domestic schemes of social cooperation, excessive differences in income and wealth can produce a sense of diminished self-worth and self-respect in those who have less. According to Rawls, significant inequalities in the economic and political domains can often be associated with inequalities in status and thus 'encourage those of lower status to be viewed both by themselves and by others as inferior' (*JAFR*: 131). In *LOP* Rawls writes that '[t]he same would be true of the basic structure of the Society of Peoples should citizens in one country feel inferior to the citizens of another because of its greater riches' (*LOP*: 114), but he then goes on to make a crucial qualification, adding '... *provided* that those feelings are justified' (*LOP*: 114, emphasis in original). According to Rawls that qualification is crucial to understand why the domestic and international cases are different. In essence, Rawls' view is that in the international case the feelings of inferiority are *not* justified, because 'when the duty of assistance is fulfilled, and each people has its own liberal or decent government ... each people adjusts the significance and importance of the wealth of its own society for itself. If it is not satisfied it can continue to increase savings ... or ... borrow from other members of the Society of Peoples' (*LOP*: 114).

Finally, we can present two distinct but closely related reasons why certain social and economic inequalities might be wrong. Presenting them together is not without merit. In essence, they both address the longstanding connection between unequal distribution of social and economic resources and unequal distribution of power in political society. In *JAFR*, Rawls presents them as distinct issues. The first reason why excessive inequalities might be wrong (when considering the link between resources and power) is that they might lead to the domination of one section of society by those who control more resources. As Rawls states, when

social and economic inequalities become large enough, they tend to lead to political inequality (*JAFR*: 131).

The second distinct but related political problem created by inequality is that it can alter the fairness of the public procedures used to regulate the allocation of resources and of political power in a social system. Rawls believes that when it comes to both markets and political elections, excessive concentrations of resources in few hands will inevitably lead to the procedures that sustain the market and political process to be distorted. To be more specific, Rawls suggests that great concentrations of wealth will tend to create monopoly power in economic markets (thus making them less efficient and unfair) and that the same holds for the political process where the interests of the rich tend to be disproportionately represented (*JAFR*: 131).

At first sight it seems strange to equate markets and political elections to procedures. Markets are often thought of as social institutions and political elections are seen as events which decide who should control the government. At the same time, and without denying these characterizations, we can also consider both markets and political elections as procedures if we see both of them as *systems of allocations*. Markets are then described as procedures for the allocation of resources, while political elections can be seen as procedures that allocate political power. So when I refer to procedural fairness I refer to the fairness of the procedures for the allocation of a given good or role. In what follows I also adopt the broader expression 'political fairness' to convey the idea of procedural fairness in the domain of the political. As we have just seen, Rawls refers to the fairness of political elections as a case of procedural fairness. Yet the idea of political fairness is broader than the idea of fairness in political elections. Political fairness might also include the fairness of political procedures which are not strictly speaking electoral, such as procedures to nominate Supreme Court judges in many democratic countries. More saliently for us, the idea of political fairness in *LOP* should be understood as the fairness of the political processes in which peoples participate. Examples of these political processes are the decision-making processes in international institutions such as the WTO, the IMF, the World Bank and the UN.

In *LOP*, as we have seen, there is no provision to prevent material inequality between peoples becoming significant. On the other hand, as Rawls himself tells

us, we also know that the fairness of markets and political institutions are generally affected by excessive amounts of inequality in income and wealth. So, in *LOP*, how are we to get around the problem of the large inequalities likely to develop in the Society of Peoples affecting the fairness of the many international institutions and economic markets? Looking at international trade negotiations or at the voting structures of certain international economic institutions, there is a clear sense that their outcome (or content) is often determined by the bargaining power of the agents involved rather than by considerations of justice or fairness. What can *LOP* say about these issues? Can its structure provide guidance to address them? Rawls is clearly aware of this problem; in *LOP* he writes that ‘[a] third reason for considering the inequalities among peoples concerns the important role of fairness in the political process of the basic structure of the Society of Peoples’ (*LOP*: 114). Rawls goes on to say that even in the Society of Peoples fairness plays an important part in the political processes regulating its basic structure.

In *LOP* Rawls considers what he now calls ‘basic fairness’.³¹ He states that such fairness will be guaranteed in two ways (*LOP*: 115). First, peoples will be fairly represented in the second original position as the principles of *LOP* are adopted from behind a veil of ignorance. Second, given that *LOP* admits the possibility of creating international institutions, Rawls also maintains that the guidelines for setting up these institutions should also be chosen behind the veil of ignorance (*LOP*: 115).³² In other words, according to Rawls, a concern for

³¹ Interestingly enough, the symmetry between the ‘comments on equality’ in *JAFR* and the considerations of the value of equality in *LOP* breaks down at this point. In *LOP* Rawls only pays attention to the idea of procedural fairness and seems to be less concerned with the idea of domination (see also O’Neill, 2008: n22). I would like to offer a conjecture regarding this latter point before going on to describe Rawls’ treatment of the idea of procedural fairness in the Society of Peoples. In Rawls’ view, given how peoples are designed, they do not seem to be plausibly described as aspiring to gain political influence over other peoples, let alone dominating them. In other words, given the general understanding of peoples’ interests, and that we are describing an ideal theory scenario, peoples do not seem to have the motivational resources to dominate other peoples.

³² Rawls deal with the idea of basic fairness in the Society of Peoples in the following passage: ‘Basic Fairness among peoples is given by their being represented equally in the second original position with its veil of ignorance. Thus the representatives of peoples will want to preserve the independence of their own society and its equality in relations to others. In the working of organizations and loose confederations of peoples, inequalities are designed to serve the many ends that peoples share. In this case the larger and smaller peoples will be ready to make larger and smaller contributions and to accept proportionally larger and smaller returns. In addition, the parties will formulate guidelines for setting up cooperative organizations, and will agree to

procedural fairness in *LOP* will not translate into a concern for inequality in the Society of Peoples.

III.2 The (alleged) problem

Taken at face value Rawls' arguments might seem insufficient. One can take for granted that being symmetrically situated in the second original position is a sufficient guarantee that the latter represents peoples fairly. On the other hand, as many critics have noted, the contention that basic fairness can be preserved in international institutions, regimes and organizations is at best underdeveloped. Given that, according to Rawls, peoples will choose guidelines for their joint undertakings in a fair choice situation such as the second original position, how are we to make sure, given the very high level of inequality that is likely to develop in *LOP*, that the guidelines structuring those joint undertakings will remain fair over time? As we have mentioned above, Rawls' domestic theory addresses the important connection between inequality and the fairness of markets and political processes. What seems to be missing from his international theory, then, is a similar argument. This is a legitimate question; it is unlikely that we can settle once and for all the design of international institutions: choosing guidelines for their establishment is only an initial step in the long process of effectively designing the content of those institutions, and what their real implications are for their members will be in the long run.

In other words, even if we were to assume that the correct guidelines were adopted, the formal structure of an institution can never guarantee that it can be insulated from a background in which differences of wealth and income are large. It is not enough, for example, to provide equal voting rights in a democracy to make sure that citizens have equal opportunity to influence the political process. In the same way it does not seem to be enough, to guarantee basic fairness at the international level, that, formally speaking, all peoples have equal rights within

standards of fairness for trade as well as certain provisions for mutual assistance. Should these cooperative organizations have unjustified distributive effects, these would have to be corrected in the basic structure of the Society of Peoples' (*LOP*: 115).

the statutes of international organizations (see Beitz, 2000). These rights would not necessarily translate into real influence. This is precisely what generally happens in formally impeccable institutions like the WTO: even if all countries have one vote and if all have veto powers over trade agreements, those agreements overwhelmingly represent the interests of the US, Europe and Japan (and more recently a few other developing countries).

III.3 The first reply: Taking peoples' interests seriously

While these criticisms are not without merit, they still miss their mark. In order to understand why, let us return to section II of this chapter. The essential point made there, following Leif Wenar, was that since peoples as moral corporate agents do not have a conception of the good to further, they are uninterested in the idea of accumulating further wealth and income. In the domestic case, representatives of the parties in the original position know that they represent persons with the two moral powers (i.e. having a sense of justice and the capacity to pursue a conception of the good). The fact that individuals have a conception of the good to further is crucial in understanding why their representatives in the domestic original position want to secure the greatest possible amount of primary goods (among which income and wealth) for those they represent. The point is that with income and wealth comes a greater ability to realize one's non-public values. In short, income and wealth are means that, among other things, allow persons to better pursue their conception of the good in society.

Yet, at the level of the second original position, Rawls is quite clear that the same is not true of (at least liberal) peoples. In fact he writes explicitly that 'a liberal society with a constitutional regime does not, *as a liberal society*, have a *comprehensive* conception of the good. Only the citizens and associations within the civic society in the domestic case have such conceptions' (*LOP*: 34, emphasis in original). In this way, Rawls builds a negative case that moves from what peoples do not have to what they do not perceive as relevant to further their interests. Peoples do not have a collective conception of the good, so they will not require the means (such as income and wealth) necessary to further that conception in the Society of Peoples. If this account is right, then Rawls' argument about procedural fairness might be salvaged. As peoples lack any form

of interest in acquiring more resources, whatever the level of inequality in *LOP*, they will not try to influence the way in which international institutions and regimes are organized. In short, there is simply nothing that peoples can gain by distorting how international institutions are structured and evolve over time.

III.4 The second reply: An implausible alternative³³

For the sake of argument, let us imagine that Rawls' solution – that is, imagining peoples as uninterested in acquiring more resources – is not a convincing one. Let us stipulate that, given what we know about human history and in particular the history of international relations, it is too implausible to imagine that peoples can be completely uninterested in wealth (see Wenar and Milanovic, 2008).

Assuming that peoples are interested in acquiring more wealth, and assuming that procedural fairness cannot be simply formally guaranteed by what Rawls says in *LOP*, what kind of alternative solution is possible? If inequality affects the fairness of international markets and international institutions perhaps the most direct way of ensuring basic fairness is preserved is to redistribute income and wealth. Unfortunately, the very structure of *LOP* makes this type of solution at best implausible.

Why so? In general when we consider redistribution (of income and wealth) domestically we imagine a scenario in which a certain amount of resources are collected, for example, by a general system of taxation. The latter channels resources from those who have more income and wealth to those who have less income and wealth. The problem with imagining the same type of scenario in the

³³ An alternative solution would be to deepen the relevance of international institutions and organizations, making them (at least to some extent) less responsive to the political will of peoples. In this way, peoples will partially lose their sovereignty in certain important areas of their social and political life, but their collective agreements would, so it is claimed, at least reflect some idea of fairness rather than differences in economic power. Behind the veil of ignorance in the second original position, peoples could institute a system of global governance that is fairly constructed and with at least some form of independent ability to extract compliance from its members. There seems to be two problems with this type of solution. First, it risks creating a worse problem than the one it seeks to address (see Kukathas, 2006). Second, it looks suspiciously similar to a world state, something that Rawls wants to avoid. More broadly, the point is that if a theory of global justice is premised on the political autonomy of peoples, it will then be difficult to argue that such autonomy should be further (that is in addition to human rights protection) forsaken in order to better protect it.

structure provided by *LOP* is, quite simply, that it provides what are, in my view, counterintuitive results. We can grasp the implausibility of this solution if we make two preliminary observations.

The first is that the types of inequalities that are likely to affect the process of international economic and political fairness are not per-capita income and wealth inequality, but rather aggregate income and wealth inequality. This is an important distinction because it implies that what will cause trouble, so to speak, is not how rich the citizens of a political community are individually, but how rich they are collectively. Thus, the target or end of redistribution would not be to reduce differences in per-capita income and wealth, but instead to reduce differences in aggregate income and wealth. The second preliminary remark is that while there is likely to be a great deal of inequality in *LOP* in terms of income and wealth, there is also likely to be significant differences in terms of population policies. Different peoples, even if all well-ordered, will develop in different ways and represent different numbers of persons; there is no reason to suppose that all peoples will be equal in population size. If we take into consideration these two preliminary remarks, we can clearly see why the redistribution principle would work to produce implausible results in the internationalist framework of Rawls' theory: it could (and probably would) require the redistribution of economic resources from peoples who have low per-capita income and wealth but high aggregate income and wealth, to peoples who have low aggregate income and wealth and high per-capita income and wealth. This, however, is unacceptable: no one would really advocate redistributing resources from China to Luxembourg, as it would risk the latter being 'bullied' in international negotiations.

IV. The second objection: Peoples and value collectivism

In this final section I want to definitively put to rest the charge that *LOP* is not committed to the justification of social and political arrangements to individuals. In section II of this chapter I have explained why Rawls chooses peoples instead of persons as the agents of his international theory. I have stated that the choice of peoples is dictated by Rawls' analysis of the global public political culture.

Nonetheless, even if this explanation is successful, some liberals might still feel uncomfortable with the overall structure of *LOP* – one in which, apparently, there is no evident preoccupation with the faith of individuals in global politics. In other words, some might still argue that even conceding that the global public political culture is made of peoples rather than persons, this would still somehow commit Rawls to a form of unacceptable value collectivism. I disagree. In *LOP*, peoples are simply the main unit of analysis, not the main unit of moral concern. In fact, as I will show below, there are good reasons to think that *LOP* is a form of moral cosmopolitanism given that the main reason for which it recommends a world made up of political communities is precisely that without such political communities it would be difficult to publicly justify the global order to all persons.

IV.1 The value collectivism objection

According to many cosmopolitan liberals perhaps the most important weakness of *LOP* lies in the relinquishment of what, following Pogge, we can call normative individualism. As we have seen, in *LOP* peoples are the main actors of global politics. The eight principles of *LOP* are principles that address peoples and their mutual obligations; persons seem not to be directly addressed. For Pogge:

Rawls endorses normative individualism domestically but rejects it internationally. This is an asymmetry insofar as, in Rawls' domestic theory, the interests of collectives (associations) are given *no* independent weight ... In his international theory, by contrast, peoples *are* recognized as ultimate units of moral concern and, more remarkably still, individuals are *not* so recognized.

(Pogge, 2006: 211, emphasis in original)

The main problem that many have encountered in reading *LOP* is that, by addressing peoples rather than persons, it appears to be somehow committed to an implausible (at least from the liberal point of view) form of 'value collectivism'. In other words, *LOP* could invite what we can call the 'value collectivism' objection (see Altman and Wellman, 2009: 37). According to Michael Hartney, 'value collectivism [is the view that] a collective entity can have value independently of its contribution to the well-being of individual human beings' (in Altman and Wellman, 2009: 37). The idea of value collectivism is problematic

insofar as its content proposes to attribute value to the life of a collective entity not on the basis of what it can contribute to the life of individuals but based on further properties of the collective that are not reducible to the properties of its members.

IV.2 Replying to the objection

Before directly responding to the aforementioned objection, allow me a preliminary remark. Let me start by saying that I believe value collectivism to be an implausible view. More to the point for our present concern, I believe that there is no reason to attribute value collectivism to Rawls. But to reject value collectivism, and thus to endorse normative individualism, does not require rejecting the moral significance of collectives altogether. Within normative individualism itself there is an important logical space to defend the moral significance of groups and collective entities. Crudely put, the idea that groups are important to the well-being of their members makes it possible to attribute to such groups moral significance without necessarily endorsing the value collectivist position. For instance, according to some liberal nationalists, it is precisely the contribution that nations can and do make to the life of persons that provides the justification of their moral significance (see Miller, 1995; Tamir, 1993). In other words, there is a difference between recognizing the moral significance of a collective and the grounds or justification of such moral significance. Once this distinction is in place it is then possible to see that what really matters for normative individualists should not be whether certain collective entities can have moral significance, but how such moral significance is justified – that is, whether such moral significance is derivative or dependent on the contribution that the collective entity can make to the life of individuals. This is instructive as it signals that there is not much we can conclude simply acknowledging the fact that *LOP* is framed in terms of peoples rather than persons. What we need to know is ‘why’ *LOP* is framed the way it is.

In chapter 1, I have insisted that *LOP* cannot be presented as theory of international politics that starts with collective agents simply for the sake of methodological considerations. As I have stated there, we need a way of picturing *LOP* that is capable of justifying its very unit of analysis, namely peoples, as the

result of the liberal idea that social and political arrangements should be justifiable to the persons that are subject to them. Furthermore, in chapter 2, I have claimed that to start with the public political culture of a given political context is the mark of a peculiar liberal strategy, one that is grounded in respect for persons and its associated requirement of public justification. Finally, in section II of this chapter, I have claimed that it is by interpreting the global public political culture that Rawls chooses peoples as the main unit for his theory. More precisely, following Leif Wenar, I have claimed that the global public political culture is not able to tell us how individuals should relate to each other. On the other hand the global public political culture is more robust when it comes to the mutual undertakings of political communities. I thus concluded that this is the reason why Rawls decided to start with peoples rather than persons.

With the three elements of my analysis of *LOP* so far we have, I believe, good reason to picture *LOP* as a form of normative individualism. *LOP* begins with the idea of respect for persons and its associated requirement of public justification. The only way in which the requirement of public justification can be carried out is to start from the public political culture of the political context *LOP* is examining, namely the global public political culture. The global public political does not refer to the idea of ‘free’ and ‘equal’ citizens, nor does it imagine the persons of the world as engaged in a fair system of social cooperation. That is to say, the global public political culture cannot really support the extension of the content of justice as fairness to global politics. Not only that, the global public political culture does not seem to provide much guidance on how persons should relate toward one another. The closest thing we can find to a sharable characterization of persons at the global level is the idea that persons are members of distinct political societies. As such, they are plausibly attached to the idea that their political communities are free and independent. Of course, this will not entail that this freedom and independence are absolute, since in the global public political culture there is a clear sense that for membership in political communities to be meaningful, certain basic human rights cannot be violated.

One way of incorporating these ideas in a conception of justice for global politics is to use political communities as the basic unit of analysis. Political communities will have to be pictured as free and independent and their power of sovereignty will have to be limited. We can call these political communities

‘peoples’ (rather than states) to mark these special features. Not only can the choice of peoples as the basic unit of analysis be able to incorporate the few elements that a sharable conception of the person at the global level would contain, but it can also capture a richer set of obligations that are traditionally seen as part of the domain of international relations, that is, of relations between political communities. Such obligations pertain to the idea of a fair international economic system; for example, to the way in which major international economic organizations and institutions are framed. Even more importantly they pertain to the limits and conduct of war between political communities, perhaps one of the most enduring sources of suffering in human history.

However suggestive (if at all) this interpretation might be, some may remain unconvinced of the normative individualism of *LOP*. *LOP*, they might claim, does care about certain fundamental human rights and does pose conditions on the internal legitimacy of nonliberal peoples, but it does not do so because it cares about persons as such. In fact Rawls himself writes, in the concluding pages of *LOP*, that it is concerned with the justice of societies and not with the well-being of individuals. Rawls imagines two societies both internally satisfying the requirements of justice as fairness, yet the worst-off in one society are faring better than the worst-off in the other. According to Rawls:

The Law of Peoples is indifferent between the two distributions. The cosmopolitan view, on the other hand, is not indifferent. It is concerned with the well-being of individuals, and hence whether the well-being of the globally worst-off person can be improved. What is important to the Law of Peoples is the justice and stability for the right reasons of liberal and decent societies, living as members of a Society of well-ordered Peoples. (LOP: 120)

I am going to leave to the next section discussion of whether it is possible to present *LOP* as a fully cosmopolitan theory. Here let me suggest that it is probable, given Rawls’ critical target in the last few pages of *LOP*, that ‘cosmopolitan view’ might simply refer to Pogge and Beitz. In order to properly understand the quote we should also take note that ‘the well-being of individuals’ and ‘the justice of societies’ are clearly not in opposition. In fact it would seem rather strange to care about the justice of any given society unless one also cared, in some way, about the well-being of individuals who are part of that society. The good of a just or decent society and the fact that its justice or decency allow it to

be a member in good standing of a Society of well-ordered Peoples is that the fundamental interests of its members (their human rights and the internal legitimacy of the political institutions under which they live) are guaranteed. No other explanation, it seems to me, is even intelligible. If the goal of Rawls' realistic utopia is to eliminate the great evils of human history, we might well admit that the only reason for caring about such evils is because of the great human sufferings and injustices that they produce. In this respect, Rawls is not, in my view, particularly helpful in presenting the contrast between the two views as sharply as he does. Rather, the crucial distinction is once again dictated by how we want to conceive of the well-being of individuals in the first place. As I have stated above, if we can assume that in the global public political culture the idea of belonging to a self-determining political community is an important one, then the way in which we understand the well-being of individuals should also take into consideration this fact. To live in one's own just or decent society is a great good for Rawls – perhaps even a greater one than having more resources or primary goods at one's disposal.

IV.3 LOP and cosmopolitanism

Rawls should have avoided presenting the contrast between his *LOP* and the cosmopolitan view so sharply. And not only that: there are in fact good reasons to picture *LOP* itself as a (moral) liberal cosmopolitan view. Perhaps the most influential statement of cosmopolitan liberalism in recent decades has been Pogge's 'Cosmopolitanism and Sovereignty' (1992). There Pogge maintained that all cosmopolitan positions share three basic elements. First, *individualism*: any form of cosmopolitanism takes human beings as the basic unit of moral concern. Other groups such as nations and states, and here we can add 'peoples', can only indirectly be units of concern. Second, *generality*: all human beings are units of moral concern, not a specific subset of them. Third, *universality*: the special concern for human beings has global force (Pogge, 1992: 48–9).

What is striking about Pogge's position is that there seems to be no reason to believe that *LOP* is not a cosmopolitan theory. In fact I believe that seeing *LOP* through the interpretive lens provided thus far actually *requires* recognizing *LOP* as a cosmopolitan theory (at least if we adopt the Poggean definition). Rawls'

LOP is crucially concerned with the justification of social and political arrangements to individuals and so it is clearly a theory that sees human beings as the ultimate unit of moral concern. *LOP* is also general and universal, since it applies to all human beings and the scope of *LOP* is global in reach.

Furthermore, Pogge makes a distinction that is particularly striking, at least given the wording he uses to introduce it. He distinguishes between moral and legal cosmopolitanism and defines their difference as follows:

Legal cosmopolitanism is committed to a concrete political ideal of a global order under which all persons have equivalent legal rights and duties, that is, are fellow citizens of a universal republic. Moral cosmopolitanism holds that all persons stand in certain moral relations to one another: *we are required to respect one another's status as ultimate units of moral concern – a requirement that imposes limits upon our conduct and, in particular, upon our efforts to construct institutional schemes.* This view is more abstract, and in this sense weaker than, legal cosmopolitanism: though compatible with the latter, it is also compatible with other patterns of human interaction, for example, with a system of autonomous states and even with a plurality of self-contained communities. (Pogge, 1992: 49, emphasis added)

What is striking about Pogge's distinction between legal and moral cosmopolitanism is how very few theorists have focused on one vital way that the two might be at odds with each other. If a (legal) liberal cosmopolitan order cannot be appropriately justified to all persons or human beings, as Rawls seems to think, then the limits we have to observe in 'constructing institutional schemes' at the global level are precisely the ones that *LOP* wants to signal by focusing on peoples. *LOP* provides one interpretation of moral cosmopolitanism that is in line with the liberal tradition. It states that social and political arrangements are to be justified to those who live under them. But, if we adopt the interpretation of Rawls' *LOP* presented in this chapter, it seems clear that Rawls develops his *LOP* in the way he does (that is, with peoples rather than persons) precisely because he is concerned about the justification of social and political arrangements to persons. Peoples, and their use in *LOP*, are not the basic unit of moral concern for global politics. The fundamental point is that without using peoples as the *basic unit of analysis*, Rawls believes that we cannot construct an adequate public justification of social and political arrangements to *persons* at the global level. *LOP* thus provides, albeit implicitly, an argument concerning which institutional

schemes, at the global level, can meet the justificatory requirements imposed by its understanding of moral cosmopolitanism.

Conclusion

In this chapter, I have extended the account of the continuity of Rawls' work to *LOP*. I have claimed that a purely cosmopolitan extension of the content of Rawls' ideas to global politics would be impossible. In their content, all the main ideas in Rawls' justice as fairness address liberal democratic institutions. I have also shown that by taking seriously the method employed by Rawls, rather than the content of his ideas, we can explain the two major discontinuities between Rawls' domestic and international theories. Finally, I have demonstrated that *LOP* provides all the relevant answers to the main questions that arise when we try to construct the appropriate conceptions of justice, stability and legitimacy for the Society of Peoples. In the final two sections of the chapter I addressed two important objections to the coherence and cogency of *LOP*. The first alleged that *LOP* could not guarantee the political autonomy of peoples as it provides no specified limit to international inequality. The second alleged that even if we could explain Rawls' choice of peoples as the agents of his theory, this choice was still based on some form of value collectivism. These objections mirror, and contest, the explanation of the two main discontinuities between Rawls' domestic and international theories that I provided in section II of the chapter. In both cases I have argued that the objections fail. The objection concerning the limits to international inequality is based on a misunderstanding of peoples' interests; peoples are interested in their political autonomy and the justice of their institutions, not in the accumulation of wealth. Furthermore, even considering a different account of peoples' interests, the idea of international redistribution itself heralds counterintuitive consequences. To the second objection I have replied by showing that peoples are only the main unit of analysis for *LOP*, not its main unit of moral concern.

CHAPTER 4

Toleration in *The Law of Peoples*

In chapters 2 and 3 I have provided an outline of how to read *LOP* as a coherent extension of Rawls' domestic theory of justice to international relations. I have claimed that the coherence of Rawls' work can be understood as an enduring form of commitment to the idea of finding a shared and mutually acceptable justification of basic social and political arrangements. By extending the Rawlsian commitment to what I have referred to as public justification we can, so I claimed in chapter 3, also understand why applying the main ideas in justice as fairness to the world at large is impossible. Furthermore, analyzing *LOP* in light of Rawls' commitment to public justification also helped to explain the main discontinuities between Rawls' domestic and international theories and to provide a fuller picture of the justice, stability and legitimacy of the Society of Peoples and of decent nonliberal societies. In this chapter, I want to deal more explicitly with Rawls' account of international toleration. My overarching goal will again be to show that Rawls' work is coherent and defensible, and that the many who think opposite can be proven wrong. Explaining the coherence and defensibility of Rawls' position on toleration by rejecting some of the most critical reactions, will also be helpful in shifting the locus of my critical attention to where *LOP*'s treatment of toleration is, in my view, less clear than it should be. Anticipating a pattern that will be repeated (in modified form) in the following chapter (concerning the duty of assistance), the real problem with *LOP*'s treatment of toleration is not, as most critics claim, that it tolerates too much, but rather that it does not explain carefully enough why it does not tolerate certain types of societies that it judges not to be well-ordered.

According to Stephen Macedo the central question of toleration in *LOP* 'is whether we can reconcile two convictions: first, that respect for the diversity of cultures and traditions means that we cannot simply universalize the liberal conception of justice worked out within Western societies; second that we must not bow to cultural diversity as a way of rationalizing the oppression of some by others' (2004: 1733). *LOP* tries to find a balance between the Scylla of imposing

one's way of life on others and the Charybdis of letting respect for diversity determine, alone, the bounds of legitimate difference. I believe that *LOP* achieves a reasonable compromise between these extremes and that such compromise is also conceptually less weak than many have alleged.

In *LOP* decent but nonliberal peoples are members in good standing of the Society of Peoples and as such deserve the full respect of liberal peoples. This is, for many, very controversial – at least if decent societies are seen through the lens of a (traditional) liberal cosmopolitan outlook. Granting respect to decent societies entails granting respect to ways of life, and specifically ways of organizing political institutions, that are markedly different from the liberal model. For those, who unlike Rawls, see no discontinuity between the domestic and the international, tolerating this kind of diversity is only one further aspect of letting something morally arbitrary (i.e. membership in a given political community) determine the basic rights and entitlements of persons. Not only Rawls' account of toleration has been accused of being flawed but, according to some, one of its very weaknesses lies in the fact that it is, once again, an incoherent extension of his domestic theory. In *PL*, Rawls acknowledges that the fact of reasonable pluralism requires liberal institutions to be justified on non-comprehensive grounds. But, while liberal conceptions of justice have to be political they still set the limits of diversity on liberal rights. In *LOP* this does not happen and the scope of liberal entitlements is confined to liberal peoples thus creating a potential tension between the two theories. I do not agree with either of these charges. If there are weaknesses in Rawls' arguments they are not to be found where the vast majority of theorists see them: *LOP* is an internally consistent account of toleration developed out of Rawlsian liberalism and it is a reasonable account of respect for diversity. Toleration is a coherently developed idea in *LOP* and it certainly does not defend diversity for its own sake.

I start the chapter by outlining the main elements of Rawls' account of toleration in *LOP*. I rehearse (in greater detail compared to chapter 3) his account of decency, the role of toleration in his international theory, and his conception of human rights. In section II I deal with two 'incoherence objections'. The first states that *LOP* is based on a false analogy with *PL*: while the latter tolerates comprehensive doctrines within the limits of liberalism the former allows decent peoples to settle their own nonliberal ways of organizing political society (see

Tan, 2000). The second alleges that taking the fact of pluralism seriously should have pushed Rawls to develop *LOP* along the lines of *PL*: to unite citizens under a single comprehensive doctrine requires the oppressive use of state power, yet this is precisely what Rawls imagines in *LOP* for decent peoples; this seems to imply that Rawls is willing to sanction the oppressive use of state power against the citizens of decent peoples (see Neufeld, 2005). To the first I reply that the analogy between Rawls' two theories should be understood as one of method rather than substance. By investigating how Rawls builds the constituency of reasonableness in the domestic context we can find a rationale for the inclusion of decent peoples in the scope of toleration internationally. To the second I reply by outlining the conceptual distinction between the use of state power and the oppressive use of state power. By looking at the genesis of this distinction we can understand that simply curtailing difference through state power should not count as oppression.

In section III I assess two critiques of Rawls' account of toleration that do not allege any incoherence but rather criticize the results that it achieves and the method by which the theory is developed. The first critique is that, simply put, *LOP* permits oppression on a large scale given its loose criteria of what decency requires (see Caney, 2002). The second is based on the idea that Rawls' eight principles of *LOP* are exceedingly minimalist and are not plausibly represented as the result of the initial original position of *LOP*: liberal peoples agreeing on a conception of international right would have included a more substantive set of human rights and distributive principles (see Pogge, 1994). In turn, if liberal peoples agreed on more than the eight principles of *LOP*, the fact that decent peoples could agree to the same conception of right as liberal peoples do would be implausible. To the first critique I reply that there is ample textual and interpretive evidence to deny the equation between decency and oppression. Not everything *LOP* forgets to call unjust is ipso facto condoned; its account of decency makes it clear that it does not approve of the oppression of minorities, genders, and so on. Contra the second objection, I reply that not everything liberal people agree upon domestically can be ipso facto transferred in *LOP*. For one thing, this would largely mean the replication of the same entitlements within different levels of governance; for another, the transformation of domestic policy into a matter of international concern severely curtails the self-determination of peoples.

Finally, in section IV I deal with one of the most neglected aspects of *LOP*: its treatment of benevolent absolutisms. It is there, so I claim, that a partial weakness in Rawls' position can be located. In fact, the real issue with Rawls' account of toleration is not that it tolerates too much, but rather that it does not fully explain why it does not tolerate certain types of peoples, and more specifically benevolent absolutisms. I survey different arguments for excluding benevolent absolutisms and find them unconvincing. I then show that Rawls does have good reason to exclude them, but that his reasoning is only partly clear in the book. I try to make it more explicit by briefly developing the link, in international law, between internal and external self-determination. I show that Rawls' *LOP* can rely on the fact that, in international law, the idea of external self-determination and its legal value are premised on the achievement of some form of internal self-determination (see Cassese, 1995) and that the latter requires collective self-rule, something that benevolent absolutisms, by definition, do not have. I also try to navigate the practical puzzle that benevolent absolutisms pose for well-ordered peoples. Benevolent absolutisms are not members in good standing of the Society of Peoples, but, since they respect human rights and are not externally aggressive, they cannot be the object of sanctions, thus remaining sovereign over their people and territory. In order to navigate this puzzle I propose a model of positive and negative incentives to match the long term goal of *LOP*: that all peoples, and thus even benevolent absolutisms, eventually become well-ordered.

I will bring this introduction to a close with one caveat. This chapter will not try to defend Rawls' conception of toleration against rival theories. Conceptions of toleration vary widely in terms of their grounds and justification (see McKinnon, 2006), but also the way in which they describe the virtue of tolerance (see Heyd, 1998) and the attitude towards the object of toleration itself (see Galeotti, 2002; Kukathas, 2003; and Walzer, 1997). To defend *LOP*'s account of toleration against the vast number of alternative views would take us too far from the original scope of this chapter and from the main topic of this thesis. Instead, this chapter should be read as a defence (and, in section IV, a refinement) of Rawls' conception of toleration against some of its most pressing liberal cosmopolitan criticisms. It argues that Rawls' work is coherent and does not suffer from the major faults that some have attributed to it. Insofar as it does this, the chapter, therefore, outlines the first stages of the broader argument which

supports Rawls' view in the wider framework of alternative theories of toleration; it cannot and should not be taken to demonstrate the validity or superiority of Rawls' work.

I. Toleration in *LOP*

LOP has a very simple structure. Rawls approaches questions of ideal theory first. Ideal theory, in Rawls' eyes, serves as a guide to nonideal theory and the latter cannot be developed without the former. Within ideal theory, Rawls starts by examining the more familiar case of liberal societies trying to understand their reciprocal relations – that is, societies whose political and institutional history are more closely matched and liberal. The second part of ideal theory extends this approach to nonliberal societies. According to Rawls, '[t]he second step of ideal theory is more difficult: it challenges us to specify a second kind of society – a decent, though not a liberal society – to be recognized as a *bona fide* member of a politically reasonable Society of Peoples and in this sense “tolerated”' (*LOP*: 63).

I.1 The role of toleration

According to Rawls, '[a] main task in extending the Law of Peoples to nonliberal peoples is to specify how far liberal peoples are to tolerate nonliberal peoples' (*LOP*: 59). In *LOP* there are different kinds of peoples (see the introduction). Rawls' account of toleration concerns mainly the status of decent peoples. For Rawls toleration does not simply entail refraining from coercing certain subjects (*LOP*: 59); it means the extension of respect to those who are tolerated, and in the specific case of *LOP*, to respect decent peoples as members in good standing of the Society of Peoples. While, in *LOP*, toleration has clearly a stronger normative basis than the 'live and let live' motto, for Rawls this does not mean that liberals should see decent peoples as fully just (*LOP*: 83). Seen from the perspective of a liberal democratic order, the way in which a decent people treats its members is clearly unacceptable. Yet a decent society respects human rights, consults its members when important decisions have to be taken, and follows a just law of

peoples in its foreign policy. These three factors, when considered together, mean that the institutions of a decent people have some features that deserve respect, and meet the standards required to ‘override the political reasons we might have for imposing sanctions’ (*LOP*: 83). To those who ask why toleration is needed at all – that is, why we cannot assume that a liberal foreign policy can simply be to shape all other peoples until they have become liberal – Rawls replies: ‘If all societies were required to be liberal, then the idea of political liberalism would fail to express due toleration for other acceptable ways (if such there are, as I assume) of ordering society’ (*LOP*: 59).

I.2 The criteria of decency

There are many possible way of organizing decent political institutions. In *LOP* Rawls proposes to survey the main criteria of decency specifically for a decent hierarchical society (*LOP*: 64). According to Rawls, decent hierarchical societies can assume many different political shapes. Some may possess more secular institutions, others more religious. But all decent hierarchical societies share the fact that they are ‘associationist in form: that is, the members of these societies are viewed in public life as members of different groups, and each group is represented in the legal system by a body in a decent consultation hierarchy’ (*LOP*: 64). The associationist form of a decent hierarchical society possesses a conception of justice based on comprehensive ideas and so cannot be defined as political in Rawls’ sense. According to Rawls, in order for a decent hierarchical society to be a member in good standing of *LOP*, it has to meet two criteria. The first is ‘external’: it states the permissible aims of any society in good standing in *LOP* – namely, a non-aggressive foreign policy. Decent hierarchical societies respect ‘the political and social order of other societies’ (*LOP*: 64) and if they seek influence internationally, they do so ‘in ways compatible with the independence of other societies’ (*LOP*: 64).

The second criterion of decency for decent hierarchical societies is ‘internal’: it states the minimal requirements of the internal organization that a decent hierarchical society must meet in order to be a member in good standing of *LOP*. The internal criterion of decency is divided into three parts. First, the system of laws, applied in accordance with a common good idea of justice, must secure

basic human rights (*LOP*: 65). Second, ‘a decent people’s system of law must be such as to impose *bona fide* moral duties and obligations (distinct from human rights) on all persons within the people’s territory’ (*LOP*: 65–6). Third, ‘there must be a sincere and not unreasonable belief on the part of judges and other officials who administer the legal system that the law is indeed guided by a common good idea of justice’ (*LOP*: 66). The second criterion above expresses a vision of a decent society as populated by decent and rational individuals who see the embodiment of the common good idea of justice in the system of law as a genuine attempt to institutionalize a vision of the common good, and as specifying a decent system of social cooperation rather than a slave economy or a system of command by force. In a symmetrical way, the third criterion specifies the attitude of those who interpret and participate in the enforcement of the law in a decent hierarchical society; they too must approach the law as being the genuine application of a common good conception of justice and use the courts of the land as a forum for its discussion. Otherwise, as Rawls warns us, laws ‘supported merely by force are grounds for rebellion and resistance’ (*LOP*: 66).

I.3 Human rights in *LOP*³⁴

For Rawls, human rights are distinct from the right of liberal democratic citizenship (*LOP*: 79). Human rights are also not the same as the rights that

³⁴ In general, Rawls’ conception of human rights comes under fire for at least three distinct conceptual reasons: a) that it is based on the idea that human rights are linked to international intervention (not necessarily military intervention, however; see Tasioulas, 2002; b) that its justification is hostage to the existing diversity of ways of life in the world (see Cohen, 2010, for a discussion); and c) that it is an ultraminimalist conception of basic human rights which only defends the bare rights the enjoyment of which only secures subsistence, instead of the fuller range of human rights internationally accepted and part of various declarations and covenants in the regime of international law (see Nickel, 2007). A full discussion of these matters would be beyond the scope of this chapter, but for the sake of clarity I would like to mention where I stand on these matters. First, the idea that human rights are linked to some form of international concern is not implausible given the role they have performed over the past decades in the international system. Second, a proper appreciation of the method of political liberalism means that human rights cannot be based on a conception of human nature because no such conception can be publicly justifiable to all persons globally, and that the idea of public justification and of overlapping consensus do not entail a compromise with existing comprehensive doctrines. Finally, Rawls’ list of human rights is more robust than it looks at first sight given Rawls’ interpretation of the terms ‘subsistence’, ‘security’ and ‘liberty’ (see especially Reidy, 2010). Note also that the legitimacy of institutions in *LOP* has human rights as necessary but not sufficient conditions and this entails that part of the benchmark of international legitimacy also include some political rights.

specify the admissible ways of organizing political institutions in liberal or decent ways. For example, membership in good standing in *LOP* presupposes effective institutionalization of collective self-rule. This was the main point of developing an account of a decent consultation hierarchy (see below). While these conditions set limits to membership in good standing in *LOP*, they are not human rights proper for Rawls. According to Rawls, human rights ‘set a necessary, *though not sufficient*, standard for the decency of domestic political and social institutions ... they limit admissible domestic law of societies in good standing in a reasonably just Society of Peoples’ (*LOP*: 80, emphasis added). Among the basic human rights, Rawls mentions the right to life (which includes rights to subsistence and security), the right to liberty (including freedom from slavery, serfdom, forced occupation and enough freedom of conscience to make freedom of thought and religion possible) and formal equality under the law (*LOP*: 65). The special class of urgent rights that for Rawls represents human rights proper fulfil three main roles: a) their respect is a necessary condition of decency; b) their respect is sufficient to exclude justified and forceful intervention via diplomacy, economic sanctions or force; and c) human rights proper set the limits of pluralism in the Society of Peoples (*LOP*: 80).

Human rights are intrinsic to *LOP*. Respect for them is a fundamental aspect of both liberal and decent institutions. Yet their normative force does not depend on local support, but is universal in reach: ‘they are binding on all peoples and societies, including outlaw states’ (*LOP*: 80–1). When it comes to the justification of human rights, Rawls is clear that *LOP* does not deduce its conception of human rights from a conception of human nature (*LOP*: 81). Instead, for Rawls, human rights are a ‘proper subset of the rights possessed by citizens in a liberal constitutional democratic regime, or of the rights of the members of a decent hierarchical society’ (*LOP*: 81).

I.4 The consultation hierarchy

According to Rawls, the first two parts of the internal criterion of decency require that the system of law of a decent hierarchical people be guided by a common good idea of justice (*LOP*: 71). A common good idea of justice is defined by Rawls by first outlining the difference between the latter and the common aim (if

such there is) of a people, and then by specifying the content of what Rawls calls a decent consultation hierarchy. The common aim of a people for Rawls is what ‘a society tries to achieve for itself or its members’ (*LOP*: 71). The crucial point is that the common good conception of justice should not contain the idea of maximizing the common aim of a people, but should rather encourage its pursuit within the constraints set by the consultation hierarchy.

The basic structure of a decent hierarchical people must contain a decent consultation hierarchy. This means that it ‘must include a family of representative bodies whose role in the hierarchy is to take part in an established procedure of consultation and to look after what the people’s common good idea of justice regards as the important interests of all members of the people’ (*LOP*: 71). While within the decent consultation hierarchy persons are neither viewed as free and equal citizens nor as ‘separate individuals deserving equal representation’, they nonetheless are seen as decent and rational and capable of moral learning (so that laws are not simply commands backed by force, and citizens, as decent and rational persons, can come to identify with their contents). Rawls further specifies what the presence of a decent consultation hierarchy implies for the process of collective self-rule of a decent hierarchical society. Citizens of a decent hierarchical people are responsible members of their community and so are able to judge and understand when their moral duties are congruent with the society’s common good idea of justice. Each person is represented via the group to which it belongs. A decent consultation hierarchy affords the possibility for a plurality of voices to be heard when the people’s interests are at stake. Political dissent is also permitted, provided it stays within the bounds of the common good idea of justice. Furthermore, dissent – which is a form of political protest and pertains to the specification of different interpretations of what the common good idea of justice requires in practice, or how to amend it to better serve the interests of the people – must be met by genuine official attention. Judges and other public officials cannot simply dismiss political dissent: they must address the substance of the questions posed by dissenters and must accept that dissent can continue even when official responses to it are sincerely believed to effectively address the attendant issue. Rawls also provides a detailed example of a decent hierarchical people and its consultation hierarchy: Kazanistan (*LOP*: 77). The six features of Kazanistan’s consultation hierarchy are:

- a) all groups must be consulted;
- b) each group is represented by at least some members of the group itself who know and share the fundamental interests of the members of the group;
- c) each person must belong to a group;
- d) the executive authority of Kazanistan, its rulers, must take into account, when making decisions, the views of each body or group and it should be possible for all groups to influence final political outcomes;
- e) political decision must be in line with the special priorities of Kazanistan, among which we find the establishment of decent Muslim institutions respecting religious minorities within Kazanistan;
- f) the special priorities of Kazanistan must fit within the framework of a fair scheme of cooperation whose terms must be publicly available.

I.5 Decent peoples and the original position

Decent hierarchical peoples are ‘well-ordered according to their own ideas of justice’ (*LOP*: 68) and this means, among other things, that their representatives, in an appropriately framed original position, would, according to Rawls, choose the same eight principles of *LOP*. The representatives of decent hierarchical peoples know that decent peoples are peaceful and thus will respect the freedom and independence of other peoples. They too strive to protect their common good idea of justice and so they too strive to be free and independent. Decent hierarchical people also respect human rights, and their being well-ordered according to their own ideas of justice further entails that the good of their people is a central part of their political organization. This implies that decent peoples will care about their prosperity and the benefits that can come with international economic association. Also, the representatives of decent hierarchical peoples accept that assistance must be granted to peoples who are in need.

With these few considerations in hand, Rawls maintains that decent peoples have no reason to object to the equality and symmetry implicit in the original position of *LOP*, as such original position guarantees the freedom and independence of all peoples. Respecting human rights, decent hierarchical peoples do not find *LOP*’s eight principles, which limit the legitimate bounds of

sovereignty to those peoples who respect basic human rights, to be problematic. Finally, given that decent hierarchical peoples deeply care for their freedom and independence and do not know what the future will hold for their people, the provision regarding mutual assistance is also easily endorsed from within their framework of reasons; hence, decent hierarchical peoples do not find respecting the precepts of the duty of assistance to be problematic either.

II. The charge of incoherence – again

In the previous section I provided a basic outline of Rawls' understanding of toleration and its role in *LOP*. Now I deal with some of the critical attention *LOP* has received and in particular with the charge that *LOP* does not cohere with the rest of Rawls' work. I start by rehearsing the alleged inconstancy between Rawls' strategy for toleration in *PL* and his account of toleration in *LOP*. According to Kok-Chor Tan (2000), *LOP*'s model of toleration is based on the false analogy between comprehensive doctrines within liberal democracies and decent nonliberal peoples within *LOP*. I respond to this charge by outlining the shared method that lies at the basis of both Rawls' domestic and international theories. The second charge of incoherence is that Rawls neglects the issue of pluralism within decent societies. Domestically, respect for pluralism requires liberal institutions to refrain from adopting comprehensive doctrines as the basis for the justification of political power, and yet in decent societies this is precisely what happens. Since domestically Rawls claims that this will lead to the oppressive use of state power, it seems that Rawls is prepared to tolerate the oppressive use of state power against citizens of decent societies. I argue that this charge fails to take seriously the difference between the use of state power tout court and the oppressive use of state power.

II.1 Presenting the main problem

In chapter 1 we noted the important difference between Rawls' methodological commitment to the independence of practices and their regulative principles, and

the independence of societies in international relations. There we said that the independence that is granted to regulative principles for non-basic institutions in a liberal society is made plausible by the fact that they all respect the same basic tenets of liberal justice. Associations in a liberal democracy are not ruled by the principles of justice, so they are normatively autonomous in this sense. But they do have to respect the constraints set by the principles of justice and this is what seems to make their relative autonomy acceptable. However, the same seems not to hold for peoples. To grant to nonliberal societies internal autonomy for their political practices seems to require a different type of justification, since such societies will not necessarily be ordered according to a liberal conception of justice. We also stressed that the real problem lies not in whether such a justification is possible, but on whether it can simply be methodological in nature. Since from a moral point of view the two situations are different, we argued that a substantive moral argument must be presented to defend the autonomy of principles for the Society of Peoples with respect to a domestic liberal conception of justice.

In the previous chapters, I have presented an interpretation of Rawls' work and claimed that such a substantive moral argument can indeed be found: by looking at stability and legitimacy in *PL*, we developed a framework that justifies the relative autonomy of different peoples in *LOP*. Nonetheless, this argument still faces an important challenge. Tan believes that Rawls' analogy between toleration of comprehensive doctrines domestically and toleration of decent societies internationally, is 'deeply flawed'. The basic disanalogy is outlined as follows: while domestic toleration is based on the acceptance of the same political conception of justice, international toleration is arguably not based on the endorsement of liberalism as a constraint to the permissible differences in political organization (Tan, 2000: 29). Liberalism can be ethically neutral but not politically neutral. This is so because a commitment to ethical neutrality necessarily implies a commitment to a particular political system: that is, a system that protects this ethical neutrality in the first place. But, at the international level, Rawls advocates the toleration of peoples that do not have liberal political institutions. In Tan's view, then, there is no meaningful analogy between toleration of comprehensive doctrines domestically and toleration of decent

societies internationally. It follows, therefore, that in certain important cases Rawls' view would be plainly inconsistent:

It seems that while Rawls would say that a liberal state should criticize a domestic comprehensive view that forbids its members from exercising their public rights (like the right to vote in public elections), this same state should not criticize a [decent hierarchical society] that denies some of its citizens this same right. This seems blatantly inconsistent to me.
(Tan, 2000: 30)

II.2 Solving the main problem

In the previous chapters we have presented a vision of *LOP* that plays on its continuity with *PL*. Indeed there is good evidence that Rawls himself pictured his work in precisely this way. In *LOP* he writes that:

Just as a citizen in a liberal society must respect other persons' comprehensive religious, philosophical, and moral doctrines provided they are pursued in accordance with a reasonable political conception of justice, so a liberal society must respect other societies organized by comprehensive doctrines, provided their political and social institutions meet certain conditions that lead the society to adhere to a reasonable law of peoples.
(*LOP*: 43)

I believe that by taking Rawls' statement seriously we can understand why he believes that there is a strong form of continuity between the two approaches. In order to focus on the correct problem, we need to begin by asking an important question concerning the idea of reasonable pluralism at 'home': What is it that makes persons, who hold nonliberal comprehensive doctrines in a liberal society, reasonable persons who deserve respect? One might be tempted to say that there is some sort of external definition of what it means to be reasonable and whom we need to respect. One might say that reasonable persons act and argue in a certain way, or that reasonable persons are willing to propose terms of cooperation that others can reasonably accept, or that reasonable persons are not willing to use the coercive power of the state according to their parochial views, or that reasonable persons accept the burdens of judgment, etc. While these characterizations are certainly correct, they still somehow miss the central point when we try to define what we can call the 'constituency' of reasonableness.

In the above quotation, Rawls provides a hint to the solution when he states that we respect persons believing in different comprehensive doctrines 'provided they are pursued in accordance with a reasonable political conception of justice'.

In other words, the standard ways in which we identify or explicate the idea of ‘reasonable citizens’ pertains to the qualities that these citizens possess. However, such qualities, if taken in isolation, are still insufficient to explain who will be considered reasonable and who will not. To define the constituency of reasonableness we must look not only at the qualities of the citizens who hold such doctrines but also at the way in which such doctrines are pursued within the wider political society. Or, to put it differently, to be reasonable means to possess certain qualities such as the ones we mentioned above, but these qualities, given the context of liberal democratic politics, entail a recognition on the part of reasonable citizens that they must pursue their non-public interests in accordance with a liberal political conception of justice. The constituency of reasonable pluralism is defined, in other words, by looking at those who are willing to comply with liberal institutions. Yet, crucially, the latter also includes persons who are not themselves liberal in a comprehensive sense of the term. It is to those citizens that we owe a justification of the political order that is valid, or at least acceptable, from within their own framework of reasons.

We can now return to *LOP*. In *LOP*, as we have stated in the introduction, Rawls starts by imagining a first international original position in which only liberal peoples ‘meet’ in order to choose principles for their foreign policies. The eight principles of *LOP* are developed, at least initially, for this purpose: to provide guidance in how liberal peoples should deal with each other in their foreign policies. Once we have the eight principles of *LOP* in hand, we can then ask a similar question to the one posed at the domestic level: Are there any other type of peoples that, while not being internally liberal, could nonetheless endorse the same liberal conception of foreign policy as liberal peoples do in dealing with each other? Rawls’ conjecture is that there are such peoples – he calls them decent peoples – and the second international original position is meant to show precisely that: that decent peoples would in fact endorse the same type of foreign policy as liberal peoples. What makes decent peoples worthy of toleration, then, just as in the domestic case, is not simply an independent definition of what is reasonable or what is not. Rather, it is also the fact that they endorse the same type of conception of right or foreign policy as liberal peoples do and that, just as for the domestic case, they would act on such conception for moral reasons.

Finally, note that when critics such as Tan see an inconsistency in the fact that the same policy (such as the one concerning the right to vote in democratic elections mentioned above) cannot be recommended in a liberal and in a decent society, it is, indirectly, the type of unit of analysis adopted that they are questioning. They are, in other words, working with a model of ‘coherence’ that states that ‘if policy X is correct in location y’ then, *ceteris paribus*, ‘policy X is correct in any other location’. But this model of coherence concentrates on the content of certain liberal and democratic rights and takes for granted that we should extend whatever conception of right we deem most justifiable to all forms of political society. Instead, the coherence between *PL* and *LOP* is based on the coherence of the method that is used to justify the content of conceptions of justice. By paying attention to the method of justification, we can identify the relevant agents for the two theories, and then picture their coherence, or the analogy between them, in the way in which they define and deal with two different instances of reasonable pluralism in a similar way.

II.3 A second charge of incoherence

Rawls’ *PL* clearly responds to a crucial problem concerning the very coherence of the liberal democratic project. As Rawls tells us, *PL* looks for a reply to the following question: ‘how is it possible for there to exist over time a just and stable society of free and equal citizens, who remain profoundly divided by reasonable religious, philosophical and moral doctrines?’ (*PL*: 4). The fact of reasonable pluralism sets limits to the depth and breadth of the type of agreement on political principles which we are likely to find. More specifically, the fact of reasonable pluralism, according to Rawls, means that comprehensive doctrines cannot form the basis of a justification for the use of political power in a liberal democratic polity. According to Rawls, then, ‘given the fact of reasonable pluralism of democratic culture, the aim of political liberalism is to uncover the conditions of the possibility of a reasonable public basis of justification on fundamental political questions’ (*PL*: xix).

Furthermore, Rawls supports his analysis of the legitimate use of coercive power in a liberal democratic society and its associated requirements of public justification, by laying out what he believes to be three enduring facts that

characterize the political culture of a democratic society. First: the diversity of moral, religious, and philosophical doctrines peculiar to democratic societies is not a mere historical accident but a permanent condition. (This fact is importantly qualified, as we will see below.) Second: the continued collective allegiance to one comprehensive doctrine, be that moral, religious or philosophical, requires the oppressive use of state power. Third: the enduring survival of a democratic regime not rife with divisions and conflict requires the free and willing support of its citizens (*PL*: 36–8).

These three facts are central to our account here because they seem to cast a long and menacing shadow over the idea of decent peoples. They are the basis of a significant alleged inconsistency in the idea of decent hierarchical regimes (see especially Neufeld, 2005): whether they are even conceptually possible and, relatedly, whether the internal features of their institutions are such as to deserve respect from liberal peoples.

Decent hierarchical societies are, at least to some extent, pluralistic in nature (see Neufeld, 2005). Since religious minorities and political dissent are part of what characterizes a decent hierarchical society and a decent consultation hierarchy, we should not imagine decent societies as monolithic entities. Diversity is clearly one feature of their public cultures, and there is no reason to believe that, as Rawls' first fact above states, such diversity will not be permanent. Second, decent societies have a common good conception of justice which is based, at least according to Rawls' own view, on a comprehensive (or at least partially comprehensive) doctrine. Thus, their social unity seems to require, as the second fact above states, the oppressive use of state power. Third, decent hierarchical societies are, according to Rawls, legitimate in the eyes of their citizens and are freely supported by at least a majority of them. Yet, given the fact of diversity and the fact of oppression, this conclusion seems unwarranted.

Much of the appeal of the account of a decent hierarchical society rests on the fact that its institutions respect human rights and are freely supported by their members. But, if we follow Rawls' analysis of the consequences of pluralism and of the need for the oppressive use of state power to counter pluralism, then the ideal picture of decent hierarchical peoples seems to be conceptually incoherent. It would be so in two ways. First, from an interpretive point of view: if we look at *PL* and *LOP*, Rawls seems to draw different conclusions for what look like similar

situations. Second, because the very idea of a decent hierarchical society as imagined by Rawls – its being well-ordered according to a common good conception of justice – seems impossible to obtain. If this were the case, then, the idea of a decent hierarchical people would lose its conceptual force (as it would result in being internally inconsistent) and much of its appeal too (as it would be based on what Rawls sees as oppression).

II.4 Solving the second problem

Once again, this charge of incoherence is, in my view, a mere misunderstanding of Rawls' position and of the basic architecture of his theory. Much of the argumentative force of the accusation of incoherence is based on the kind of interpretation we give to the term 'oppression'. In what follows I state that the alleged inconsistency between Rawls' *PL* and *LOP* presented above is premised on the following confusion: the critics simply fail to distinguish between the oppressive use of state power and the use of state power aimed at curtailing difference.

As we have seen above, in *PL*, Rawls is concerned about what he calls the fact of oppression. The first thing to notice, though, when we think about the idea of the oppressive use of state power, is that simply curtailing difference is not something that is necessarily bad (on this point see Macedo, 2000). In fact political institutions, liberal or not, are also meant to perform that role in society. By creating systems of monitoring and enforcement of the law, political institutions limit the extent of permissible pluralism in accordance with a conception of right.³⁵ This observation should alert us to the fact that by denoting any exercise of state power as 'oppressive' we are not simply signalling that it is a coercive exercise of power for the curtailment of difference; if that were the benchmark, most if not all exercises of state power would be oppressive. This idea is important because, in my view, it motions to the fact that defining something as

³⁵ Here note two things. First this sentence is not meant to imply that this is the only role that political institutions perform. Second, this is of course an idealistic picture since in many ways the actual shape of political institutions and its roles will depend on political bargaining and conflict negotiation. Since we are moving within the bounds of ideal theory, I do not see this idealistic picture as problematic.

‘an oppressive use of state power’ seems to presuppose a prior conceptual exercise, namely that of defining the bounds of legitimate diversity. In other words, whenever we define any exercise of state power as oppressive it is because we have a prior determination of the bounds of legitimate difference. Crucially, however, the bounds of legitimate difference are set by a conception of right. The very act of defining something as ‘an oppressive use of state power’ seems to presuppose an account of how state power should be used and, in turn, such account seems to be part of a conception of justice.

This should provide some indication as to why the use of state power in decent society is not necessarily oppressive, even when it is based on some form of comprehensive reasoning. It is only when basic constitutional freedoms of the liberal democratic tradition have already been taken to be justified that the use of state power to require citizens’ allegiance to any comprehensive doctrine can be defined as oppressive. In a liberal democratic context to do so would be oppressive because, as the idea of reasonable pluralism within a liberal democracy implies, no form of public justification for the imposition of a comprehensive doctrine can be provided. And, as we have seen in chapter 2, the creation of a moral consensus on matters of basic justice based on some form of comprehensive reasoning would require the violation of what Joshua Cohen calls the deliberative and expressive liberties associated with the liberal democratic tradition (see Cohen, 1994). In sum, in a liberal democracy, the use of state power to maintain citizens’ stable allegiance to a comprehensive doctrine is ‘oppressive’ because, as Rawls’ analysis of the emergence of reasonable pluralism under free institutions tells us, it is impossible to do so (to maintain such allegiance) without violating the very same rights and liberties that a liberal society is recommending.

But if such liberties are not guaranteed in the first place (as they are not in a decent society), we cannot use the same benchmark to judge the oppressiveness of the use of state power as if the liberties were guaranteed. Extending the same type of analysis to decent hierarchical peoples, we would simply define as oppressive any use of state power in decent hierarchical societies that does not guarantee the expressive and deliberative freedoms that are part of the liberal democratic tradition (and define the basic content of any liberal conception of right). This would clearly be a form of circular reasoning, as part of our task is precisely to establish if decent hierarchical societies are to be tolerated. Proposing that they

should partake in the basic constitutional freedoms of the liberal traditions is tantamount to presupposing that we should not tolerate them in the first place.

In sum, to define something as oppressive we need a benchmark. The benchmark that Rawls adopts for liberal societies is a liberal one: the oppressive use of state power that is required to unite citizens under the same comprehensive doctrine is oppressive when it violates the basic constitutional guarantees that are part of the liberal tradition and that form the basic content of any liberal conception of right. If we were to use the same benchmark to define as oppressive the use of state power required to maintain the allegiance of citizens of decent hierarchical peoples to a (comprehensive or partially comprehensive) common good conception of justice, we would in fact presuppose that all types of regimes need to protect the basic liberties that are part of the democratic tradition. However, to do so would premise our argument against tolerating decent hierarchical peoples on the simple fact that all peoples should be liberal.

Rawls seems to be saying just that when he states that, according to some, ‘nonliberal societies fail to treat persons who possess all the powers of reason, intellect, and moral feeling as truly free and equal, and *therefore*, they say, nonliberal societies are always properly subject to some form of sanction’ (*LOP*: 60, emphasis in original). To the latter point he replies: ‘The italicized “therefore” several lines back marks, however, an inference that begs the following question: how do we know, before trying to work out a reasonable Law of Peoples, that nonliberal societies are always, other things being equal, the proper object of political sanctions?’ (*LOP*: 60). To his reply we can offer the following rejoinder: whatever we think about decent hierarchical peoples, starting with the assumption that liberalism is the only possible way of organizing political society, won’t tell us much about ‘decency’ and about the proper scope of toleration.

Finally, let me guard the reader against one potential misunderstanding that my argument might bring about. A different way of looking at the ground covered in last few paragraphs is to say that given *PL*’s analysis of the use of practical reason under free institutions, we can see that a liberal conception of right plays a dual role for Rawls. On the one hand it determines the boundaries of permissible diversity and sets limits to the types of comprehensive doctrines that citizens can hold. On the other hand it also creates the conditions for reasonable pluralism to develop in the first place. And it does so by protecting the basic deliberative and

expressive liberties that are familiar to the liberal constitutional tradition. It is precisely by attending to the dual role of liberalism for Rawls, as both origin and limiting condition of diversity, that we can better appreciate the internal tension within *TJ*. If that is correct, then the oppressive use of state power, at least as it is presented by Rawls in *PL*, is an internal problem to the liberal democratic tradition. It is thus very difficult to simply transpose the problem in the context of a decent society. This might also suggest – and here lies the possible misunderstanding – that the very idea of reasonable pluralism only pertains to the liberal democratic tradition.

I wish to deny that, but I also wish to make an important qualification concerning that denial. I want to make clear that I am not claiming that a decent society is monolithic, or that no form of pluralism would develop within it. Nor am I claiming that the pluralism that would develop within a decent society has no moral significance and could simply be met by the use of collective power to eliminate it. To qualify this slightly, although reasonable pluralism is certainly possible in a decent society, we would still have to adjust our understanding of ‘the idea of reasonable pluralism’ to the moral diversity that is likely to develop within a system of decent institutions. In a decent society – that is in a system of decent rather than free institutions – persons’ division along moral, philosophical and religious lines will be (at least so Rawls conjectures) less ‘deep’ and less ‘irreconcilable’. In other words, in a decent society, and given the institutions under which persons develop, citizens might be less divided on fundamental moral, philosophical and religious questions. To repeat, this does not entail that no doctrinal division is likely to emerge, nor that such divisions are not reasonable. Rather, it simply signals that the type of reasonable pluralism we will encounter will be different depending on our context of analysis.

III. Further problems: Horrible scenarios and asymmetry

In the previous part of the chapter we have put to rest the idea that *LOP*’s treatment of toleration and decent peoples is incoherent with Rawls’ broader political philosophy and in particular with his account of toleration and pluralism

in *PL*. Yet the fact that Rawls' conception of international toleration is not incoherent is not enough if we want to form a judgment about its justifiability. In fact, many have argued that, whatever the coherence of Rawls' work, some of the arguments and conclusions concerning toleration in *LOP* are deeply flawed. To that effect, in this section I will address two main critiques. The first contends that *LOP* tolerates unacceptable ways of organizing political society (see Caney, 2002); while Rawls paints a rather rosy picture of a type of decent society, a decent hierarchical society, the criteria of decency (see section I in this chapter) are loose enough to permit political institutions that, on due reflection, most persons will find unacceptable. The second concerns Rawls' reasoning in the second original position; the critics argue that the original position among liberal peoples is unjustifiably restrictive in the scope of its conclusions, and that it is so because it is purposefully designed to accommodate decent peoples (see Pogge, 1994). Both critiques challenge Rawls' account of toleration, albeit in different ways. If the first critique is sound, then the model of toleration of *LOP* simply tolerates too much: it yields what are, on due reflection, unacceptable results. If the second critique is correct, Rawls' method for devising the scope of international toleration proceeds in the wrong conceptual direction. It does not, as Rawls claims, develop a just law of peoples and then expands the scope of toleration to those regimes who can plausibly be part of *LOP* (as discussed in section II in this chapter). Rather, it decides that decent peoples are to find a place within the Society of Peoples and then guides the results of the first (international) original position in order to justify their inclusion.

I find both critiques unconvincing. In the following four sections I present these critiques more extensively and explain why they should be rejected.

III.1 A world of (in)decency?

One of the most common critiques of toleration in *LOP* can be labelled 'horrible scenarios'. I term them such because one of the most frequently repeated ideas about Rawls' account of decency is that it is compatible with political scenarios all well-behaved liberals should find repugnant (see Caney, 2002). Since I find both the argumentative strategy and the conclusion that it reaches less than convincing, I will try to explain where its faults lie. According to Caney (2002:

101–2), Rawls' criteria of decency permit the following: a) the denial of democratic rights; b) ethnic cleansing; and c) racial discrimination. Thus, according to Caney:

Rawls' schema ... allows racial discrimination, the political exclusion of ethnic minorities, the forcible removal of members of ethnic communities (that is, ethnic cleansing), the reduction of some to just above subsistence whilst other members of that society luxuriate in opulent splendour, and the perpetuation of grossly unequal opportunities and political power. As such it is implausible to claim that Rawls' people-oriented approach models the ideal of 'toleration'. A Rawlsian world order would sanction extensive intolerance toward individuals and minority cultures. (Caney, 2002: 102)

In fact, by combining these features, Caney maintains that we can devise two types of examples of possible decent societies, one based on a racist ideology, the other on a patriarchal conception of society that severely discriminates against women. Among the many distasteful political circumstances of these allegedly decent societies we would find:

- a) the treatment of its minority race as second class citizens;
- b) the exploitation of its minority race by the ruling or dominant class (provided that such exploitation does not include slavery or serfdom);
- c) the confinement of the racial minority to dangerous or degrading work;
- d) the denial to the racial minority of the chance to raise above subsistence levels (since no equality of opportunity is in place);
- e) the denial of any type of voting right to the members of the discriminated race;
- f) the denial of suffrage to women;
- g) the impossibility of women occupying roles of responsibility in political and economic life;
- h) the acceptance of female genital mutilation;
- i) the lack of real private property for women (their possessions becoming their husband's upon marriage);
- j) the prohibition of women leaving the house once they are married;

- k) the flogging of adulterous women (compared with much milder punishment for adulterous men). (Caney, 2002: 102–3)³⁶

III.2 What decency does not find decent

Before discussing Caney's reading of the implications of the idea of decency, let me make an interpretive point. It seems that scholars like Caney want to argue that since Rawls only explicitly rejects slavery and serfdom, this means that anything short of that is permissible. That is clearly not true. *LOP* is a short book, and in few pages it tries to deal with a wide range of major issues such as just war, human rights, the ideal of the statesman, and the meaning of a realistic utopia. It would be, I believe, more helpful from an exegetical (and consequently even critical) point of view, to avoid assuming that omissions represent endorsements. (In the following chapter I will maintain a similar argument when it comes to international economic practices.) The idea of decency is a heuristic device to try to understand what kind of shape would nonliberal (but still worthy of respect) institutions take. The idea of a decent hierarchical society serves the purpose of further clarifying, admittedly in a brief way, what that idea could look like in practice. If, as Caney believes, the criteria are exceedingly loose and, allegedly, permit too much, then given the brevity of Rawls' account it would seem more charitable and plausible to amend or further specify the account of decency that he provides, and not simply draw the worst possible conclusions from it. My point here is not necessarily 'an argument', but it does try to highlight how, in part, our critical response to a text depends on the attitude we adopt. In the case of *LOP*, especially given how much it covers in a short space, filling the gaps with worst-case scenarios is not necessarily a wise interpretive strategy.

Notwithstanding this interpretive clarification there is also textual evidence that Caney's preoccupations are unwarranted. Let us start with the list of human rights that Rawls proposes (here I follow Reidy, 2010). On page 65 of *LOP* Rawls mentions that '[a]mong the human rights are the right to life (to the means of subsistence and security)'. As Reidy correctly argues (2010: 289), the footnote attached to the passage shows how much wider Rawls' understanding of subsistence is than simply physical survival. According to Rawls subsistence

³⁶ Features (a)–(e) refer to the racist society, features (f)–(k) to the patriarchal society.

implies 'a minimum economic security' and by that he means more specifically that 'the sensible and rational exercise of all liberties, of whatever kind, as well as the intelligent use of property, always implies having general all-purpose economic means' (*LOP*: 65n1). In short, the right to life, when looked at from the perspective of subsistence, is not simply a right to enough to address physical needs. Rather, as Reidy notes, it seems to implicitly contain the right to control personal property (2010: 289). This should put to rest at least points (d) and (i) from Caney's list: since subsistence is not survival, all citizens of a decent society have a right to more than the mere elements that permit their continued physical existence; and since some measure of control over private property is also part the requirements of economic security, women cannot be denied the right to personal property.

Further, even when it comes to security we can conjecture that Rawls' interpretation of the right to life can be expanded to include more than mere physical integrity. This should at least partially put to rest worry (h): if security is more than physical integrity, a fortiori, female genital mutilation is not simply something that can be imposed on women.

Worry (j) instead can be partially put to rest on the basis of the fact that, according to Rawls, decent societies follow the precepts of natural justice (it is part of human rights for Rawls), and so their legal systems treat similar cases in a similar way. I say 'partially' here, because we cannot be sure ex-ante that a legal system would not include stoning as a punishment for adultery. But what seems *not* to be implied by the idea that decent societies follow the precepts of natural justice is that this type of punishment should be reserved for women only.

Worries (e) and (f) are instead put to rest by the very description of the consultation hierarchy of Kazanistan. Since it contains the idea that all citizens must be members of a group and that all groups should be politically represented, then plausibly we can be assured that the idea of decency does not include the non-representation of entire groups or genders. Of course, if by representation we mean democratic representation, then the idea of a decent consultation hierarchy will not serve. But, as we have stated in section II of this chapter, to presuppose that only democratic representation is justifiable is to presuppose a liberal democratic answer to the extent of toleration.

We can immediately discard worry (g) after reading the following passage from *LOP*:

A third observation concerns the representation in a consultation hierarchy of members of society, such as women, who may have long been subjected to oppression and abuse, amounting to the violation of their human rights. One step to ensure that their claims are appropriately taken into account may be to arrange that a majority of the members of the bodies representing the (previously) oppressed be chosen from among those whose rights have been violated. (*LOP*: 75)

This passage signals that women can – and in fact, given certain circumstances, should – occupy roles of responsibility within a decent hierarchical society. Inter alia it also conclusively dispels any doubt that any of the members of discriminated races, genders or minorities can be denied political representation. Fundamentally, it seems to question the very idea that the patriarchal society imagined by Caney is even remotely compatible with the idea of decency.

In his account of the deep flaws of Rawls' model of toleration Caney also gestures towards the fact that the idea of decency is basically consistent with a caste society (2002: 101). In fact worries (a), (b) and (c) above seem to synthesize how most of us would understand a caste society, at least when looking at it from the perspective of its least advantaged members. When it comes to the society based on a racial ideology Caney also supposes that '(quite reasonably) the victims of this repressive regime resent' their treatment (2002: 102). But the idea that certain groups of people in society can be relegated to dangerous and degrading tasks is not supported by anything Rawls says. The system Caney imagines seems clearly to be one that approximates a system of forced occupation: if the jobs that certain members of society are required to perform are dangerous and degrading, it seems that the only way for society to make them perform their tasks is to compel them.³⁷

³⁷ This argument seems premised on a controversial notion of coercion, namely that the lack of alternatives for occupational choice is a form of coercion. I think the point can be reformulated less controversially by stating that if the only practical choice that is offered to a group of persons in a decent society is to perform a degrading job, then it seems hard to imagine that this state of affairs is something to which they can be reconciled and that they will, from their own point of view, see it as a form of coercion. Note that I am also leaving aside the possibility that dangerous and degrading jobs might be coupled with increased financial incentives or other material benefits.

Even if we reject the previous argument, note that Rawls simply mentions, in his account of decent hierarchical societies, that only members of certain groups can attain the highest positions of government. Clearly the latter idea is not fully reasonable from the perspective of a liberal polity. But the conceptual and practical gap between declaring ‘you cannot be prime minister unless you are part of group X’ and ‘if you are part of group X the only thing you can do is sweep floors’ is rather wide. These remarks should also shed some light on the fact that there are many ways of being ‘second-class citizens’. None of them are fully reasonable from a liberal point of view, but not all of them are necessarily fully unreasonable.

Allow me a word on the issue of ‘resentment’. Decent societies are described by Rawls as allowing the possibility of political dissent. In fact this is one of the features of the criteria of decency. Not only that, but public officials are required to take that dissent seriously and not to dismiss it as a sign of incompetence. This should start defusing the impression that decent ways of organizing political institutions are simply systems of oppression in which the voice of those who are oppressed is never even heard. Decent peoples are capable of moral learning and the dissent of their members is an important part of the internal dialectic of change and reform that is part of decent institutions (*LOP*: 66ff). In other words, as Stephen Macedo correctly argues, a decent society respects dissent and is transparent and capable of self-reform (2004: 1734–5). Furthermore, Rawls mentions that the common good conception of justice which structures decent hierarchical societies is legitimate in the eyes of the citizens of those societies, and that decent hierarchical peoples are well-ordered according to their common good conception of justice. The common good conception of justice ‘takes into account what it sees as the fundamental interests of everyone in society’ (*LOP*: 67). All these features entail that the law of the land is not simply experienced as a form of command backed by force and that there is, at least in a large majority of citizens, a form of identification between their views and the way in which the basic structure of their society is organized.

III.2 Conceding too much to decent ways of life?

Some critics (notably Charles Beitz, 2000; and Thomas Pogge, 1994) have maintained that *LOP* is skewed towards the needs of decent peoples. According to them, Rawls has artificially expanded the bounds of toleration in order to respond to global diversity. He has, allegedly, done so by limiting the extent to which liberal societies agree with each other. Why, the critics maintain, do liberal people not agree with each other on a much broader and deeper set of principles in the first original position of the Society of Peoples? Since they all share the main aspects of liberal democratic regimes, why don't they agree on establishing these features as principles of a law of peoples? If they did, decent societies would be excluded from *LOP*, since it would at least be extremely problematic for them to accept international principles of political organization that require domestic political institutions to match liberal standards. In short, the critics claim, the first original position is inclined towards minimalism to accommodate the results of the second original position.

In a now-famous essay on *LOP*, Thomas Pogge puts this point rather forcefully. It is worth quoting him at length:

[T]he law of peoples [Rawls] proposes is not what liberals would ideally want, but rather is affected by the existence of hierarchical societies. The alleged coincidence of the results of the two runs of the second session is then not luck, but design. It comes about because good liberals seek to accommodate hierarchical societies by adjusting their ideal of global justice ... This could explain their – otherwise incredible – decisions against certain human rights (precisely those most offensive to the hierarchicals) and against any egalitarian principle.

This picture is not at all that of a negotiated compromise in which the liberal delegates agree to surrender their egalitarian concerns and some human rights in exchange for the hierarchical delegates accepting the remainder ... The liberal delegates, informed that their societies share a world with many hierarchical societies, seek to design a law of peoples that hierarchical societies, on the basis of their values and interests as such, can reasonably accept. Yet, for all its nobility, the toleration model has a drawback ... It is rather one-sided. The hierarchicals, unencumbered by any principle of toleration, get their favorite law of peoples, while the liberals ... surrender their egalitarian concerns and some important human rights. (Pogge, 1994: 215–16)³⁸

³⁸ Note that Pogge's observations are based on Rawls' 1993 Amnesty Lecture. Since the 1999 version of the law of peoples does not change substantially on this point, I do not believe that the discussion of this matter is altered by the hiatus between the original critique and Rawls' final text.

III.3 Redundancy and the constituency of authority

I believe this kind of reasoning to have important flaws. The first thing to note is that there seems to be no real need to include all or most of the major features of a liberal democratic regime within the first original position in *LOP*. The basic reason for this is that the rights of liberal constitutional democracy are already guaranteed within the different domestic jurisdictions of liberal peoples (see also Freeman, 2007b: 276). In the first original position in *LOP*, representatives of peoples know that they are representatives of *liberal* peoples. Thus, they know that the main aspects of a liberal democratic regime are already part of their domestic basic structures. What would be the point of replicating that protection at the international level? At one extreme, one could also imagine liberal peoples also sharing many features of their schooling systems, traffic control systems and the laws that regulate the bequest of property, but clearly it would be strange to maintain that this would entail that these aspects of their systems of government should also be replicated in *LOP*. Pogge could retort that he is not mentioning all aspects of liberal governance, he is insisting on fundamental human rights and minimal liberal requirements of justice. But this does not capture the real point: if certain rights are already protected domestically, and if we assume that we are in an ideal theory where liberal societies are well-ordered according to their liberal conceptions of justice and face favourable conditions, what is the point of replicating the protection of something that is already secured?

I see only one reason for this type of ‘duplication’, and by looking at the rationale for it we will also be able to understand why perfect duplication is unlikely to be a good solution (or at the very least a costless one). The main reason for duplicating entitlements is that if more peoples are collectively responsible for the protection of basic liberal rights in the jurisdictions of all liberal peoples, then those rights will be, *ceteribus paribus*, more secure. If the violation of all relevant liberal rights (however this set is defined) is legally felt in all liberal peoples wherever it might happen, there will be a greater chance that those rights will be secured if conditions for its protection become less favourable within any given liberal polity.

This type of reasoning is not without its appeal, but I believe it does not come without costs. In order to see why, note first how much of Pogge’s reasoning is

premised on what looks like a neutral assumption. The assumption (A) is: If representatives of liberal peoples agree on the *domestic* justifiability of entitlement X then, *ceteribus paribus*, they will agree to incorporate X within the *international* principles of *LOP*. This type of assumption might, at a first glance, appear to be rather innocuous, but as I will show below this is far from the case.

When we discussed the coherence of the Rawlsian model of toleration in section II of this chapter, and especially Kok-Chor Tan's powerful attack on it, we stated that Tan's model of coherence did not correctly capture the analogy between *PL* and *LOP*. We saw that to simply suppose that if 'X is justifiable somewhere' then 'it will be justifiable anywhere else' was not a good way of proceeding. I also conjectured that this problem was the result of not fully digesting Rawls' choice of unit of analysis. Here I believe that Pogge, albeit in a rather different way, is making a similar mistake.

Looking at assumption A above, the emphasis on 'domestic' and 'international' should signal that there is a clear difference between the first part and the second part of the proposition. One might be tempted to observe that such difference lies mainly in the scope of the validity of entitlement X: it was once justifiable domestically (and severally within all liberal polities) and it is now justifiable internationally (and for all liberal peoples collectively). But note that the validity of a certain entitlement within different domains (here the domestic and the international) also has important consequences for its implementation. These changes are not simply pragmatic problems of application. The change in the scope of validity of an entitlement (in this case) also *alters the constituency of those who have legitimate authority* to monitor its implementation.

Note also how this is a peculiarity of the passage from domestic to international politics. When we move from national to supranational politics we transform a matter of domestic policy into a matter of international concern. In fact, this is precisely what was mentioned as the main rationale for duplicating the protection of liberal rights (in liberal basic structures and in *LOP*). Before delving more deeply into this matter let me say that the apparent neutrality of this passage from 'domestic' to 'international' is easily explainable if we look at what happens in a similar case using, this time, the traditional (domestic) model of the original position. Imagine that, much as in Rawls' own domestic theory, representatives of persons in the original position have to choose between two sets of entitlements

(for instance, one based on a version of the principle of average utility and one based on justice as fairness). The reasoning of the parties in the original position will be premised on the fact that their choice, whatever that might be, will not affect the constituency of those who will monitor the fact that domestic institutions comply with the choice made in the original position. And yet this is precisely what will happen if we shift the problem so that the parties, now representative of peoples, have to decide which set of (already domestically justified) entitlements they want to see as part of *LOP*.

Why is this a problem? Put simply, whenever a given entitlement becomes a matter of international concern, this signals that the self-determination of peoples is curtailed with respect to that entitlement. This statement should be qualified in two ways. First, the curtailment of the self-determination of peoples on some issues is not necessarily bad. In fact the Rawlsian conception of human rights, among other things, precisely serves the purpose of limiting the internal autonomy of peoples. (See section IV.2 below for a fuller discussion of this point.) Second, the curtailment of self-determination is a matter of degree. That something becomes an issue of international concern does not entail, in the case of a violation of the entitlement in question, that there would be direct coercion, military intervention or the imposition of sanctions. This will depend on the circumstances and the importance of the human interests that the entitlement is meant to protect.

Bearing in mind these two qualifications, I nonetheless believe that the basic rationale of the point I am making is clear. It is not enough to state that all liberal peoples separately might agree on certain basic principles in order to conclude that such principles would need to be part of a collective international law of peoples.

When doing so, the constituency of those who have legitimate authority to monitor the enforcement of the entitlement in question, will change dramatically. It is more plausible, in my view, instead to argue that the case for making said entitlement part of international law would depend on other considerations, such as the value of self-determination and the importance of the human interests protected by the entitlement. In turn, it is how we will decide to balance these values that will tell us what should form the letter of international law, not the fact that the entitlement in question is a shared feature of liberal institutions.

IV. The curious case of benevolent absolutisms

Rawls' critics are always, or almost always, preoccupied with how much *LOP* tolerates; Rawls' strategy on toleration, however, seems to be problematic for the opposite reason. In this section I want to explore Rawls' treatment of benevolent absolutisms. In *LOP* Rawls states that benevolent absolutisms cannot be members in good standing of the Society of Peoples (*LOP*: 4, 63). Benevolent absolutisms are not well-ordered because their citizens 'are denied a meaningful role in making political decisions' (*LOP*: 4). Now, clearly, given Rawls' account of decency and his outline of political participation in a decent society (see section I in this chapter), by definition benevolent absolutisms cannot be well-ordered. Yet the reason for this – what grounds Rawls' stipulation that political participation is so crucial in identifying those that are entitled to membership in the Society of Peoples – is not clear. *LOP* offers two answers to this question, one concerning the idea of foreign policy formation, the other the relevance of self-determination: the first is unconvincing and the second is underdeveloped.

I start by sketching out the first attempt to justify the exclusion of benevolent absolutisms from *LOP* based on the fact that they are unlikely to be able to follow its principles (call this the foreign policy reply). I show that this reply is unconvincing. According to Rawls, the main reason that benevolent absolutisms cannot be members of the Society of Peoples is that they do not have mechanisms for political participation, yet his remarks are at best cursory on this subject. Instead, I develop the link between self-determination and the idea of political participation at greater length and highlight a possible view of why, in a Rawlsian framework, benevolent absolutisms are plausibly excluded from the Society of Peoples. I note the conceptual gap between denying membership in the Society of Peoples and curtailing the sovereignty of certain political communities. In essence, benevolent absolutisms represent a puzzle for *LOP* because while they cannot be members in good standing of the Society of Peoples (as they are not well-ordered), neither can they be the object of sanctions (as they are not outlaw states). Benevolent absolutisms exist in a sort of limbo, and the task of the last

section of the chapter is to provide practical and principled guidance on how to navigate that ambivalence.

IV.1 Foreign policy

As we have seen in section III above, decent peoples are worthy of toleration because, crucially, they endorse the same conception of international right as liberal peoples. In other words, decent peoples are reasonable because they subscribe to the same structure of the Society of Peoples as do liberal peoples. The problem, then, is justifying so many restrictions on the internal organization of what can be classed as a well-ordered people. Or perhaps more accurately, why suppose that only decent peoples as Rawls describes them would be capable of honouring *LOP* in the same way that Rawls imagines liberal peoples would?

Some of the restrictions on the internal and collective organization of ‘would-be’ internationally reasonable peoples seem clearly warranted by the theory itself, simply by stipulation. For example, respect for human rights (albeit a minimal list of such rights) is required by the sixth principle of *LOP*. Thus, no society can violate basic human rights and accept *LOP*’s eight principles in full. Other restrictions are also plausibly demanded by Rawls’ distinction between social cooperation and command by force. One could argue that, even controlling for different historically-situated political traditions, we can make a judgment on whether a regime of social norms is possible simply out of threat of force or active manipulation of its citizens or whether it stands because it is a genuine form of social cooperation. However, on neither count do we have evidence that benevolent absolutisms cannot be in line with the prescriptions of *LOP*. Benevolent absolutisms, by definition, respect human rights, and while Rawls tells us that their members have no meaningful political role we simply have no reason to believe that their system of cooperation is one of command by force. There seems to be no reason why benevolent absolutisms cannot respect the eight principles of *LOP*.

A more promising possibility is that benevolent absolutisms are not peaceful. Rawls does not tell us as much, but his description of well-ordered peoples as ‘satisfied peoples’ and his peculiar interpretation of the democratic peace theory might partially signal this conclusion. I say ‘partially’ for the simple reason that

Rawls' interpretation of democratic peace, whatever its merits, can only establish that certain peoples are likely to be consistently peaceful in their relations; it does not establish the negative relationship between non well-ordered institutions and aggressive behaviour in foreign policy. At best, what Rawls could say is that, given his account of satisfied peoples and the link between being well-ordered and being externally non-aggressive, being a well-ordered people (rather than a benevolent absolutism) offers greater guarantees of peacefulness.

So, what are the bases of Rawls' view of foreign policy formation? In the *Society of Peoples*, peoples as corporate agents do not have a conception of the good to further. But Rawls' *LOP* does provide a fuller account of the types of interests that peoples do have, and, as we have briefly seen in the introduction and in chapter 3, it is a central feature of *LOP* since it is the basis of Rawls' understanding of the idea of peace in international society. According to Rawls, liberal peoples are different from states. While states are simply guided by what they perceive as their rational interests, liberal peoples have a moral nature and they set limits to what their interests can legitimately be. In Rawls' words, 'just liberal peoples limit their basic interests as required by the reasonable ... 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' (*LOP*: 29). Given their reasonable interests, peoples do not want more power, territory, wealth or glory. According to Wenar and Milanovic,

Rawls asserts that the limited interests of a liberal people makes it unwilling to engage in adventures abroad, and that the internal political structure of a liberal people generates only these specific interests. Rawls' explanation of why this internal political structure generates only non-aggressive interests centers on three features of a liberal people. First, a liberal people will have a commercial character; second, a liberal people will be indifferent to economic growth; and third, a liberal people will tolerate religious diversity.

(Wenar and Milnaovic, 2009: 469)

More controversially, Rawls also extends this analysis to decent peoples and claims that even decent peoples are part of what he calls 'satisfied peoples'. As Wenar and Milanovic point out, this extension of the democratic peace hypothesis to nondemocratic but decent peoples is problematic (2010a). At the very least, one will have to recognize that the empirical support for Doyle's (2005) and Russett's (1993) work is based on the idea that mature democracies are not aggressive

towards each other, and does not take into consideration the possibility that even nondemocratic but decent peoples can behave in the same way. Yet even if we were to accept Rawls' extension of the democratic peace hypothesis, the very features of well-ordered peoples that Rawls mentions as the basis for their being 'satisfied peoples' (that is, their indifference to economic growth, their tolerance and their commercial character) are plausibly extended to benevolent absolutisms. There seems to be no principled reason to state that benevolent absolutisms cannot share these three features. Rawls' definition only signals that they respect human rights but do not allow political participation, and is silent on their attitudes towards growth, commerce and religious diversity. True, Rawls could claim that neither does the conceptual category of benevolent absolutisms define them as possessing those features either. But this would merely be a way of defining away our concerns: unless there are principled reasons not to define benevolent absolutisms as 'satisfied' why suppose that they are not?

IV.2 Self-determination

Thus far, I have examined Rawls' approach to toleration mainly for the purpose of defending it from some of the critical attention it has received from cosmopolitan thinkers. Time and again I have noted how Rawls' view of toleration is based on the idea that the constituency of international reasonableness is decided upon by looking at those who are able to follow the eight principles of *LOP* for the right reasons. But, while the focus on the allegiance to the principles of *LOP* is clearly crucial for understanding the scope of toleration, this strategy runs the risk of obscuring part of the Rawlsian conceptual strategy. The main reason is that while the scope of toleration can be determined by looking at those peoples who are able to endorse *LOP*, this view does not tell us why the principles of *LOP* are what they are. In other words, I have emphasized how the scope of toleration is co-extensive to an international overlapping consensus on principles of justice, but, again following Rawls' general framework in *PL*, I have remained silent on how the principles of international justice themselves are developed. In terms of ideas of justification, then, we can say that the chapter, so far, has concentrated on the issue of public justification but has not delved into the issue of pro-tanto justification (see *PL*: 389). Yet, it is precisely by looking at how Rawls constructs

his eight principles of *LOP* and by developing the link between that elaboration and the idea of self-determination that we will be able to discover a rationale for Rawls' treatment of benevolent absolutisms.

In general when we speak of self-determination we normally refer to what can be called, following Cassese (1995), external self-determination. The idea of external self-determination refers to the degree of political autonomy that a given group can exercise in relation to other entities and groups. Within the concept of external self-determination itself a further distinction should be made between 'the establishment of' and 'the on-going protection of' external self-determination (see Cassese, 1995: 52–5; see also Buchanan, 2004: 332ff); the first refers to the attempt of a group to become self-determining while the second refers to the entitlement of an already self-determining group to stay so (for example when confronted with external pressures or threats). The standard normative questions linked to external self-determination mainly pertain to two domains: a) the nature of the groups that are entitled to self-determination (nations? tribes? ethnic groups?); and b) the type of political/institutional requirements necessary to protect a group's right to self-determination³⁹ (statehood? a measure of political autonomy?).⁴⁰ Internal self-determination, on the other hand, pertains to the way in which a group is governed, and is mainly discussed in connection with the relationship of a whole people to its government; but this should not obfuscate the fact that the idea of internal self-determination is also relevant when it comes to: a) the rights of religious or ethnic minorities; b) the rights of ethnic groups; c) the rights of linguistic minorities; d) the rights of indigenous populations; and e) the rights of national minorities within federal states (see Cassese, 1995: 102).

In *LOP* Rawls does not tackle the question of the establishment of self-determination. Instead he seems to assume that all peoples, in ideal theory at least,

³⁹ So for instance Allen Buchanan states that 'self-determination (or autonomy) implies an independent domain of political control. But this characterization leaves open (1) the nature of the domain of independent control (what sorts of activities and institutions the group exerts control over in its own right), (2) the extent of its control over items in the domain (which may vary from item to item), and (3) the particular political institutions by which the group exercises political control over its domain of control' (Buchanan, 2004: 333).

⁴⁰ One of the most popular discussions in the field of international ethics concerns the idea of (external) national self-determination (see Miller, 1995; Tamir, 1993). But note how the idea of national self-determination is only a sub-category of the debates concerning which groups are entitled to self-determination, and that even among those who believe that national groups are entitled to external self-determination, not all consider the most appropriate means of achieving it to be statehood (see for example Tamir, 1993).

are already self-determining and want to preserve their freedom and independence. In this respect, Rawls' view is in line with international law. In fact the latter is rather timid when it comes to the *establishment* of external self-determination as such establishment is closely linked to a people's right to secede. Public international law only recognizes colonial peoples, or peoples who are victims of unjust military occupation, as having a legal right to form a separate self-ruling political unit (see Cassese, 1995: 37ff; Buchanan, 2004: 333–4). On the other hand, international law is more forthcoming when it comes to the ongoing aspect of self-determination. According to Cassese, Article 1 of the UN Covenant on Economic, Social and Cultural Rights and of the UN Covenant on Civil and Political Rights⁴¹ 'requires that a State's domestic political institutions must be free from outside interference ... and reinforce[s] the duty incumbent on every state under customary international law to respect every other state's political independence and territorial integrity' (Cassese, 1995: 55). This is in line with the first principle of *LOP* which states that 'Peoples are free and independent, and their freedom and independence are to be respected by other peoples' (*LOP*: 37).

Less evident is Rawls' position on internal self-determination. More precisely, while Rawls does have a relatively clear view on the importance of internal self-determination, the link between the two aspects of self-determination (internal and external) are not explicitly stated. Given Rawls' account of liberal and decent peoples, we know that a measure of collective self-rule is a necessary condition of being well-ordered and thus of membership in the Society of Peoples. But Rawls does not fully state the reason for it being necessary, or how it is connected to the idea of external self-determination. In what follows I want to show that this missing link can be found by interpreting the letter of international law.

Article 1 of the of the UN Covenant on Economic, Social and Cultural Rights and of the UN Covenant on Civil and Political Rights (see note 41 for the wording of the article) does not refer to external self-determination, but rather to internal self-determination. Following Cassese, we can state that 'the primary significance of the provision [of Article 1] is that the people choose their legislators and political leaders free from any manipulation or undue influence from the *domestic*

⁴¹ The article reads as follows: 'All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.'

authorities themselves’, and that Article 1 has been ‘a major impetus to self-determination’s development into a legal principle encompassing the *internal* decision-making process [of a political community]’ (Cassese, 1995: 53–4, emphases in original). The idea of external self-determination is only a secondary and derivative aspect of Article 1. It is only insofar as the people can have a meaningful role in the process of collective self-rule that their freedom and independence from external constraints becomes important. In other words it is not implausible to claim that *a plausible interpretation of the global public political culture holds that a premise for the enjoyment of external self-determination is internal self-determination.*

If that is the case, Rawls’ position can be restated more clearly and more explicitly to maintain that the idea of the political participation of the people in domestic affairs is a premise of the said people’s freedom and independence from external constraints. In Stephen Macedo’s words, ‘we ought to respect the right to collective self-rule, so long as the people – all of them – are collectively ruling over themselves’ (Macedo, 2004: 1735). In short, *LOP* assumes that all well-ordered peoples provide for meaningful political participation to their citizens (even if not necessarily democratic political participation), and states that well-ordered peoples would subscribe to a conception of international right that sees them as free and independent. Thus, a plausible interpretation of the letter of international law and of the global public political culture provides the connection between the two aspects.

In maintaining that external self-determination is premised on internal self-determination, it elucidates the reasons for the exclusion of benevolent absolutisms from the constituency of toleration. The constituency of toleration in *LOP* is based on the overlapping consensus of well-ordered peoples on the eight principles of *LOP*. But crucially, this overlapping consensus is only meaningful if it is itself based on the idea that those who participate in the consensus are internally allowing some measure of collective self-rule. In sum, the rationale for excluding benevolent absolutisms from the Society of Peoples is as follows:

- a) Rawls’ method for developing an international conception of right is based on his interpretation of the global public political culture (see chapters 2 and 3);

- b) all of the elements of the eight principles of *LOP* (such as the role of human rights and the idea of limited sovereignty) are the result of an interpretation of the evolution of public international law in the twentieth century;
- c) also part of Rawls' interpretation is the idea that peoples should be externally self-determining (here the reference is to 'ongoing' external self-determination);
- d) however, Rawls does not fully explore the link between internal and external self-determination;
- e) a plausible interpretation of the global public political culture, and one in line with public international law, sees the claim to external self-determination as premised on the achievement of internal self-determination;
- f) it follows from (e) that when Rawls maintains that peoples are 'free and independent' he should (and perhaps implicitly does) maintain that their freedom and independence is premised on their being internally self-determining;
- g) internal self-determination requires a system of collective self-rule (even if not necessarily a democratic one; see Cohen, 2010a);
- h) benevolent absolutisms, by definition, do not possess such system and so cannot be internally self-determining;
- i) thus, benevolent absolutisms cannot be part of the Society of Peoples.

IV.3 How to deal with benevolent absolutisms

In the previous two sections I have explored the rationale for excluding benevolent absolutisms from the Society of Peoples. I have maintained that, since in international law the idea of external self-determination is premised on the achievement of a measure of internal self-determination, peoples which fail to allow for that collective self-rule cannot enjoy the 'freedom and independence' to which *LOP* refers. Nonetheless, the fact that benevolent absolutisms are not within the scope of international toleration is not enough to understand how well-ordered peoples are to relate to them. Rawls' conception of toleration is based on the idea that those included in the international overlapping consensus on the eight

principles of *LOP* are to respect each other as equals and that they are all members in good standing of the Society of Peoples (see section I). However, to deny membership of the Society of Peoples is simply to deny a measure of respect, not to conclude that either sanctions or general political pressure should apply. Being well-ordered defines the constituency to which the principles of *LOP* are addressed, not how we are to deal with those who are not part of it. The only instance in which *LOP* allows (explicitly) for pressure and intervention, is in the case of outlaw states. But, outlaw states, as defined by Rawls, violate human rights and are externally aggressive. Rawls' discussion of limited sovereignty (*LOP*: 25–7) never mentions the idea of political participation as a genuine reason for outside intervention, and the same is true of his brief remarks on the limited nature of 'the freedom and independence' of peoples (see *LOP*: 38). Benevolent absolutisms instead are not aggressive in their foreign policy and, by definition, they respect human rights. In fact, Rawls goes as far as telling us that they too are entitled to wage war in self-defence since any 'society that is nonaggressive and that honours human rights has the right of self-defence' (*LOP*: 92).

We are therefore faced with the following conundrum:

- a) benevolent absolutisms are not internally collectively self-ruling;
- b) hence, they are not internally self-determining;
- c) hence, they are not entitled to membership in the Society of Peoples (see above for the link between (a) and (b));
- d) however, they are nonaggressive and respect human rights;
- e) they are therefore entitled to be sovereign over their territory and to wage war in self-defence;
- f) it follows that benevolent absolutisms are not members of the Society of Peoples but that they are entitled to be sovereign, and so cannot be the object of sanctions or political pressures.

So, how are we to deal with benevolent absolutisms within the framework of *LOP*? For guidance on how to proceed it is important to note that the long-term objective of the Rawlsian framework is for all peoples to become members in good standing of the Society of Peoples. For Rawls, the great evils of human history are political in nature. Allegiance to the eight principles of *LOP* is the best we can hope for to banish those evils and make the world a just and peaceful place. Even Rawls' discussion of nonideal theory is premised on this idea of

progressively enlarging the constituency of the Society of Peoples (this is also discussed in the next chapter where I address the problem posed by burdened societies). In dealing with benevolent absolutisms, therefore, the long-term objective of *LOP* would seem to be to allow them to make a transition to the status of well-ordered peoples.

As we have seen above, a defining aspect of the internal political life of benevolent absolutisms is that they do not allow their citizens to participate in the political process. An important aspect of how well-ordered peoples are to deal with benevolent absolutisms, then, is whether political dissent within a benevolent absolutism is either present or absent.

Let us assume that political dissent is absent: the citizens of a benevolent absolutism are simply happy with (or not unhappy enough to protest against) their rulers. In this case, I believe the wisest way to deal with benevolent absolutisms is to *provide incentives* to become well-ordered. There are three distinct issues regarding incentives: a) their source or origin (who provides the incentives?); b) their content (what is it they offer?); and c) their goal (what is the hoped-for result of the incentive mechanism?). (See also Grant, 2011, for a book-length treatment of the morality of incentives.)

In the incentive model I am developing, I take for granted that the long-term goal is for benevolent absolutisms to become well-ordered. A further distinction between two different scenarios is required. In the first scenario, liberal or decent peoples provide incentives to a benevolent absolutism separately or bilaterally. The incentives can thus be targeted to develop the types of institutions that the 'source' country most prefers. For example, it would seem permissible that bilateral help from a liberal people could come on condition of the development of democratic procedures. While the goal is always to transform benevolent absolutisms into well-ordered peoples, there are many types of institutional framework that satisfy that condition, and becoming liberal and democratic certainly represents one. Of course, the same would hold if decent peoples provided incentives to a benevolent absolutism to develop a consultation procedure modelled on their common good conception of justice. In the second scenario, if the incentives are the result of collective agreement on the part of the entire Society of well-ordered Peoples, then the incentive model should remain open to the types of institutions that can be developed by the benevolent

absolutism. To require that it becomes liberal, for example, would imply that the Society of Peoples considers decent institutions as secondary to liberal ones, and that would clearly be a form of lack of respect towards decent peoples.⁴²

While the goal of the incentive model should remain within the bounds of the long-term goal of *LOP*, the content of the incentives is rather open (with the possible exception of the involvement of military equipment, given its potential to affect the future repression of political dissent). Well-ordered peoples (or specific liberal or decent peoples) can offer economic help. But, more importantly, they are also entitled, in my view, to offer military agreements for the protection of benevolent absolutisms from outlaw states. Some may comment that it seems strange to fight for an institutional system in which one does not believe and that does not even match the criteria of toleration provided by *LOP*. In that case, well-ordered peoples would have to choose between the lesser of two evils. No doubt that might be a tragic choice: sending its citizens to fight and die for absolutist institutions would clearly be a decision that is hard to swallow, especially for a democratic regime. Yet in defending benevolent absolutisms from outlaw states, liberal and decent peoples are defending institutions that at least do respect basic human rights, and are making it more likely that the Society of Peoples will have to deal with fewer evil and aggressive regimes in the future.

What if the members of a benevolent absolutism are regularly protesting against their rulers, showing that political dissent is widespread? Here we need to distinguish two different situations, or more precisely, two ways in which the government of a benevolent absolutism can react to the presence of political dissent. In the first case, the government represses dissent with force. If the repression is violent, then the basic rights of the citizens are violated and a benevolent absolutism becomes an outlaw state and deserving of appropriate treatment. Here the incentive model is inapplicable. In the second case, where the repression is mild, or not bloody, or where the government simply ignores the

⁴² Some might claim that incentives might lead to ‘bitterness and resentment’, to paraphrase Rawls. That might very well be the case when incentives are provided to well-ordered peoples. And yet the situation of benevolent absolutisms is markedly different as their government does not really represent its people. True, members of a benevolent absolutism’s government might feel some resentment and bitterness, but that resentment and that bitterness cannot be deep and widely diffused as they might very well be if incentives were offered to a well-ordered people since they are not incentives to alter a system of collective self-rule but rather to create one in the first place.

protesters, then well-ordered peoples cannot directly interfere with the internal political life of a benevolent absolutism as the latter can still claim its sovereign status. This does not entail that well-ordered peoples cannot offer (non-military) help to the protesters (for instance, by acting as their speakers on the world stage and in international organizations). In this case, an incentive model can be employed: well-ordered peoples can put in place a system of diplomatic pressure mixed with positive incentives (such as the ones briefly discussed above) in case the internal situation of the benevolent absolutism was to change.

Conclusion

In this chapter I have defended Rawls' conception of toleration against some of its liberal cosmopolitan critics. I have shown that the many alleged inconsistencies of *LOP*'s idea of toleration are only apparent. Once one takes seriously the content and method adopted by Rawls in *PL*, one can more readily appreciate the coherence of Rawls' extension of toleration from domestic to international politics. I have also defended Rawls against the charges of permitting oppression and unduly constraining the scope of the agreement between liberal peoples. In the final section I have tried to refine Rawls' strategy concerning the exclusion of one type of society: benevolent absolutism. I have further developed the rationale for excluding them from the constituency of toleration and also tried to resolve the practical puzzle that well-ordered peoples face when dealing with a political community not worthy of respect, yet sovereign.

CHAPTER 5

Rawls' Duty of Assistance: A Defence and Re-elaboration

In the previous four chapters I have presented a sympathetic interpretation of Rawls' law of peoples. I have, time and again, insisted on its continuity with the framework Rawls developed in his domestic political philosophy and with the main liberal idea of respect for persons and of the justification of social and political arrangements to all. I have explained why Rawls is not a global egalitarian, yet can still be considered a cosmopolitan thinker, since the very nature of the international order he imagines is the only one that it is possible to justify to all. I have also maintained that his account of international toleration is not incoherent or indefensible. In this chapter I analyse Rawls' duty of assistance (DOA), which is the core of his project of international economic justice.⁴³ As I have shown, while there is every reason to believe that Rawls was correct in not extending his egalitarianism beyond borders, that fact, by itself, does not guarantee that his position on international economic justice is sustainable. Only a more detailed exposition of the merits (and faults) of the DOA can support the claim that *LOP* provides a sound understanding of our economic duties at the international level.

While this chapter does not necessarily insist on the coherence of Rawls' work, assuming such coherence does have an important impact on how I approach the DOA itself. Accepting that Rawls should not have extended the difference principle to international politics helps us to remove from our conceptual horizon the idea that *LOP* should have simply 'done more' when it comes to international distributive justice. This is important, I will argue, because it is precisely this attitude towards Rawls' treatment of international distributive obligations that has

⁴³ As we will see, the DOA (that is, its content and interpretation) does not really share much with the idea of economic justice per se, at least if the latter is understood to require or concentrate on the transfer of resources. The DOA is, in this respect, a very political duty, focused as it is on the character of institutions. I retain the terminology of international economic justice in order to not lose contact with the debates that have surrounded *LOP* on this specific point.

prevented many commentators, sympathetic and not, from seeing what is really problematic about the DOA.

Looking at the literature on distributive justice in *LOP*, even in this respect Rawls' work did not initially receive a warm welcome. Many have been baffled by Rawls' dubious empirical generalizations concerning the wealth of nations and the sources of their prosperity (Beitz, 2000). Others have been disappointed by the idea that issues of distributive justice at the international level were replaced by Rawls with issues of assistance (Pogge, 2004). If justice is the first virtue of social, political and economic institutions, and since there are many such institutions at the international level, then surely we should apply our ideas concerning distributive justice beyond the state (Buchanan, 2000). While the latter has been the predominant critical reaction for a long time, it is also fair to say that more recently a more robust and sympathetic response to Rawls' work has appeared. Some have argued that Rawls' ideas have to be interpreted at the appropriate conceptual level: they concern ideal theory, not the world as we see it (Reidy, 2004; idem., 2007; Freeman, 2007b). Others have tried to explain that if we take the idea of a just law of peoples seriously and if we understand how peoples and their interests are constructed, then a preoccupation with wealth is not really a priority in *LOP* (Wenar, 2006; see also chapter 3).

Although I tend to sympathize with more 'favourable' critical reactions, I still believe that there are important problems with Rawls' treatment of international economic assistance – yet I find most of the traditional arguments against Rawls to be less than convincing. Their general tone is overwhelmingly based on the idea that *LOP*, for one reason or the other, does not seem to do 'enough'. It does not provide a rich enough sense of the international or global obligations of justice that peoples have toward each other. The DOA is not a duty of justice but should be one;⁴⁴ the DOA attributes to the poor responsibility for their own fate, not, as it

⁴⁴ This issue in particular is less conceptually clear than some have assumed. In general there is a tendency to believe that the main difference between justice and assistance is the degree to which a principle is binding. Given that the DOA is part of the eight principles of *LOP* and that all principles are equally binding, the application of the 'degree of bindingness' distinction is not particularly helpful. One could also comment that since the eight principles themselves are a conception of justice for the Society of Peoples, then as the DOA is one of these principles it must ipso facto be a principle of justice. That is true but it does not clarify the distinction between a principle of justice and a principle of assistance. Perhaps the best conceptual distinction is the one provided by Valentini (2011a) claiming that principles of assistance, among other things, already

should, the world order; the DOA does not cater to the many and unjust inequalities that plague the world. The default opinion, if one wishes to criticize Rawls, seems to be that he is not doing or asking his theory to do as much as it should. More than finding these allegations unconvincing, I find them strikingly off the mark. The DOA might not solve all the difficulties of international distributive justice, but if it has a real problem it is that it asks too much of those who have to perform it, not too little.

The striking nature of this problem is evident if we look at *LOP* from a slightly ‘higher’ vantage point. Rawls’ critics basically complain that he often depicts a world in which all peoples are responsible for their choices and the outcomes of such choices. He also maintains that some societies, given their social and political culture, are unable to become responsible for their fates. This might appear a suspicious picture, one in which the poor are poor because of their ill-judgment, and the rich are only there to assist them, not to give them what they are owed. But this is simply a mistaken view, and for many reasons. Perhaps the most fatal problem with this type of view is that it fails to make a simple connection. If the sources of how a society fares are domestic social and political institutions, and if we have a duty to help all societies to become well-ordered and responsible for their choices (as Rawls thinks we have), then, surely, what we have a duty to do is quite extraordinary: we have a duty to change, or vigorously shape, the social and political institutions of all societies burdened by unfavourable conditions. Very few cosmopolitan proposals ask so much of those who are lucky enough to live in a well-ordered society, and there are good reasons to believe that it would mean, in fact, asking too much.

This is, in my view, the most important problem the DOA has to face, but the fact that such problem exists does not mean that no sympathetic solution is available within the Rawlsian framework. In fact, I believe there is such a solution, although it requires a partial reframing of the way in which we conceive of the DOA. It calls for greater concentration on human rights and a more incentive-based solution to the problem of developing well-ordered institutions.

presuppose a system of just entitlements. That is probably true for *LOP*, as it is based on the prior legitimacy of peoples and their control over the territories and natural resources that they occupy. The legitimacy of peoples has been the object of discussion in chapter 3 of this thesis.

I rehearse Rawls understanding of the DOA, its meaning, context and purpose, in section I. This will serve as a background for the rest of the chapter. In section II I examine some of the main critical arguments against Rawls' DOA, and find them all wanting. In section III I explain what is in my view the real and relatively unexplored challenge posed by the DOA, and in section IV, I put forward a possible solution to it.⁴⁵

I. Distributive justice (or lack thereof) in *LOP*

As we have seen in the introduction *LOP* puts forward a duty of assistance (DOA) as the best proposed solution to problems of poverty and inequality in the world.⁴⁶ In order to understand why, we need to begin by setting Rawls' reasoning in the broader theoretical framework he adopts in his domestic and international theories.

In *LOP*, just as in *TJ*, there is a crucial distinction between what Rawls calls ideal and nonideal theory. In short, ideal theory deals with cases in which we can believe that the two following assumptions hold: a) full compliance with the normative principles that regulate the domain under consideration; and b) favourable conditions for the fulfilment of the obligations that are given by the relevant normative principles. In *LOP*, the DOA is essentially a principle that

⁴⁵ As a final comment let me state that I will not take up in any detail the issue of what justifies the DOA, i.e. its presence among the eight principles of *LOP*. The debate concerning this issue has been recently developed by, Reidy (2007), Armstrong (2009) and Williams (2011). In general the literature seems to recognize that the DOA is the result of an assurance problem based on the possibility that a well-ordered people might become a burdened society through no fault of its own (for example, as the result of a natural catastrophe). Of course, as Williams rightly notes, this would be a less than satisfactory explanation for those societies that have always been burdened. In contrast, Reidy's reply to this worry seems to consist in denying that we can empirically attribute full responsibility to a people for being burdened given the complexity of historical circumstances in the nonideal world that would pre-exist the establishment of a just law of peoples (for example, colonialism and wars of conquest shift responsibilities, but how much, and for how long? And so on).

⁴⁶ Two things need to be clarified here. First, strictly speaking the DOA does not address inequality since the latter does not pose particular problems for Rawls (see chapter 3). Second, the DOA is not aimed at reducing poverty directly, but it might contingently do so as it tries to provide support to societies who lack the appropriate institutional cultures to become well-ordered.

operates once one of the two assumptions of ideal theory breaks down.⁴⁷ This is a primary and crucial distinction between a principle of distributive justice and what the DOA's role is meant to be. In general, at least from the perspective of justice as fairness, principles of distributive justice operate in ideal theory, that is, when both favourable conditions and full compliance apply. In other words distributive principles are not thought of as forms of redress for existing circumstances in the world as we see it, but operate in the world as it would be if it were structured according to the appropriate normative principles of the domain we are examining. Instead, the DOA, in Rawls' eyes, operates in nonideal theory. More precisely, in *LOP* Rawls proposes a duty of assistance in order to remedy the breakdown of the second condition of ideal theory, namely favourable conditions (*LOP*: 101).

The parallel with the first case of nonideal theory, non-compliance, is instructive here. According to Rawls, 'certain regimes refuse to comply with a reasonable Law of Peoples; these regimes think a sufficient reason to engage in war is that war advances, or might advance, the regime's rational (not reasonable) interests' (*LOP*: 90). Rawls calls these regimes outlaw states. Two issues are of importance: why such regimes are unwilling to respect *LOP*, and what the goal of *LOP* is in sanctioning their behaviour. For Rawls, the origin of the foreign policy behaviour of a people is strictly domestic. Rawls' *LOP* goes from the inside out, so to speak. Thus, in Rawls' eyes the best way of understanding and explaining outlaw states is to examine their internal political life and see that 'their fault [lies] in their political traditions and institutions of law, property and class structure, with their sustaining religious and moral beliefs and underlying culture. It is these things that shape a society's political will; and they are the elements that must change before a society can support a reasonable Law of Peoples' (*LOP*: 106). On the other hand, the goal of *LOP*, when dealing with non-compliance, is simply to

⁴⁷ Note that there is a distinction to be made between what we can call 'general' and 'local' nonideal circumstances. The idea of 'unfavourable conditions' can be applied, in other words, to the Society of Peoples at large, or to burdened societies individually. The first case would be a case of general nonideal theory while the second is a case of local nonideal theory. Rawls directly takes up the issue of local nonideal theory since if the Society of Peoples had to deal with unfavourable conditions for all its members it would be harder to imagine any principle of assistance towards burdened societies: the DOA probably presupposes some form of Society of Peoples is already functioning. Of course this does not mean that in the real world we are not in fact facing some form of general nonideal scenario.

make the world a place in which ‘all peoples accept and follow the (ideal of the) law of Peoples’ (*LOP*: 89).

These two elements of nonideal theory – its origins, and what we should do about it – are accordingly shifted in the case of unfavourable conditions. According to Rawls, ‘[b]urdened societies, while they are not expansive or aggressive, lack the political cultural traditions, the human capital and know-how, and often, the material and technological resources to be well-ordered’ (*LOP*: 106). Just as in the first case of nonideal theory, ‘[t]he long-term goal of (relatively) well-ordered societies should be to bring burdened societies, like outlaw states, into the Society of Peoples’ (*LOP*: 106). But as Rawls tells us, the fact that well-ordered peoples have a duty of assistance does not entail that the best way to carry out such duty is to establish principles of distributive justice. Most such principles, in Rawls’ view, do not have a definite goal, and they operate without any substantial aim in mind (*LOP*: 106). The DOA, instead, is expressly thought of as a response to a concrete problem, namely to bring back burdened societies within the parameters of *LOP*, and hence it is natural to believe that once such objective is achieved, the DOA is fulfilled.

A further feature that we should recall, and that is clearly relevant for our discussion, is that of avoiding assuming that burdened societies ‘equals’ poor societies. Rawls’ classification of peoples is always political in nature and depends on their internal structure and their foreign policy, not on their level of affluence. The same holds for well-ordered peoples: liberal and decent peoples are not defined or understood by their aggregate or per-capita income and wealth, but by the nature of their institutions. The DOA is not a duty to assist the poor (although it might contingently do so); it is a duty to assist those societies that are incapable of being well-ordered, either as a liberal or decent people, and which consequently might be unable (given unfavourable conditions) to follow the precepts of a reasonable law of peoples.

The aim or goal of the DOA is even more clearly stated by Rawls when he contrasts his view with what he calls cosmopolitan views. According to Rawls the ‘final political end of society is to become fully just and stable for the right reasons. Once that end is reached, the Law of Peoples prescribes no further target such as, for example, to raise the standard of living beyond what is necessary to sustain those institutions’ (*LOP*: 119). *LOP* is not concerned with the material

well-being of individuals but with the justice of the societies of which they are members. The DOA is not a principle to improve the lot of those who fare worst in the world (although contingently it might achieve just that); it is a principle that aims at guaranteeing to all persons life in a well-ordered people, and to all peoples that the world in which they live will be one where all political communities adopt a reasonable law of peoples.

Rawls also discusses some of the cosmopolitan alternatives to his view in paragraphs 16.2 and 16.3 (*LOP*: 115–20). Rawls contrasts his *LOP* with Beitz's two principles of global justice – a global principle concerning the redistribution of natural resources, and a global distributive principle modelled on the difference principle (*LOP*: 116–17) – and with Pogge's General Resource Dividend (*LOP*: 119). As a reply to Beitz's principle concerning natural resources Rawls reiterates his general idea of the sources of development (both political and economic) by stating that 'the crucial element in how a country fares is its political culture and ... not the level of its resources' (*LOP*: 119). According to Rawls, then, the unequal distribution of natural resources has no clear bearing on his discussion of mutual obligations between peoples. As a reply to Pogge's principle Rawls basically maintains that if it has a target – that is, if it is linked with the satisfaction of persons' basic needs and human rights – then the difference between the GRD and the DOA might be limited. There might be disagreement on how to set the target but, as Rawls states, 'surely there is a point at which a people's basic needs (estimated in primary goods) are fulfilled and a people can stand on its own' (*LOP*: 119).

Rawls' reply to Beitz's second principle of global distributive justice is much more controversial. Rawls states that Beitz's principle might seem an attractive solution provided we take as a reference the world as we see it, plagued as it is by many injustices. However, as was made clear early on, principles of distributive justice, for Rawls, are meant to apply in ideal theory, or, to put it differently, without any form of target. Therefore for Rawls the real question is whether, in *LOP*, once all peoples are well-ordered and there are no more burdened societies, we can still look favourably on the consequences of applying a principle of global distributive justice between peoples. In Rawls' eyes, this situation 'gives what we would, I think, regard as unacceptable results' (*LOP*: 117).

Why so? As we have seen, Rawls takes for granted that the sources of economic and political development are domestic. But in stating his reply to Beitz's second global distributive principle Rawls also lays out what in his view follows from that assumption. Rawls proposes two comparisons. The first is between a society that decides to industrialize and increase its real rate of savings, while the second decides to opt for a more leisurely and pastoral way of life. In the second comparison, two societies with equal (and adequate) protection for women's rights decide to opt for different population growth policies. In both cases, Rawls assumes that the societies he mentions are either liberal or well-ordered, and that the relevant starting positions are equal. In both cases, ex hypothesi, levels of wealth will vary between the two societies compared. However, according to Rawls it would be unfair not to hold peoples with liberal or decent structures responsible for their collective choices. And yet, this is exactly what would be implied by a global distributive principle without a target. In Rawls' view, Beitz's second principle is unacceptable because it fails to make room for peoples' responsibility for their level of well-being once we can grant that their institutions are either liberal or decent.

II. Debating the DOA

It is fair to say that, as mentioned above, Rawls' remarks on distributive justice in *LOP* have not been terribly well received. Here I want to examine some of the arguments that Rawls' critics have made. My provisional conclusion is that they do not really address the core of *LOP*'s structure. The critics assume that Rawls is imagining a 'vanished Westphalian order' (Buchanan, 2000), but Rawls' argument should be placed at the level of ideal theory, not the world as we see it (see also Reidy, 2004; idem., 2007; Freeman, 2007b). Rawls' critics assume that he entertains the implausible empirical thesis that the sources of economic growth are wholly domestic. Yet Rawls is ambivalent about such argument, and furthermore, given the purpose of the DOA, it is not relevant: what is crucial is the more modest conviction that initial endowments of economic resources are not important to become well-ordered. Rawls' critics complain that *LOP* omits

addressing many injustices perpetrated by the current world order. But the only thing that the latter omission shows is that *LOP* should be extended. Rawls' critics say that he attributes collective responsibility to nondemocratic peoples, but they fail to provide a credible model of collective responsibility that shows we should not do so.

II.1 Two empirical problems

Perhaps the most common form of critical response to Rawls' treatment of distributive justice is that the empirical assumptions needed to support his theory are far from solid (see Buchanan, 2000). Two empirical assumptions stand out in Rawls' account. The first concerns what is central about a people's level of wealth and development. As we have seen above, Rawls seems to rely on the idea that the latter can be almost entirely explained via the structure of their internal institutions. The second empirical assumption upon which Rawls' theory is (allegedly) based, and one that seems to be in line with his first, is that peoples are relatively in control of their economic fate and can thus be considered responsible for how they fare. According to Allen Buchanan, this amounts to stating that Rawls considers peoples to be both economically self-sufficient and distributionally autonomous (2000: 701). Rawls seems to project a vision of the world in which all peoples are fully in control of their future. Taken at face value these are quite extraordinary ideas. Firstly, there is still no consensus among economists and social scientists on which are the real causes of economic growth and development (see Rodrik, 2008; Acemoglu and Robinson, 2012: 45ff). Secondly, as many have pointed out, the relative autonomy of peoples in the world as we see it sounds more like a cruel joke than a plausible reconstruction of existing international economic integration (see Pogge, 2002).

II.2 The ideal theory scenario

These arguments are not persuasive. First, they seem not to appreciate the shift between different domains of enquiry in Rawls' theory. Rawls' views concerning the appropriateness of distributive justice in *LOP* are not premised on an empirical argument. In order to appreciate why, we need to place the argument in its correct

context. Rawls is arguing against principles of distributive justice between peoples. One of the main problems he identifies is that these principles of justice work in ideal theory and so do not have a target. Within the bounds of ideal theory, we imagine all relevant subjects to be compliant with *LOP* and we assume that favourable conditions obtain; therefore, empirical matters will not settle the question in hand. Why so? Because the world as we see it is emphatically not the one that the ideal theory of *LOP* imagines, and there is no real conclusion we can draw from analyzing existing practices of international economic integration (see Freeman, 2007b: 261ff). For example, when Rawls mentions the idea that peoples can be considered responsible for some of the collective choices they make, he is not maintaining that existing political communities will be able to fully control their fate. Rather, he is simply conjecturing that in the ideal theory of *LOP*, where all peoples are by definition either liberal or decent, and where all peoples follow the precepts of *LOP*, they *could* be considered as responsible for their choices (see Brown, 2002).

Interestingly, it is Thomas Pogge himself, perhaps one of the most fervent critics of Rawls' international theory, who provides us with a hint to the importance of the background conditions of international society for ideal theory construction. In *Realizing Rawls* (1989), Pogge claims that the historical record of the Cold War would surely support the moral judgment that the two political systems confronting each other are perpetrators of terrible crimes. According to some, Pogge adds, this shows they are clearly not worthy of respect in the ideal scenario of a moralized international practice. To rebuke this claim he argues, in my view correctly, that:

the fact that our historical experience supports such an argument against one or both main forms of regime ... does not show that any acceptable global order would have to exclude regimes of this sort. What our historical experience shows is how capitalist and socialist governments design global institutions and how they behave (within and outside their borders) *in the context of a modus-vivendi framework*. This may teach us very little about how capitalist and socialist governments would design global institutions and how they would interact if surviving and prevailing were no longer at issue. Let us at least entertain the thought that the horrors of this world are not, or at least not primarily, the horrors of capitalism and/or socialism per se but the horrors of an inconstant modus vivendi among deeply hostile governments...

(Pogge, 1989: 233, emphasis in original)

Surely the same type of reasoning should be applicable when it comes to our ideal theory of the international economy. Surely, even then, we should be able to entertain the possibility that an international economy not based solely on bargaining but also on values and reciprocity might be a place where societies are much more in control of their economic development.

Some might wish to maintain that, even if we grant to Rawls the fact that his theory is working within the bounds of ideal theory, he still fails to provide any good reason for designing the ideal theory of *LOP* as it is (see the excellent discussion in Valentini, 2011c: 85ff). By imagining an ideal theory in which (existing) international interdependence does not really have a role, Rawls is in fact assuming away the very nature of the problem that has generated the discussion, and is not providing a theory that is action-guiding in any relevant sense (Valentini, 2011c: 86). But Rawls' theory, at least implicitly, does provide such type of guidance. The international order, Rawls maintains, could be just if it was populated by just and decent societies. So, when asked what to do in order to change the many injustices that plague the international arena, we do have a Rawlsian answer: we start at home, and hope that change can go from the inside outwards. As Rawls says, and it is hard not to agree, '[a]ny hope we have of reaching a realistic utopia rests on there being reasonable liberal constitutional (and decent) regimes sufficiently established and effective to yield a viable Society of Peoples' (*LOP*: 29–30).

Now of course, and as some have pointed out, Rawls' strategy could be undermined if we thought that the problems of domestic and international justice were inextricably intertwined (Valentini, 2011c: 88). But the latter idea is only initially plausible. When we look at the world as it is, the two problems are clearly linked; but if we imagine a world in which all major political communities (for instance, the G20) have become well-ordered in Rawls' sense, then it would be less than clear that achieving international justice with a 'from inside to outside' strategy would be impossible. If in all major markets buyers refused to acquire goods tainted by child labour as a matter of public policy, child labour would greatly diminish at the global level. If all major markets refrained from buying, again as a matter of public policy, natural resources from murderous regimes, then the incentives provided to those regimes to violently gain power would be undermined (see Wenar, 2008). If all major economies and all major international

economic organizations refused to lend to oppressive dictators, then the incentives to create and accumulate ‘odious debt’ would clearly vanish. Well-ordered societies would probably be the type of societies that could aspire to have these public policies, or perhaps even be required to have them – if not because of how Rawls explicitly designs them, then because of what we can reasonably conjecture the behaviour of a decent or liberal society to be.

II.3 The idea of economic growth

It is also (partially) misguided to identify Rawls’ ‘domestic factors’ argument as an argument concerning economic growth (strictly speaking). I say ‘partially’ because Rawls is probably using two different theses concerning the relationship between domestic institutions and how a country ‘fares’. The strong thesis is the one that states: economic growth is fully determined by the shape of domestic institutions in a country. The weaker thesis states: the initial amount of economic endowments is irrelevant to a society’s prospects of becoming well-ordered. Compounding Rawls’ ambiguity, between these two theses there is also the distinction between ideal and nonideal theory, so we have:

	Strong thesis	Weak thesis
Ideal theory	In a world where most societies followed <i>LOP</i> , economic growth would be endogenously determined.	In a world where most societies followed <i>LOP</i> , initial endowments would be irrelevant to prospects of becoming well-ordered.
Nonideal theory	In the world as we see it, economic growth is fully explained endogenously.	In the world as we see it, initial economic endowments are irrelevant to becoming well-ordered.

We can clarify the first ambiguity thus: there seems to be no reason to attribute to Rawls the strong thesis in nonideal theory. When, for example, Pogge speaks of

‘explanatory nationalism’ (see Pogge, 2002) it is precisely that thesis that he is attacking. But, as we have seen, Rawls’ enquiry is meant to take place in ideal theory, so it seems illegitimate to think that, according to Rawls, in the world as we see it all societies are fully responsible for their economic fate.

Rawls sometimes ‘flirts’ with the ideal-theory version of the strong thesis. Discussing the second guideline of the DOA he states that ‘the causes of the wealth of a people and the forms it takes lie in their political culture’ (*LOP*: 108), while when discussing equality among peoples he mentions that peoples who develop feelings of inferiority given their lack of wealth can, ‘[i]f it is not satisfied’, take further action and ‘continue to increase savings, or, if that is not feasible, borrow from other members of the Society of Peoples’ (*LOP*: 114). In both cases Rawls seems to be genuinely committed to the idea that, at least in ideal theory, the origins of wealth are purely domestic. But this idea seems unnecessary to the main point Rawls wants to make. The target or aim of *LOP* is that all societies are well-ordered, not rich, so there is no purpose in insisting that the sources of economic wealth are purely domestic (even in an ideal theory scenario).

In the same way, when Rawls presents his two comparisons between peoples that make different choices and become differently well off, he might be seen to imply that it is enough for a people to get wealthier just to change a given element of its public institutions (either its economic policy or its population policy). Once again, we have to pay attention to what Rawls is arguing. Rawls’ purpose in presenting the two comparisons is to show that a principle of global distributive justice would be unacceptable. To do this, he imagines what are, *ex hypothesi*, two cases in which levels of wealth can be traced back to changes in public institutions (see also Freeman, 2007b: 291). The point is not that, whatever else might happen in a people’s circumstances, the factor that would affect its level of wealth is, for instance, its real rate of savings. Rather, the point is that, all other things being equal, it is not unreasonable to believe that increasing one’s real rate of savings will affect economic growth. In fact it is precisely in order to deny that this type of example is possible that one would have to be committed to the diametrically opposed thesis to the one (wrongly) attributed to Rawls. Or, in other words, one would have to commit to the thesis that it is impossible to even imagine a controlled scenario in which a domestic factor for which a people can

be considered responsible is capable of producing changes in the level of its wealth.

Is there any support for the weak thesis, then? If the centrality of economic growth for *LOP* can be partially challenged by attending to its aim, the weak thesis can be supported by the theorists Rawls addresses. For instance, when discussing Beitz's argument concerning the redistribution of natural resources in a theory of global distributive justice, Rawls states that, 'because, as I have said, the crucial element in how a country fares is its political culture ... and not the level of its resources, the arbitrariness of the distribution of natural resources causes no difficulty' (*LOP*: 117). If we interpret 'how a country fares' to signify 'its prospect of becoming well-ordered' then Rawls seems to endorse precisely the weaker thesis. And given that Rawls' analysis is carried out mainly at the level of ideal theory, then Rawls is probably better portrayed as endorsing the ideal-theory version of the weak thesis. Whether or not this reflects Rawls' intentions is, in my view, beside the point. *LOP* simply does not 'need' more than the ideal-theory version of the weak thesis.

Is the ideal-theory version of the weak thesis plausible? Of course, it is not uncontroversial, but it is far from unrealistic. As we have seen, when Rawls is outlining the idea that peoples will 'fare' according to their political cultures and the shape of their domestic institutions he is not simply concerned with their level of affluence. Rather, Rawls is suggesting that a society's political culture and institutions are decisive in understanding whether it will manage to become well-ordered. This is unsurprising given that being well-ordered is mainly a political, not an economic, criterion. Being well-ordered is a feature of the basic structure of a society, and not of the per-capita incomes of persons. But, then, what else could be responsible for the shape of a society's basic structure than its social and political institutions and the political virtues of its citizenry? In a nonideal theory scenario we can imagine innumerable instances of wars of aggression and colonization that might shift this type of responsibility from 'inside' to 'outside'. But, Rawls' argument is carried out at the level of ideal theory, hence we know this is not the problem we face.

II.4 Omissions

In the wake of the numerous complaints that *LOP* makes use of wildly implausible assumptions, the second most prevalent criticism is that it fails to address many of the important topics that lie at the core of the current agenda of international ethics. From migrations to global public goods and secession, *LOP* seems to provide no real guidance where guidance is sorely needed. This objection is not necessarily unwarranted, but it is rather surprising that a book should be criticised so harshly, not only for what it contains but also for what it does not. If this were the standard, no book would be adequate. Much seems to depend on what type of attitude we decide to take with respect to Rawls' project. Those who dislike his conclusions will probably see his omissions as further signs of *LOP*'s inadequacy. Those who believe that *LOP* provides a powerful understanding of international law and its moral bases (if not without fault) will probably try to extend *LOP*'s framework and show how it can address the many things it does not.

Yet, one thing should be clear: omission does not insinuate acquiescence. Consider the elements of the current world order which, according to Thomas Pogge, provide incentives for corrupt elites to seize power in poor countries (see Pogge, 2002; Jaggar, 2010). The two most relevant ways in which such incentives are provided, according to Pogge, is by allowing those who control power in a political community to borrow in the name of their citizens and to legally sell the natural resources of the territory. Whether or not we agree with Pogge's general argument concerning the violation of negative duties it is easy to recognise that these features of the international order are rather disturbing. Rawls does not seem to be concerned with these features of the present international basic structure. Yet clearly, these are features of the international order that greatly damage the ability of those who live in certain regions of the world to be self-determining. What shall we conclude from this type of example? It is fair to say that, given the importance of these topics, *LOP* could have been more outspoken about them, but we should not infer that since they are not mentioned they are ipso facto condoned. If we go back to the distinction between ideal and nonideal theory, it might be the case that Rawls does not directly address Pogge's type of example because in the ideal theory of *LOP* it would not happen or be tolerated. If all peoples were decent or liberal, corrupt elites ruling through violence and

irresponsive to the plight of their citizens would not only be unable to sell natural resources or borrow internationally, they would also probably be considered as cases of non-compliance with the ideal theory of *LOP* and thus perhaps even removed through sanctions or military interventions. Furthermore, even if we were uncertain about the precise reaction of a *LOP*-based framework to the issues Pogge is presenting, we would need a further argument to show that they are positively permitted – otherwise, why not adopt a more sympathetic stance and extend *LOP*'s framework so that it *does* address them?

II.5 The issue of (collective) responsibility for decent peoples

Some cosmopolitans will maintain that even if we accept this ideal theory picture, there are serious doubts about whether decent peoples are the proper object of collective responsibility (see Caney, 2002). Decent peoples are not democratic, and so it seems implausible to maintain that their members, who have little say in the decision-making procedures of their collective, should bear the consequences of these choices.

I find this type of objection at best inconclusive. It seems to presuppose that collective responsibility can only be attributed to democratic societies. But this is hardly an uncontroversial claim, and should certainly feature as the conclusion of an argument rather than as one of its premises (see for example Miller, 2006; and Miller, 2007; see also List and Pettit, 2011).

One reason for assuming that only democracies are the proper object of collective responsibility is that since in a democracy all contribute to political decision-making, we can trace political outcomes to individual contributions. This view seems to imply that models of collective responsibility are only viable if we can somehow identify the precise contribution of a given individual to a certain action or outcome. Yet most conceptions of collective responsibility seem to be premised on exactly the opposite insight: that we need to provide a way to assign responsibility to groups even when we do not know exactly which member of the group has contributed to which outcome or to what extent.

A second reason for assuming that only democracies are the proper object of collective responsibility might be that only groups that are not subject to extensive coercion can be the object of any form of responsibility: if you are held

responsible for some action you must have had the possibility to do otherwise (see List and Pettit, 2011). Note that if we adopt a strict interpretation of this principle then even democratic citizens could not be held responsible for some of their collective decision-making: ultimately, even in a democracy, many citizens are often compelled to follow laws they might deem unjust (and which they have voted against), even if legitimate. If, on the other hand, we adopt a more reasonable interpretation, one in which it is enough to identify with the type of political principle that is necessary to take those very decisions, then decent peoples surely pass the relevant tests. Rawls is clear about the fact that the members of decent peoples are not simply coerced into obedience; they share a common good conception of justice, and a form of political consultation procedure must be in place in order to inform public policy.

Finally, we should also question the way in which the appeal to our moral intuitions is formulated in this case. More precisely, we should try, as far as possible, to disentangle two issues: our concern for the well-being of those who live in decent societies, and our concern for the type of costs which agents that are (putatively) not responsible for certain actions can be required to incur. If we believe that a decent society that makes poor choices in terms of development and growth will allow its citizens (or future generations) to become destitute then of course we will be concerned for those we believe to be not responsible for this outcome (see Martin in Martin and Reidy, 2006, for a similar point). Note here, though, that what seems to do the work (in terms of our moral intuitions) is the idea that the cost incurred by the (putatively) non-responsible citizen is very high. Imagine instead that as a result of its collective choices a decent society is left with average incomes 10 per cent lower than before but still twice as much as what is needed to maintain subsistence for all its citizens. In this second case it seems much less evident that we would feel that some form of injustice has occurred. But in *LOP*, the role and content of the DOA both exclude the possibility that the first scenario can take place. Thus, the conclusions we can draw from the (putative) lack of collective responsibility in decent societies are at best uncertain.

III. The real problem with the DOA

In the previous section I analysed some of the main criticisms that have been levelled towards the DOA, and found them all unpersuasive. However this is not to say that the DOA (at least if interpreted in the ways I will survey in this section) is in fact a plausible solution to the problem Rawls wants to address.⁴⁸

I begin by outlining an important omission in the critical literature on the DOA. If Rawls is really committed to the idea that the determinants of how a country fares are domestic, then it is precisely those domestic factors that the DOA will have to address. This is not an abdication of responsibility but rather an extraordinary commitment on the part of well-ordered societies. Such commitment is so important that, in fact, it might be pictured as being overly demanding from a practical point of view, and unjustifiably paternalistic. This section ends with an objection to the overdemandingness of the DOA which is in line with the cosmopolitan critical reaction. It claims that the DOA should be interpreted as a duty of advice and perhaps economic support rather than as an institution-building duty. I reject this interpretation, which would make the DOA little more than a few words of counsel – and would clearly not be a solution to the problem of societies burdened by unfavourable conditions.

III.1 The (real) omission

In general, critics of Rawls come from the so-called (in the literature on global justice) cosmopolitan camp. The underlying assumption of their critical attention

⁴⁸ Here there are two possible issues we should try, as far as possible, to disentangle. The first is a substantive problem: What is a plausible solution to the case of burdened societies? The second is an interpretive problem: What is Rawls' preferred solution to the problem of burdened societies? In this section I present what I take to be two implausible solutions to the problem of burdened societies: a) one based on the idea of full-blown institution-building abroad, and b) one based on the simple provision of advice. Is Rawls committed to either of the two (implausible) solutions? As I say in section IV below, Rawls' text is ambiguous, and it seems that both interpretations can rely on some textual support. I present an alternative view, based on human rights, and claim that my preferred substantive solution is compatible with Rawls' overall architecture in *LOP*. If we were to apply the standard of interpretive charity, perhaps, one could claim that since the solution I propose is taken to be superior, and since it is compatible with the main elements of the overall text, then it should be taken to be Rawls' view. I want to leave this option open, but my main goal is to present, in section III, two understandings of the DOA that I see as implausible, and then in section IV one that I find more effective. As I repeat in section IV, I take these to be substantive rather than interpretive claims.

is that the DOA is simply ‘not enough’ to deal with the problems Rawls wants to address, or that it completely obliterates a great variety of real-world circumstances. It is not surprising, then, that very few have considered the opposite problem. The DOA is not something less demanding that we settle for because we want to address the real world. The DOA is in fact exceedingly demanding as a form of international obligation (see Armstrong, 2009; Williams, 2011). What so many of Rawls’ critics have failed to appreciate is how much Rawls seems to be asking decent and liberal societies to do for the sake of burdened societies, not how little.

Here I start by reviewing some of the guidelines that Rawls provides for the DOA. The first is that, as we have seen above, we should refrain from considering a well-ordered society as a necessarily rich one. In turn, according to Rawls, this brings out the similarity between the DOA and the principle of just savings in *TJ*: both stress how wealth is not something that is required to become well-ordered. If the final aim we set ourselves is to imagine a world in which all persons can live under liberal or decent institutions, the idea of permanently increasing or maximizing wealth is superfluous as wealth is not really what determines a society’s prospect of becoming a full member of the Society of Peoples (*LOP*: 106–7). The second guideline for thinking about the DOA is that, as we have seen above, the political culture of a burdened society is all-important. As Rawls says, ‘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’ (*LOP*: 108). The third guideline that Rawls provides is the target of the DOA. The DOA is not aimed at making burdened societies rich: rather, its ultimate aim is to make them well-ordered. The target, in other words, is to imagine a world in which we can find only well-ordered societies and in which all are at least able to comply with *LOP*.

What is striking about the discussion of Rawls’ DOA is how little Rawls’ critics have picked up on how incredibly demanding are the requirements the DOA sets for the international community. This is even more striking because so many have criticized, as we have seen in section II, precisely the preconditions of Rawls’ analysis. According to his critics Rawls’ analysis is fallaciously based on the rather precarious idea that the sources of economic wealth are purely domestic. And, in general, Rawls’ move was portrayed as a form of abdication

from responsibility (see Pogge, 2002): it is not the world order that makes the poor miserable, it is only their fault. Now, I believe that that I have already provided (see above) good reasons to question this picture. What is nonetheless interesting is that no one seems to appreciate its real implications. If one really believes that the sources of economic development and growth are purely to be found in the social and political institutions at the domestic level, and if one is also committed to the idea that there is a duty to make all societies well-ordered, then it is precisely those social and political institutions that one will have to change in order to solve the problem. This is far from an abdication of responsibility; in fact it requires an assumption of responsibility that is much greater than many cosmopolitans have suggested (see Armstrong, 2009). It entails the idea that in a world where many of its inhabitants do not live within the bounds of a well-ordered society, the duty of those who are fortunate enough to live in one is to embark upon collective action for widespread institutional reform across continents. Surely, this is no small feat.

III.2 Resources, information and paternalism

The latter issue, in turn, exposes the first problem with the DOA. Conceptually speaking, there seems to be no guarantee that putting the DOA into practice is even remotely possible. First, there is a material problem. In the ideal theory of *LOP* we have no information concerning how resources would be distributed between well-ordered peoples and burdened societies. This means that, as we have stated on a number of occasions, there is no reason to believe that well-ordered societies will be rich. Secondly, from time to time Rawls reminds us that resources are not really what should matter for a political community. In fact, he even conjectures that a Millian steady state of zero growth would be an ideal solution to avoid the overemphasis on a political culture based on materialistic values and prey to capitalistic ideals. These remarks should alert us to the type of ideal scenario that Rawls is imagining, a world in which well-ordered peoples do not really care about wealth, so one can easily conjecture that many of those peoples would not keep on accumulating it. This picture might not be a realistic one (at least not looking at our current world), but what is important about it is

that it reinforces the suspicion that we have no reason to believe that well-ordered societies could even be able to help the citizens of burdened ones.

Of course, Rawls could comment that it is not about resources; but while resources are not sufficient, they are nonetheless necessary. We should not confuse: a) the resources that are necessary to a people to become well-ordered; and b) the resources that are necessary to change the political culture of a burdened society. While we can conjecture with Rawls that (a) does not require a great amount of resources, there is no reason to believe that (b) will not be much more costly.

Not only is the latter likely to involve significant amounts of resources, it also might require the ability to master significant amounts of information: a capacity we might not really possess (see Fukuyama, 2006). In fact, as recent historical experience tells us, and as Rawls himself admits, ‘there is no recipe, certainly no easy recipe, for well-ordered peoples to help a burdened society to change its political and social culture’ (*LOP*: 108; see also Acemoglu and Robinson, 2012; Flournoy, 2006). The latter idea also shows how demanding of information the DOA would be. Note how we can *observe* a certain connection between a society’s social and political culture and its ability to become well-ordered. On the other hand it is rather more difficult to *prescribe* how certain social and political traits of a burdened society would have to change in order for the latter to become well-ordered. For example, we can conjecture that relegating women to a position of subjection in society can lead to overpopulation and, in turn, underdevelopment and the inability to meet the basic needs of persons. But observing the connection between women’s rights and overpopulation will not be enough in order to know how to reform a social and political culture that attributes to women a certain subordinate role.

Finally, I believe that our discussion should also alert us to the morally problematic aspects of the DOA, namely its potentially paternalistic nature. The paternalistic nature of the whole enterprise for well-ordered societies is a consequence of the responsibility that is clearly attached to the idea of, among other things, radically changing the ‘virtues’ of a society’s citizenry, its social and political institutions and much else in the process (see Williams, 2011: 66, 198). Rawls is fully aware of this problem, as when he states: ‘the well-ordered societies giving assistance must not act paternalistically, but in measured ways

that do not conflict with the final aim of assistance: freedom and equality for the formerly burdened societies' (*LOP*: 111). Rawls also mentions the idea that well-ordered peoples should not tie assistance to the development of liberal institutions. But the latter point can only partially diffuse the worry that the DOA would be of a paternalistic nature. Well-ordered peoples can say to a burdened society, 'you do not need to become liberal to receive our help'. But they cannot really say 'you will receive our help and you can choose how to behave by yourself'.

Burdened societies are burdened precisely because of the way in which their institutions have developed over time. If we believe that such institutions should change, then it seems clear that we cannot avoid deciding, at least in part, how such social and political institutions are to be designed. Well-ordered peoples may not suggest liberal solutions, but they will have to suggest some solution. This claim is confirmed by the fact that, in general, exercises of institution-building abroad often rely on force and do not really cater to local ideas of legitimacy. For example, Pei, Amin and Garz believe that two of the most important lessons to be drawn from the American experience with nation-building concern the use of force and the relative neglect of local political demands: 'First the United States must sustain its commitments of troops, time, and money despite domestic political opposition. Second, the United States should balance the demands for greater legitimacy by political opposition in the target country with reconstruction needs' (2006: 81). In the end, the impression is that if one undertakes profound institutional reform abroad, eventually changing some of the deepest elements of a foreign social and political culture, not acting paternalistically would be impossible. And this is especially the case, given that some burdened societies might not necessarily welcome the proposed changes.

III.3 The 'advice' interpretation

I want to deal now with one important objection to the critique of the DOA I have so far put forward. The objection goes as follows: it might indeed be true that the DOA is too demanding, but only, and only if, we consider it *as a duty to change directly* the political culture of a burdened society. Yet, the objection continues, the DOA is not that type of duty; it is instead a way of signalling that well-ordered societies are under *a duty to try to assist* those that are burdened to become well-

ordered. They should not coerce them, nor pressurize them. What they are required to do is simply to provide advice and perhaps some form of financial assistance in order to put that advice into practice, but nothing more can plausibly be required from them. As one passage in *LOP* suggests, Rawls believes that ‘there is no easy recipe for helping a burdened society to change its political culture. Throwing funds at it is usually undesirable, and the use of force is ruled out by the Law of Peoples. But certain kinds of advice may be helpful’ (*LOP*: 110). In other words, the DOA does not prescribe anything along the lines of the institution-building duty I have examined in the previous few paragraphs, but is instead a duty of advice and support. This interpretation would also solve the moral problem tied to the potentially paternalistic nature of the DOA. If the DOA is simply constructed as ‘advice’, the decision to follow the advice or not is one that burdened societies will make.

A reply to this objection concedes that this reading of the DOA might make it more plausible in terms of what well-ordered societies are required to do; the content of the duty, given by ‘advice’ and the ‘possibility of assistance’, would be indeed more reasonable. But, crucially, it would also make the DOA unworkable. It would become what we can call a futile duty, because its results regarding the fate of burdened societies would probably be marginal. Burdened societies lack the political culture to be well-ordered: this is the crucial distinction between different types of nonideal theory. Some societies are unwilling to comply with *LOP* (for instance, outlaw states) but other societies are simply unable, and that is what justifies our different attitude to them. The fact that such societies (that is, burdened ones) are unable to comply cannot simply mean that they lack resources to do so. As we have seen above, resources might be necessary, but given Rawls’ take on the initial economic endowments that are required to become well-ordered, they are certainly not what is at issue. If we consider the DOA as simply a duty of providing advice, such duty would probably be ineffectual in all most relevant cases, as the weaker a society’s social and political culture and institutions, the less likely it is that simple advice and resources will make a difference.

Furthermore, perhaps the greatest shortcoming of this advice interpretation is that, by reducing the amount of commitment on the part of the Society of Peoples, it also leaves unanswered the question of the human rights of members of

burdened societies. Given Rawls' discussion of the DOA we have no clear idea about whether human rights are respected in a burdened society. If we believe that the duty of the Society of Peoples is only one of advice, and if we don't know if the human rights of a burdened society's citizens are being fulfilled, then *LOP* (in this interpretation) seems to require a simple commitment to providing advice in cases of human rights violations. This would have great human costs for *LOP* because, among other things, it might imply that the human rights of many who are living in burdened societies would not be guaranteed. In fact it would seem to lead to the paradoxical conclusion that those who live in burdened societies have even less chance of seeing their basic human rights fulfilled compared to those who live in outlaw states. Against outlaw states *LOP* prescribes intervention, yet for burdened societies it cannot, bound as it is to respect the limits on the use of war to self-defence and non-compliance.

But perhaps I have radically misconstrued the problem. Perhaps burdened societies, precisely because they are not 'unwilling' but 'unable' to comply with *LOP*, would gladly accept the help that they receive. I doubt that the latter can be a convincing option. Or, at least, it is not an option that we can take as the default. Conceptually speaking, there is no reason, or at least none is provided by Rawls, to imagine that a burdened society would gladly accept the revisionist implications of the DOA, especially if we consider how deep such reforms would go. There is no reason to assume that burdened societies are conscious of their limits and are striving unsuccessfully to become well-ordered. This is a depiction one can accept only if one also assumes that agents who cannot take responsibility for their fate are also aware of their limits and try to overcome them. But why should we assume that a society lacking the social and political institutions required to become well-ordered should have this type of awareness?

An adherent of this advice interpretation might respond that my argument is based on a relatively narrow interpretation of advice. Advice should instead be assumed to involve technical assistance and support, help to build human capital through training programmes, and so on. This interpretation of the DOA, coupled with the resources that would be necessary to make it happen, would clearly be more demanding and effective than just a few words of counsel. That might indeed be the case, but, as I have argued above, this solution would still leave one unsolved problem. By making the effectiveness of the DOA fully dependent on

the decisions of a burdened society it would greatly reduce the weight of the paternalism concern, yet it would still provide no special attention to the fulfilment of the human rights of citizens in burdened societies.

IV. A possible solution

In the previous section I criticized the DOA mainly for being excessively demanding as an international principle of assistance. The DOA seems to be caught between two extreme scenarios. On the one hand, if it is interpreted at face value as a duty that requires stringent application of its goals, then its emphasis on the transformation of the political cultures of burdened societies is unsustainable. On the other hand, if the duty is interpreted as one that entails ‘advice’ and a modicum of financial support, it seems to be quite ineffectual as relies on the idea that burdened societies are unable to become well-ordered because they are somehow ignorant of the processes and ideas that could lead them to become so. In this section, I want to offer a way out of this conundrum. Briefly stated, my solution is to imagine a two-speed scenario for the DOA based on the human rights record of a burdened society.

IV.1 The nature of the proposed solution

It is my contention that there is a solution to the problem of burdened societies that is compatible with Rawls’ understanding of the DOA. Here I say ‘compatible’ because I do not claim that my proposal is, strictly speaking, Rawls’ preferred interpretation. In my view, the text of *LOP* itself is rather ambiguous on the nature and extent of the DOA – and section III of the chapter is a testament to that ambiguity. The DOA is often interpreted as a duty of ‘advice’ by its critics and as an institution-building duty by its supporters (see Armstrong, 2009). My contention so far has been that neither understanding of the DOA is plausible or reasonable if they are taken to represent the content of international economic duties. This is not an interpretive claim, it is a substantive one. The goal of this section, then, is not to provide the best interpretation of Rawls’ text, but rather, if I

am correct, to provide a reframing of the DOA that, while compatible with the overall structure of *LOP*, provides a more sustainable solution to the problem of burdened societies.

The basis for my solution is to partially abandon, at least initially, Rawls' focus on the political culture of burdened societies. I want to maintain that the proper target of a stringent duty of assistance in *LOP*, even when it comes to burdened societies, is the comparatively less ambitious goal of fulfilling the basic human rights of all citizens of burdened societies (see Jones, 2001). It is only once this comparatively less demanding duty of assistance is fulfilled that *LOP* can concentrate on the idea that a burdened society should become well-ordered. Conceptualizing the DOA in this way, we can separate Rawls' view of international economic assistance into two different parts. If the citizens of a burdened society are not able to see their human rights fulfilled, the Society of Peoples should see its collective duty of assistance towards burdened societies as a more stringent one that does not, strictly speaking, require the assent or approval of burdened societies themselves. If, on the other hand, citizens of burdened societies have their basic human rights fulfilled, then the Society of Peoples should interpret the DOA as a less stringent duty of counsel and advice and perhaps resource availability, coupled with an appropriate system of incentives to push burdened societies towards being well-ordered.

As we have seen in chapter 4 the criteria that a people must meet in order to be well-ordered are rather demanding. In chapter 4 I also argued that while human rights are a necessary requirement of the legitimacy of political institutions they are not sufficient to establish that such institutions are worthy of toleration. Thus it should be clear that ensuring human rights are protected within burdened societies is, at least comparatively, a less demanding enterprise than ensuring burdened societies become well-ordered.

In section III I have highlighted the problem of resources. There I argued that while resources might not be relevant when judging if a society is well-ordered or its prospects of becoming so, this does not imply that resources will not be necessary to help burdened societies in their path to developing well-ordered institutions. I also stated that, given that we have no real guarantee that well-ordered peoples would be rich in the ideal theory of *LOP*, the material resources needed to fulfil the DOA might be lacking; however, concentrating on basic

human rights would require fewer resources on the part of well-ordered peoples. Furthermore, if well-ordered peoples decide to concentrate on the fulfilment of human rights in burdened societies, they would also be able to more effectively mobilize resources. The perceived legitimacy of their foreign aid would be augmented by the minimal moral goal of preventing severe and avoidable destitution and in the meantime would provide a clearer remedy to what Rawls calls the ‘problem of affinity’ (paragraph 15.5 is in fact called ‘Duty of Assistance and Affinity’; *LOP*: 112). According to Rawls, ‘[a] legitimate concern about the duty of assistance is whether the motivational support for following it presupposes a degree of affinity among peoples, that is, a sense of social cohesion and closeness, that cannot be expected even in a society of liberal peoples’ (*LOP*:112), let alone in a society of liberal and decent peoples. A comparatively less ambitious DOA aimed (initially) at the protection of the human rights of the members of burdened societies would probably be more effective in lessening the social and cultural distance between different peoples given the urgency of the human interests it would protect, and it would thus (again comparatively) reduce the problem of affinity highlighted by Rawls.

Concentrating on human rights would require less information too. The focus on human rights effectively side-lines the importance of the political culture of burdened societies and instead concentrates, at least partially, on its consequences. If such consequences include the violation of basic human rights, the judgments involved will be based on information that is much more readily available. For instance, it seems more plausible to assess whether the basic needs of a population are met rather than if its institutions are freely upheld by the citizens, and it is easier to know if the physical integrity of persons is guaranteed than if all groups in society are properly represented, and so on. Not only do human rights violations seem easier to spot, but they also seem, at least *prima facie*, easier to remedy since they would require a smaller degree of institutional reform in order to be put in place.

Furthermore, this is in line with what Rawls himself would prescribe as a central component of his strategy to help burdened societies, namely to progressively increase the responsiveness of social and political institutions to citizens’ requests. Rawls acknowledges that human rights are an important first step in that direction (see *LOP*: 108–11). For instance, when explaining the

second guideline of the DOA, Rawls maintains that '[w]hat must be realized is that merely dispensing funds will not suffice to rectify basic political and social injustices (though money is often essential). But an emphasis on human rights may work to change ineffective regimes and the conduct of the rulers who have been callous about the well-being of their own people' (*LOP*: 108–9). This would mean that concentrating on human rights could still have a knock-on effect for the institutions of burdened societies; insisting on their fulfilment could be seen as a milestone towards the more ambitious goal of building well-ordered institutions.

Once the protection of human rights is fulfilled in a burdened society, though, the task of the Society of Peoples is not over. In chapter 4 I have elaborated a system of incentives to encourage benevolent absolutisms to become well-ordered. I believe that much the same system could be made available to societies burdened by unfavourable conditions. Of course, given the differing nature of the regimes involved in the system of incentives, there is no doubt that the conditional assistance offered to burdened societies to become well-ordered should take into consideration that fact. This might mean, for example, that conditional assistance could be granted on more generous terms. It could also mean that when institutional capacity is lacking, the Society of Peoples could initiate a system for developing human capital in burdened societies. This aspect of the assistance provided to burdened societies is, as we have seen above, subject to the uncertainty that all institution building exercises abroad carry with them. But the conditional help offered to burdened societies is in this case developed as a long-term goal of the Society of Peoples that can accept setbacks and perhaps even partial failure given the knowledge that the basic human rights of the citizens of burdened societies are already protected.

Note also that the interpretation of the DOA I am proposing – that is, a two-speed understanding of the DOA with a more stringent aspect when human rights violations are concerned, and a longer-term incentive-based system for the development of well-ordered institutions – is also fully compatible with the non-paternalistic nature that Rawls wishes to attribute to international economic assistance. As we have seen in chapter 4 for Rawls, human rights are not parochial and are universal in reach. Requiring that burdened societies respect human rights, perhaps even imposing such respect from the outside, is not paternalistic. The autonomy and self-determination of peoples in *LOP* is always constrained (see the

introduction, chapter 3 and 4). And human rights are the most important necessary condition for the autonomy of a people to be meaningful and acceptable in the Rawlsian framework.

IV.2 Excursus: Duties in *A Theory of Justice*

Not only is the solution I am proposing more effective in dealing with some of the objections I have outlined in section III but, as I will now show, it is also compatible with the Rawlsian architecture of natural duties as they are presented in *TJ*. In *TJ*, Rawls develops an important distinction between (natural) duties and obligations. Crudely put, while obligations are the result of contracts, duties, for Rawls, apply to persons irrespective of their acts. For Rawls, all forms of obligation are the result of the acceptance of what he calls, following Hart, the principle of fairness: ‘The main idea is that when a number of persons engage in a mutually advantageous cooperative venture according to rules, and thus restrict their liberty in ways necessary to yield advantages for all, those who have submitted to these restrictions have a right to a similar acquiescence on the part of those who have benefited from their submission’ (*TJ*: 96).⁴⁹ The principle of fairness, for Rawls, is aimed at capturing the nature of all forms of obligation.

On the other hand, duties, or natural duties as Rawls calls them, are principles for individuals (or agents) that do not require voluntary or contractual undertakings; ‘in contrast with obligations, it is characteristic of natural duties that they apply to us without regard to our voluntary acts’ (*TJ*: 98). This does not mean that natural duties are grounded in the idea of natural or pre-political rights; rather, natural duties are principles for persons that would be chosen in the original position and yet do not presuppose the existence of contractual undertakings on the part of individuals. According to Rawls there are positive and negative natural duties, such as the duty not to harm, the duty not to cause unnecessary suffering but also a ‘duty of helping another when he is in need or jeopardy’. Finally, and

⁴⁹ Note that the principle of fairness presupposes that the institution or practice that generates the obligation must be fair or just in the first place in order for the principle of fairness to carry normative weight (see *TJ*: 96). Note also that the view of obligation as the result of contractual agreements means that, strictly speaking, there is no such thing as political obligation holding for all citizens generally, and this is better explained through the natural duty of justice.

perhaps most importantly, there is what Rawls calls the natural duty of justice, '[the duty] to support and to comply with just institutions that exist and apply to us [and] to further just arrangements *when this can be done without too much cost to ourselves*' (*TJ*: 99, emphasis added). An important aspect of the duty to further just arrangements when they do not yet exist is precisely the so-called 'principle of just savings'. In fact, in *TJ*, Rawls goes as far as stating that '[t]he savings principle represents an interpretation, arrived at in the original position, of the previously accepted natural duty to further just institutions' (*TJ*: 257).

By looking at the distinction between natural duties and obligations I believe we can ascertain a number of important things about the DOA. The DOA should be understood as a principle for agents that is not the result of contractual obligations. This, among other things, explains why it applies to peoples that are not parties to either of the international original positions.⁵⁰ Second, there is a clear impression that natural duties are minimal requirements that apply to inter-agent interaction. So, for example, to maintain that there is a (positive) natural duty to see the human rights of those who live in burdened societies fulfilled is not an implausible extension of the natural duty of mutual aid that Rawls already acknowledges. Finally, natural duties must be of reasonable cost to those who perform them. This is especially the case for the natural duty of justice, and more specifically, as Rawls acknowledges, for the duty to further just arrangements when they do not yet exist.

The natural duty of justice entails that the goal of the DOA, symmetrically shifted to take into consideration the issue of international toleration, must be that of helping to establish well-ordered institutions abroad. But it also points us towards the idea that the cost of such duty cannot be too high for ourselves (or for well-ordered peoples). Thus, while the DOA has a goal – to make burdened societies well-ordered – it is possible to apportion the appropriate form of action that would help us meet such requirement, according to how demanding its fulfilment is. In *LOP* Rawls states when outlining the first guideline of the DOA that this should be interpreted along the lines of the principle of just savings in a domestic society. Yet, as we have seen, the principle of just savings is an

⁵⁰ Although, of course, this still does not explain what justifies this choice. See Williams, 2011, for a detailed treatment.

interpretation of the principle to further just arrangements. Thus, a crucial part of the principle of just savings, and hence of the DOA, is that it too must not be exceedingly demanding.

IV.3 Objections

Here I want to address two possible objections to my proposed reformulation of the DOA. In doing so I hope both to show that my proposal is capable of resisting scrutiny and, through responding to possible criticism, to make its nature clearer.

The first objection is that in *LOP*, at least when burdened societies are concerned, the use of force is ruled out – it is reserved for cases of non-compliance with the eight principles structuring the Society of Peoples, and for self-defence. As we have seen in section I, burdened societies are instead part of the ‘unfavourable conditions’ part of nonideal theory. Can a reasonable *LOP* prescribe the use of force (or political pressure, or sanctions) on burdened societies just as it does with outlaw states? My reply here is that the types of measures that are appropriate towards a regime cannot be simply determined by the reasons that led said regime to behave in certain ways. Of course what might lead a regime not to be well-ordered, the causes of its lack of well-ordered institutions, will affect the way in which we judge the moral standing of the regime, but it cannot really be the only thing we take into consideration when it comes to the remedial actions of the Society of Peoples. This is especially true when we divide burdened societies into the two different categories, as I have proposed above, in which basic human rights are fulfilled and in which they are not. It would be a mistake, in my view, to argue that pressure and force cannot be applied to a regime that is incapable of respecting the human rights of its people, even if this lack of respect is not the result of overt callousness.

Of course, we can imagine a scenario in which a burdened society is willing to protect the human rights of its members but might be practically incapable of doing so. In such a case, clearly, the use of force would not make sense: sanctions and political pressure might simply aggravate the plight of the citizens involved. But, as I have highlighted above, there seems to be no conceptual reason, or at least none is provided by Rawls, why the only type of burdened society we would encounter is one in which those who face unfavourable conditions are strenuously

trying to overcome them. If they are, then the use of force would be useless and most of all it would be redundant given that these types of ‘striving’ burdened societies would probably accept the insistence (and support) of well-ordered peoples to become able to protect the human rights of their people.

The second objection concerns the devising of a system in which well-ordered peoples intervene (with force if necessary) in the domestic affairs of a burdened society to protect the human rights of its members and only then aim at assisting that society to develop well-ordered institutions; surely, someone might object, this elides the specificity of burdened societies in *LOP*. What is the point of building a specific category (‘societies burdened by unfavourable conditions’) if we are not taking seriously what that category implies? The crux of the matter is that burdened societies are not able to become well-ordered given the circumstances of their social and political institutions, not that they do not respect human rights. The solution to that problem, congruent with the overall goal of any nonideal scenario in *LOP*, is to help burdened societies to build and develop precisely the correct types of social and political institutions, not to insist on their human rights record.

My reply to this second objection is that we should not confuse the analysis of the case of burdened societies, with the types of actions that the Society of Peoples should take to confront that problem. Of course the analysis of a problem and its solution are related. But this does not entail that the best way, or the most plausible way of addressing any given problem is to do so directly. More concretely, burdened societies do not possess the social and political background to become well-ordered, but this does not entail that the most plausible solution to their problem is to address this deficit directly. In fact, as we have seen in section III, my claim has been precisely that it would be unreasonable to do so. Building institutions abroad is a task the international community is not proficient at performing. The information it requires is often elusive and unavailable or simply too complex to evaluate. Its costs are high even taking into consideration the enormous extent of the inequalities in the current nonideal world (not to mention in a Society of Peoples where wealth is not as relevant). Even the legitimacy of institution-building is debatable since it unavoidably imposes external decisions concerning the shape of all major traits of a political community for some time to come. Instead, focusing on human rights is comparatively less costly, it is

informationally more plausible, and it is also more legitimate since no society can claim that its political autonomy or right to self-determination requires the violation of those human rights. This does not change the fact that the long-term goal of the Society of Peoples, when dealing with burdened societies, is to help them to become well-ordered. Instead, what it does affect is the choice of the most plausible way of achieving that goal.

Conclusion

In this chapter I have examined Rawls' position on international economic justice. I have considered some of the major criticisms that have been levelled against *LOP*. The main thrust of such criticisms is that the DOA and Rawls' understanding of international interdependence were unrealistic and that they entailed a set of obligations that were not robust enough to fully capture the extent of our duties of global economic justice. I have rejected these criticisms because, in my view, they failed to fully take into consideration the nature of Rawls' position. Furthermore, what many of Rawls' critics have failed to appreciate is not how little Rawls' *LOP* asks well-ordered peoples to do, but rather how much. The DOA can be pictured as a very demanding duty of assistance that asks well-ordered peoples to transform some of the deepest elements of a society's culture. As I have explained in section III, this is too much to ask and much more than we can realistically achieve. However, this does not mean that the Rawlsian framework cannot contain an alternative understanding of the DOA which aims for the same goal, but treads a more plausible path to it. I have tried to imagine such a path in section IV by insisting on a two-speed solution for the DOA. I proposed to focus on human rights and to make the respect for human rights in burdened societies the main priority. The issue of developing well-ordered institutions is only to be considered as a second step in the strategy and needs to rely, just as in the case of benevolent absolutisms, on incentives rather than simple advice, or the implausible idea of large-scale institution-building abroad.

CONCLUSION

I. The attitude towards the text

Before rehearsing the arguments that I have developed over the course of the thesis, let me make a few remarks about what motivated my attitude towards Rawls' *LOP*. Even on this point – that is, how we approach a philosophical text – I believe Rawls has something valuable to teach us. When discussing his style of lecturing Rawls famously declared that:

I always took for granted that the writers we were studying were much smarter than I was ... If I saw a mistake in their arguments, I supposed those writers saw it too and must have dealt with it ... I looked for their way out ... I assumed there were never plain mistakes, not ones that mattered anyway. (Rawls, 2000: xvi–xvii)

In the same way, introducing some of his lectures on political philosophy (on Hobbes, Locke, Rousseau, Hume, Mill and Marx) Rawls stated that:

when we discuss these writers our first effort is to understand what they say, and to interpret them in the best way their point of view seems to allow. Only then shall we regard ourselves as ready to judge their solution from our point of view. I believe that unless we follow these guidelines in reading the works of these ... philosophers, we fail to treat them as conscientious and intelligent writers who are in all essential respects at least our equals. (Rawls, 2007: 104)

Rawls' approach conveys a certain amount of humility that, the historical record seems to agree, was characteristic of the man himself. Nonetheless these brief remarks do more than simply suggest a trait of character. They tell us about the overall interpretive attitude that we should try to adopt towards the classics in the canon of moral and political philosophy. Our attitude, Rawls is telling us, should as far as possible be to look first for solutions to the texts' perceived inconsistencies and mistakes, only resorting to criticism when we are, to the best of our ability, certain that inconsistencies and mistakes are the only reasons for certain theoretical choices. Arguably, Rawls' oeuvre has now entered the canon of

western political thought and, to the best of my understanding, I have tried to apply the same approach recommended by Rawls to his own work here.

These prefatory remarks about interpretation are also more specifically relevant to the thesis. One of its primary contentions was the rejection of the idea that Rawls' work on international justice was an inconsistent extension of his domestic theory of justice. When looked at from the higher vantage point, independent of the debates concerning the content of *LOP*, the idea that the whole of Rawls' work on international relations is essentially inconsistent with the rest of his corpus is, I believe, overly simplistic, and highly debatable.

Of course, the assumption of continuity can only provide a baseline to our enquiry. Authors, even the most eminent, are capable of mistakes and our attitude to their work, even conceding their superior intellect and knowledge, cannot simply be one of admiration. The point is, rather, that we should be able to present their work in the strongest possible version we find available in order to criticize it. To assume incoherence, to picture one of Rawls' major contributions as the result of error or simply, as some do in conversation, as the result of old age, violates the dictates of interpretive charity (see Davidson, 1984) and cannot assist our progress.

II. The argument of the thesis

In this thesis I have tried to rescue Rawls' *LOP* from the charge that it is an incoherent and implausible extension of Rawls' work to the domain of international relations. My analysis took as a starting point the polarized features of the intellectual debate surrounding Rawls' work on international justice. On the one hand, Rawls' critics have tended to approach *LOP* as a blind spot in the Rawlsian corpus, seeing *LOP* as simply incoherent with Rawls' domestic theory of justice. On the other hand, those who have defended Rawls' work on international justice have, in my view, swung to the opposite extreme, attempting a piecemeal defence but often without highlighting the deep changes that Rawls' theory has undergone. The goal of this thesis, then, was to reconstruct Rawls' work as coherently emanating from his understanding of liberalism and, at the

same time, to do so without obscuring the main points of tension between his domestic and international theories.

The two main discontinuities between Rawls' theories that I have highlighted were the fact that the main actors in *LOP* are peoples rather than persons and the fact that *LOP* is not an egalitarian theory of justice. Both features are understandably troublesome for Rawls' readers. *A Theory of Justice* and *Political Liberalism* both relied on the idea that individuals were the main unit of concern for a liberal theory of justice and that the best or most reasonable conception of justice for a society understood as a fair scheme of social cooperation between free and equal persons was an egalitarian one based on a strong interpretation of reciprocity. Indeed, Rawls' domestic work promised to reconcile the idea of individual rights and liberties that is central to the classical liberal tradition with the socialist aspiration towards a society of equals.

To those who were attuned to understand Rawls' work in this way, with all the tensions that reconciling freedom and equality necessarily involved, *LOP* must have seemed an incredibly strange book since, apparently, these tensions have simply evaporated. Superficially, some might have felt that *LOP* presented an entirely different approach to the whole of political philosophy, not simply a friendly amendment of justice as fairness for the more specific purposes of global politics. Yet, at least so I have claimed in this thesis, these apparent inconsistencies can be explained from within Rawls' conceptual toolkit.

The thesis started, in chapter 1, by clearing the deck of perhaps one of the most original attempts to interpret *LOP* as a coherent extension of Rawls' domestic theory of justice. The basic idea of the practice interpretation of Rawls' work is that the differences in both the subject and character of Rawls' domestic and international theories are simply explained by his attempt to construct justice for existing practices (see James, 2005, see also chapter 1). Pictured in this way, Rawls' theory opts for peoples and for sufficiency rather than equality, because the main agents of international relations are peoples and because the practice of international relations does not imply egalitarian distributive obligations. I have resisted this view of Rawls' work for one main reason: this view of *LOP*, and of Rawls' philosophy in general, seems hostage to the idea that it is methodology that drives our philosophical choices. But, then, how can we justify the outcome of our reasoning process to those who disagree with us on the content of moral

and political principles? The answer, so I claimed in chapter 1, cannot simply be that it is our method that requires it. Method is important but it cannot be all that it takes to justify where we stand on morally controversial issues such as those discussed in *LOP*.

Instead, in chapter 2, I have claimed that one of the most important Rawlsian ideas, and one that was present in Rawls' work from the start, was the attempt to construct a shared and mutually acceptable justification for basic social and political arrangements to those who live under them. In my view, this idea strikes to the core of Rawlsian liberalism. Rawlsian liberalism is justificatory liberalism. Justificatory liberalism starts from an ideal of respect for persons and adopts a specific understanding of justification, namely public justification. Public justification, following Rawls' insight, is not simply the statement of logical connections but, rather, starts from shared premises and tries to give reasons that all can reasonably accept. In turn, shared premises that constitute the basis of our public justification are to be found in the public political culture for the political context being addressed.

This understanding of Rawls' political philosophy, so I claimed in chapter 3, immediately dispelled the charge of incoherence that many have lodged against Rawls, and explains some of the central features of his *LOP*. Chapter 3 proceeded to show first that extending the content of a liberal egalitarian conception of justice to global politics would be misguided. All the main ideas Rawls uses to construct his domestic conception of justice, from the idea of primary goods to the features of the original position, are centred on aspects of a liberal democratic understanding of person and society and we cannot simply assume that these understandings are valid for the world at large. At least, this does not seem to be what Rawls' commitment to respect and public justification require. At the same time, by looking at the global public political culture, we can also understand why peoples are the main unit of analysis in *LOP* and why the latter is not egalitarian. The global public political culture, Rawls seems to believe, provides us with a conception of persons as being deeply attached to their political communities and of peoples that are not necessarily preoccupied with the continued accumulation of resources and wealth.

In the end, this suggests a rather different picture of *LOP*, one in which peoples are the main unit of analysis for the theory, but where persons are still, as

in the cosmopolitan outlook, the main unit of moral concern. In other words, at least so I have claimed, *LOP* presents a normative theory for international relations that is in line with the desire to present a publicly justified global order, and in so doing remains true to the ethos of cosmopolitanism. To use a rather crude slogan, we can say that *LOP* is a truly cosmopolitan theory insofar as it is not simply happy to settle, as many cosmopolitan theories seem to do, for what it sees as *valuable about persons* (such as their ability to use resources and opportunities to autonomously develop their conceptions of the good) but also tries to integrate what it claims to see as *valuable to them* (their desire and pride in developing their cultures and ways of life within the bounds of just and decent institutions).

While chapters 1 to 3 present this distinctive interpretation of Rawls' work, chapters 4 and 5 attempt to defend (and partially reframe) Rawls' understanding of international toleration and international economic assistance. Once again, I start by examining the main criticisms that have been levelled against *LOP*'s account of toleration based on reasonableness and of the duty of assistance (DOA). In both cases I find the many criticisms to be less persuasive than they claim. All such criticisms seem to point out deep flaws in Rawls' reasoning. My aim in chapters 4 and 5 was to show that, properly (or perhaps simply charitably) read, Rawls' text does not contain the many inconsistencies his critics wish to attribute to him.

To mention just a few items in the long list of critical reactions, I have tried to show that Rawls' analogy between domestic and international toleration based on reasonableness does not simply rest on a macroscopic fallacy. In other words it does *not* simply overlook the distinction between moral diversity concerning the good at home and political diversity concerning the right internationally. I have also tried to show that the account of decency put forward in Rawls' text is not really compatible with the many oppressive scenarios that some have associated with it. I have also tried to dispel the doubt that the idea of the social contract within *LOP* was 'tainted' from the start by a desire to accommodate less than fully just political communities.

In the same way, when it comes to the DOA I have tried to show that reading Rawls' proposal in terms of the world as we see it is not necessarily the best option available. The world as we see it, crippled as it is with many injustices,

relationships of domination and power, extreme poverty and destitution, aggressive war and destruction and the overwhelming and unnecessary loss of human lives, is emphatically not the template within which to understand the prescriptions of Rawls' realistic utopia. Rawls' ideas concerning the origin of economic and political development and the responsibility that each political community bears for its being well-ordered are not the result of a cynical endorsement of the current system of international economic and political governance; rather, the chapter claims that, if understood at the level of ideal theory, and matched with his conspicuous DOA, *LOP* offers a good approximation of a just and peaceful world order.

Furthermore, as I have already stated in the introduction to this thesis, what seems even more striking is that by attacking Rawls and (allegedly) exposing major flaws in his reasoning regarding these two topics, the critics have, in my view, neglected other aspects of Rawls' account of international toleration and assistance that are deserving of closer scrutiny. More specifically, in chapter 4 I contended that Rawls' explanation of his refusal to consider benevolent absolutisms as members in good standing of the Society of Peoples was less clear than one might have expected. And in chapter 5, I have claimed that the DOA is perhaps too ambitious and demanding and exposes the assistance provided by well-ordered peoples as being either impracticable or paternalistic in nature.

What is striking, at least from the perspective adopted in this thesis, is how far the tensions in Rawls' work that I have tried to expose are distant from, even perhaps conceptually opposite to, those highlighted by the standard criticisms of *LOP*. My concern, when approaching the text, has been to rescue *LOP* from the accusation that it does not tolerate enough, not that it tolerates too much. In a similar vein, my main worry when addressing international economic assistance has been that the DOA in fact asks too much of those that are meant to perform it and exposes their good will to risks that are opposed to the spirit of their assistance. In both cases I have attempted to ease these tensions within Rawls' text, and to provide sketches of how *LOP* could more plausibly diffuse these worries while still providing guidance for the foreign policy of a just Society of Peoples.

III. What can we learn from the thesis?

I have tried as far as possible throughout this thesis to draw back from making grand claims or sweeping generalizations. Nonetheless, it seems appropriate to attempt to extract some core messages from the thesis itself that go beyond the detail of its arguments. In what follows I want to lay out what I see as two fundamental lessons or messages that the thesis seems to provide. These messages are not really ‘shown’ in any sustainable sense of the term by the chapters in this work, but they constitute some of its deeper structure and, to some extent, speak to its deeper aim.

The first is that the idea of moral equality, perhaps the bedrock of cosmopolitan thinking, is in fact an insufficient guide to the establishment of our reciprocal obligations at the global level. More precisely, I believe that part of the work of the thesis consisted in showing that the idea of moral equality does not necessarily imply the idea of distributive egalitarianism. Clearly this point is contestable and, by any reasonable interpretation, not particularly new in debates within contemporary political philosophy. In fact, just glancing at the development of libertarian thinking (and here I mention just one example) it seems clear that to see persons as morally equal does not necessarily suggest, let alone demonstrate, that their political relationships should be guided by an egalitarian conception of distributive justice.

This, of course, does not entail the view that moral equality has no role to play in our discussions of distributive justice, or that there are no arguments in favour of egalitarian conceptions of distributive justice. Instead my suggestion, and indeed the suggestion that runs as a thread through this thesis, is the more modest point that moral equality is at best a starting point for our understanding of distributive obligations, and that other factors such as the nature of the political context in which we are operating, and the way in which we picture the main agents within such context, are also important and constitute a necessary step in our justificatory process towards establishing the content of a conception of distributive justice. As I have already stated above, this message is not particularly new or innovative, but it is perhaps important to reiterate its content within the

global justice debate where it has been rather less well received and understood (for a discussion see Sangiovanni, 2012).

The second message of this thesis, once again addressed to those who see themselves as naturally inclined toward contemporary cosmopolitan views, is that any plausible account of global justice also requires a plausible view of toleration. Toleration, it is fair to say, is a difficult subject and one that has been an aspect of moral and political thought for some time. As far as possible, perhaps conscious of limited space and ability, I avoided confronting the issue other than within the narrow bounds of Rawls' *LOP*. Yet I believe that discussion has highlighted an important problem within (at least some) cosmopolitan views.

Toleration seems to presuppose that what we tolerate is somehow different from what we think is best or true or most reasonable. This is, of course, itself a controversial view about toleration, but my point in suggesting it is not to show why such view is convincing, but rather to suggest that *if* one is convinced by this basic premise concerning toleration, then one should be suspicious of the idea that the only possible world is one structured by liberal democratic values all the way down.

In other words, at times one might be inclined to suspect that a fully cosmopolitan world, at least within the bounds of current debates on global justice, is simply a liberal egalitarian world in which persons are given all the rights and prerogatives of liberal democratic citizenship, and that no other acceptable ways of organizing political society and attributing rights and responsibilities within a social framework can be accepted. I believe this to be an implausible view of the world, and a warning to contemporary cosmopolitans. I also believe that, by avoiding this type of black-and-white picture, Rawls' work actually recommends itself as stronger rather than weaker.

Taken together, these two messages represent a qualified appeal to caution to the contemporary mode of cosmopolitan thinking. It advises contemporary cosmopolitans to be careful when they try to extend what they believe justice requires from the nation state to global politics, and to do so precisely because of their liberal credentials, not in spite of them. It seems the very nature of liberalism, at least as understood by Rawls, which recommends this caution, not the political problems we might encounter in implementing our vision or the

limited ability of human beings to comply with moral demands and to care for the fate of others.

IV. Future directions

Finally, let me provide a sketch of two main directions of future research that are implicitly contained in this thesis.

The first avenue of future research is connected to what I perceive to be the main theoretical weakness in the Rawls-friendly view of political philosophy I have presented. As I have stated above, Rawlsian liberalism is justificatory liberalism. This commitment to justification is itself the result of an ideal of respect for persons. But someone less friendly than I am to Rawls' project might legitimately ask the following questions: Why is respect for persons so important? What is it really that we respect about them? In respecting them, we consider them as our moral equal, but what grounds this assumption of moral equality? Furthermore, even if we accept this idea of moral equality and respect for persons, why is this necessarily tied to a concern for justification? And finally, even if we accept the link between respect and justification, why should we adopt the idea of public justification as correct or relevant?

Of course, these questions have all been the subject of a great deal of discussion (for example, see Gaus, 2011; Carter, 2011; Scanlon, 1998). Some of them, such as those relating to the moral equality of all persons, are as old as the discipline of moral and political philosophy itself. My aim in tackling such questions would not, then, be to find unique answers, let alone 'correct' ones (if such things even exist). Rather, it would be to present possible answers to these questions that are compatible with the Rawlsian framework in order to make the latter more credible, less arbitrary, and perhaps grounded in a broader understanding of some of the foundational aspects of political philosophy.

If this avenue could be described as 'investigating the foundations', the other I would like to propose looks at the possible implications of Rawls' *LOP* and could be termed 'investigating the consequences'. Rawls' political philosophy is inherently practical. Among other things, Rawls saw the role of political

philosophy as one that could help us resolve the deep political conflicts that we face in collective life. More specifically, *LOP* was presented as the attempt to provide us with a realistic utopia that would enable us to imagine a just and peaceful world that is hospitable to liberal democratic ideals and to difference, and that is also free of the great evils that have characterized human history. Rawls told us that having faith in these ideals will matter to how we approach politics, and that demonstrating they are at least conceptually consistent is the first step in our journey to translate hope into something more concrete.

Nonetheless, a book like *LOP* can only bring us so far in this journey. *LOP* is a short book, and one that still remains abstract despite its attempts (paraphrasing Rawls) to provide guidance where guidance is needed. Let me give just a few examples. *LOP* divides political societies into different categories and tells us what the general attitude to these different categories should be. To liberal and decent peoples we owe respect, to outlaw states condemnation, to burdened societies assistance and to benevolent absolutisms encouragement to become well-ordered. These are useful guidelines for orienting ourselves but they are not detailed answers as to how we should construct an ideal of foreign policy decision-making on specific issues. In chapter 4, for example, I tried to show how something more specific could be said about benevolent absolutisms, and yet my depiction remained very sketchy and did not discuss any real world scenarios or the historical record of our interactions with benevolent absolutisms.

In the same way, *LOP* proposes to imagine global economic governance as constructed beyond a veil of ignorance. In chapter 3 I suggested that this might result in a very different world economy than the one we currently see. Yet, once again, this was a mere suggestion, not a credible picture of a different and perhaps more just system of global economic governance. How should WTO rules be designed? How far should IMF conditionality go when suggesting changes to the domestic policies of a country asking for an emergency loan? Should we allow labour conditions to vary according to differing cultural, political and economic background conditions? All these questions matter and, I believe, could be answered by using *LOP* as a guide.

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