

I contend that this scenario is realistic – it could and may exist. I say it is also utopian and highly desirable because it joins reasonableness and justice with conditions enabling citizens to realize their fundamental interests.

John Rawls, *The Law of Peoples*, p. 7

# Rawls's Law of Peoples

## A Realistic Utopia?

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## Rawls's Peoples

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John Rawls's work on the law of peoples<sup>1</sup> is notorious for its anti-cosmopolitan stance: roughly, its insistence that those of us in well-ordered societies do not owe to the members of other societies the sort of justice that we owe to one another. I believe that his assumptions about the nature of societies – if you like, his ontology of peoples – make this stance a natural one to adopt and the aim of my paper is to explain why. Social ontology does not drive political theory as axioms drive a theorem, but it can have an important shaping or constraining effect; this fits with Rawls's idea<sup>2</sup> that our views on normative and related topics should be in “wide reflective equilibrium.” My goal is to document the shaping effect of his social ontology on his theory of international justice. The paper complements an earlier discussion of Rawls's theory of domestic justice, where I argued for a parallel thesis.<sup>3</sup>

The paper is in three sections. First, I look at Rawls's rejection of cosmopolitanism. Next, I review the claims that he makes about peoples and try to articulate the ontology of peoples that they support. And then in the final section I show how that ontology helps to explain his position on cosmopolitanism.

## 1 Rawls's Anti-Cosmopolitanism

Rawls's project in his work on the law of peoples is to use the device of the original position, first introduced in his theory of domestic justice,<sup>4</sup> in order to develop principles of justice for the international domain. In his earlier work he asked after the principles of justice that ought to determine the “basic structure” of a society, assuming that to do this they would have to be universal in scope, apply equally to all, and be publicly recognized as the final court of appeal for resolving the conflicting claims of individual members.

He suggested that in order to identify such principles, we should think of what we would individually choose for our own society, were we making a rational choice in light of our own interests or those of our family line but under “a veil

of ignorance” as to how far we have the qualities that will help us to do well in social life. He reasoned that a social choice made under such a veil of ignorance would reflect our view of what a society should be required by justice to do for its members.

How to transfer this contractualist way of thinking to the international stage? The obvious way would be to assume that those in the original position represent, not the members of a particular society, as in the earlier case, but individuals from they-know-not-what-society (and for the moment I put aside issues having to do with which societies are represented in the original position). Were we to ask about what such individuals would choose in the way of principles of justice to rule across different societies then it might seem that this would give us the international counterpart to domestic principles of justice. The principles would tell us what the society of peoples should in justice do for individuals everywhere, and so what a more fortunate people or its members should do for the members of a less fortunate group.

Charles Beitz<sup>5</sup> and Thomas Pogge<sup>6</sup> had argued for such a use of the original position device prior to Rawls's work on the topic. They had suggested that just as the device can tell us what a society owes in justice to its members, so it can tell us what a society and its members owe to individuals everywhere. The idea is that one and the same ideal of justice makes demands across societies as well as within societies; justice is cosmopolitan, not parochial.

This normative cosmopolitanism, as we might call it, should be distinguished from institutional cosmopolitanism. Even if justice is available as a common basis on which people can make claims against their own society and against other societies, other considerations will also be relevant to determining what sorts of arrangements are required in the domestic and the international domains. Justice might require a domestic society to set up a state that enforces very demanding principles of justice; justice in international society might not require anything of the same extensive kind. It will not be taken to require a world state, for example, if such a state is thought to be impractical or dangerous.

Although not necessarily committed to the development of cosmopolitan institutions, normative cosmopolitanism would nonetheless have characteristic implications. Consider a situation where a pair of countries are each domestically just, satisfying Rawls's two principles of domestic justice: in each society everyone has equal liberty under a system of liberties that is fully adequate; and, given that system, material rewards in each society are available under fair equality of opportunity and are allowed to be unequal only so far as the inequality improves the absolute lot of those in the worst-off position. Suppose that in one society people – and in particular, the worst off – are wealthier than their counterparts in the other. And suppose that a certain redistribution would improve the position of the worst off in the poorer society. Would that redistribution be required as a matter of justice? According to cosmopolitanism, as Rawls (*LoP*: 120) understands the doctrine, it would.

While Rawls wants to redeploy the original-position device in the international domain, however – he speaks of it as the second original position – he shrinks from embracing this normative cosmopolitanism. He maintains that we should try to work out what he describes as the principles of international justice or the principles of the law of peoples (*LoP*: 37) by looking at what contractors would choose in an original position, where they represent they-know-not-what-country, rather than individuals from they-know-not-what-country. The idea, roughly, is to articulate the requirements of justice as “basic fairness among peoples” (*LoP*: 115), not justice among the individuals who constitute different peoples.

More exactly, the idea is to formulate the requirements of international justice that are binding on what Rawls describes as well-ordered peoples. A well-ordered people is one whose affairs are regulated on the basis of shared ideas or reasons from which it is possible “to work up” a conception of justice. Equivalently, it is “a society effectively regulated by some public conception of justice, whatever that conception of justice may be.”<sup>7</sup>

The principles endorsed in the second original position, as Rawls conceives it, presuppose the substantive principles of justice that ideally prevail within each well-ordered people. Their role is to dictate the relations that ought to obtain, as a matter of international justice, among well-ordered peoples as such and between those peoples and less fortunate societies (*LoP*: 33). The principles will not posit obligations of justice as between one well-ordered society or its members, then, and the members of another well-ordered society; and this, no matter how much variation in affluence there is between them. They will be indifferent between the two well-ordered societies where the worst off in one happens to be better off, perhaps very much better off, than the worst off in the other; they will not represent either society as more fair or just than the other (*LoP*: 119–20).

This restriction on obligations towards the members of another well-ordered people, as indicated, does not entail a restriction on obligations towards the members of all *other* societies. Rawls argues that well-ordered societies and their members are required to do what they can to protect the rights of those who suffer at the hands of ill-ordered, outlaw regimes and to provide relief for those in ill-ordered, impoverished societies; these requirements figure in the law of peoples that he thinks international justice requires (*LoP*: 37–8).

There are three elements, then, in the anti-cosmopolitan position that Rawls embraces:

1. *The domestic claim.* Justice makes substantive demands in any well-ordered society, dictating what the society as a whole should do for its members.
2. *The negative international claim.* Justice makes no such demands across the membership of different well-ordered societies; it dictates nothing that one such society or its members should do for the members of another.

3. *The positive international claim.* Justice requires well-ordered societies to relate to one another in a certain way, and to provide up to a certain limit for the victims of oppression or poverty.

Rawls does not reject cosmopolitanism just for the superficial reason that it makes excessive demands and is in that sense utopian. He emphasizes throughout his book that it is right to restrict international justice in the society of peoples along the lines just sketched, not that it is merely pragmatic or prudent to do so.<sup>8</sup> But why is the restriction right? Emergencies aside, why is it that the ideal of justice as fairness applies only to the way well-ordered societies treat their members and to the way in which they treat one another? Well-ordered societies may differ significantly in their levels of affluence. So why doesn't justice require that richer societies or their members do something to redress such imbalances? That is the question that will concern us here.

## 2 Rawls's Ontology of Peoples

My answer to the question is that Rawls endorses an ontology of peoples in relation to their members and in relation to one another that helps to make his anti-cosmopolitanism intelligible. I develop a case for this view in the remaining two sections. In this section I review Rawls's more or less explicit claims about peoples and identify the sort of theory or ontology of a people to which he is committed. And then in the final section I show how his anti-cosmopolitanism is intelligible in light of that ontology.

First, then, to Rawls's claims about peoples and the ontology they support. I set out his claims under a number of headings, dealing in turn with the extension of peoples, the agency of peoples, and the requirements that must be fulfilled for peoples to be truly represented by governments. I then go on to consider the implications of those claims for an ontology of peoples.

### *The extension of peoples*

Rawls distinguishes five sorts of society: liberal peoples, decent peoples, outlaw states, burdened societies, and benevolent absolutisms (*LoP*: 4). The first two sorts of society he describes as well ordered, the others as not well ordered. An outlaw state will fail to be well ordered so far as it behaves aggressively towards its citizens and towards other states. A benevolent absolutism will fail to be well ordered so far as it tracks just the ruler's ideas – albeit the ruler's ideas about what is for the common good – not a public conception of justice. And a burdened society will fail to be well ordered so far as it suffers a level of poverty and destitution that makes proper order impossible: indeed it is this impossibility that identifies it as burdened (*LoP*: 37).

Although liberal and decent societies are both well ordered, they are ordered in different ways. In the liberal society a conception of justice reflects received ideas as to what reciprocity among equal, reasonable individuals requires. In the decent society such a conception reflects in the same way a generally accepted notion of the common good (*LoP*: 71, fn 10). But the notion at work in the decent society does not represent all individuals as equal. The ruling conception in this case favors the members of some groups over others but gives an otherwise fair hearing to the representatives of the less favored groups; no one will fail to have a voice, though the less favored will only have the indirect voice that their group gives them (*LoP*: 71–2).

On the face of it, Rawls's suggestion is that while liberal and decent societies are well-ordered peoples, the other three are ill ordered or "disordered"; indeed he once describes them as such (*LoP*: 38). But it is necessary to be careful here. Rawls only rarely uses the term "people" of those other three regimes, resorting instead to terms like "society," "state," and "country." In reconstructing his view we need to take account of this reluctance to describe ill-ordered societies as peoples. We need to be able to explain why only well-ordered societies – liberal or decent, as they may be – figure in the primary extension of the term "people."

### *The agency of peoples, direct and representative*

Peoples are treated by Rawls as capable of agency and as possessed of something that parallels the psychology of an individual agent. Thus he says that peoples are "actors" to whom we can ascribe motives, including the "moral" motives that go with making a commitment, such as a commitment to the law of peoples (*LoP*: 17). They are capable of "a proper pride and sense of honor," including a pride in their own histories and achievements (*LoP*: 44, 62). And they can both give and receive respect from one another; they can each insist on "receiving from other peoples a proper respect and recognition of their equality" (*LoP*: 35).

But motivated as they may be in these ways, what do peoples actually do? They are said to act on three different fronts. In relation to government – on the constitutional front, as we say – they act to "coordinate" government action (*LoP*: 19), and to "author" the powers of government (p. 26). These actions presumably involve citizens acting to joint effect, say in referendums or elections or class actions, or acting individually in contesting or not contesting received arrangements. Most of what peoples do, however, is done on two other fronts: on the domestic front, in relation to their own citizens and, on the international front, in relation to other peoples. And on these fronts, a people acts through its government. For Rawls, its government is "the representative and effective agent

of a people" (p. 38) or, as it is also called, "the political organization of the people" (p. 26).

### *The conditions for representation of a people*

A people will exist as an agent on the domestic and international fronts, then, only if the government acts appropriately in its representative role, giving the people a voice and a presence on those fronts. What it means for a government to act appropriately, according to Rawls, is that it allows itself to be domestically constrained by a public conception of justice, whether liberal or merely decent in character (*LoP*: 65–6). His picture is that if a government does not take its cue from that conception of justice – if it is not in that sense well ordered – then it cannot be regarded as the representative of a people.

This is a striking claim. Let the government be domestically unjust, Rawls suggests, and there will be no people present in its actions. The government will have to be seen as a body that acts only in its own name and, he would say, as a body that has no standing under the law of peoples. The norms that tell us how the government should behave in relation to its citizens are constitutive norms that determine what it is to represent a people, not regulative norms that merely instruct us on how representation is best pursued.<sup>9</sup> Suppose a government breaches those norms through failing to behave with respect towards its own citizens. In that case we might be tempted to say that while the government still represents its people, it represents them badly. But Rawls always speaks as if it does not represent a people at all. It is just a freewheeling agency with no claims to such a role: it comes to constitute an outlaw state or, at best, a benevolent absolutism. It usurps the position of the people.

A view once prevalent in law held that if the representatives of a company or corporation act *ultra vires* or without authority, then they do not act or speak for the company and the company cannot be held responsible for what they do.<sup>10</sup> Rawls holds in parallel fashion that if the government acts *ultra vires*, then the people are no longer present, no longer represented, in what is said or done. A usurper has taken its place.

The people may still exist as a potential agent when its government becomes a usurper, of course, since the people will retain a residual power on the constitutional front: a power that is capable, in principle, of establishing and controlling a representative government. But the people will not be present – it will not be represented – in the actions of the usurper government. This presumably explains why Rawls tends to use the word "people" only of well-ordered societies. The people that corresponds to an outlaw state or a benevolent absolutism – or indeed a burdened society – scarcely exists as an agent. It will be there to be invoked in envisioning better ways of arranging things

on domestic or international fronts but it will not be there as a power with which citizens or other peoples may hope to reason in a relationship of mutual respect.

### *Towards an ontology of the people*

The ontology of any composite like the people will have to identify the components out of which the composite is built, characterize the relationships or structure among those components that the composite presupposes, and detail the profile of the composite as a whole – say, its capacity to relate to other such wholes – that is fixed by the presence of that structure. This is true whether we are considering a molecule or cell or organism or something artificial like a social entity.

For Rawls the basic components out of which a people is composed are natural persons. He allows that persons may form groupings that are not yet peoples and that may play a role in the life of a people. Indeed, he makes explicit room for such formations in his account of how the less favored members of a decent society get a hearing; they are represented by the ethnic or religious groupings to which they belong. But it remains the case that ultimately every people is composed just of natural persons.

### *The structure of a people*

Individuals must amount to more than just an unstructured collection of persons if they are to be a people, for clearly not just any collection will constitute a people or indeed any sort of group. The natural persons who happen to have the same height or to live at the same latitude on earth constitute collections but amount to nothing of social significance. So what are the relationships that persons must have with one another in order to constitute a people? What is the structure that the persons must exemplify?

Rawls's answer to this question is that the persons who constitute a people must be related to one another in the manner that leads us to say that their society is well ordered. They must subscribe as a matter of common awareness to certain ideas about how their affairs should be ordered. They must treat these ideas as common reasons that constitute the only currency in which it is ultimately legitimate to justify the way things are done in the collective organizing of their affairs. I speak here of common rather than public reasons since Rawls speaks only of the ideas that operate in liberal regimes as "public reasons." And the persons envisaged must exist under a basic structure that enforces the rule of those reasons, requiring government to justify its coercive decisions, or at least the procedures under which it reaches those decisions, to those who are subject to it; this structure will make some room, at least in liberal societies, for the

election of officials and for the possibility of contesting the justifications offered for government actions.

The idea that persons might come to constitute a people of this kind represents, from one point of view, a political ideal. Indeed Rawls treats it as such an ideal in *A Theory of Justice* (1971), where he asks us to consider which among a range of possible well-ordered societies we would like to live in, did we not know how we would personally be situated within the chosen candidate; he ignores candidates that do not satisfy the well-ordered ideal. By the time of *Political Liberalism* (1993) and later writings, however, Rawls suggests that there is an empirical division among societies between those that are well ordered and those that are not. He never suggests that any society is perfectly well ordered but he thinks that some approximate that ideal – it is there in embryo, waiting to be more fully realized – while in others the ideal is completely lacking.

Rawls does not think it is accidental that some societies of natural persons come to be more or less well ordered and so to constitute peoples in his sense. He does not go in for explanations in the style of Habermas and others as to why suitable ideas might happen to get established in public consciousness as common reasons for constraining government.<sup>11</sup> But he does think that there is an empirical inevitability attaching to their appearance, once certain conditions hold.

He suggests in particular that the emergence of democratic institutions is more or less bound to give rise to what he would see as a liberal order. In his own words,

the political culture of a democratic society that has worked reasonably well over a considerable period of time normally contains, at least implicitly, certain fundamental ideas from which it is possible to work up a political conception of justice suitable for a constitutional regime.<sup>12</sup>

He assumes that in any such society the ideas that are valorized in this way amongst its members will attain the status of publicly endorsed reasons that govern the actions of those in government. Specifically, he assumes that the ideas will require and elicit a constitutional dispensation that entrenches, at least in the liberal case, the usual measures for facilitating free election and the possibility of contestation. Citizens will be entitled to challenge the actions of government that apparently offend against suitable reasons or that are not obviously decided under procedures that those ideas support.

### *The profile of a people*

That a people instantiates a structure of the kind discussed means that it is more than a collection; it constitutes a group. But it also means that it constitutes what I describe as a group agent. This fits with Rawls's own assumptions, since he says that well-ordered peoples are "the actors in the Society of Peoples, just as citizens are the actors in domestic society" (*LoP*: 23).

Many groups are not group agents. Consider those who routinely enter exchanges with one another in a market, or those who interact on the basis of a common set of norms. The members of such a group, like the members of any collection, may often act together for common ends; I put aside the question of how exactly such joint action is to be analyzed.<sup>13</sup> But they will not act together to establish a group subject that can be treated on a par with an individual subject and held to parallel expectations. They will not establish the sort of agent that can act effectively and responsibly over time.

If a group is to count as a group agent then at least three conditions must be fulfilled.<sup>14</sup> First, there must be certain goals that the group pursues, whether pre-set goals or goals identified over time by pre-set procedures; the group will pursue these so far as members act jointly to promote them or authorize an individual or group of individuals to do so in its name. Second, the group must endorse a common body of judgments about those issues that arise in the course of pursuing its goals; issues to do with whether to revise or remove or add certain goals, with how to order the goals amongst themselves, with what opportunities are available for their pursuit, and with what means promise to be most effective. Third, under intuitively normal conditions, the group must form its goals and judgments in a more or less rational manner and act rationally so as to satisfy those goals, according to those judgments. At the least, the group must be responsive to the recognition of any theoretical or practical form of irrationality; it must be disposed to mend its ways on having such irrationality pointed out.

To require that a group agent should satisfy these conditions is to require that it simulate individual agents in the most minimal way. No group can be depicted as an agent if it lacks the goals or judgments or minimal sensitivity to reason that agency requires. But how might a group reliably satisfy the three conditions? In particular, how might a Rawlsian people do so?

There are two simple models of how a group might succeed in meeting the three conditions, one involving endogenous organization, the other organization of an exogenous kind. Though neither of these models captures the way a Rawlsian people is supposed to organize itself for agency, they are worth mentioning as contrasting cases.

The endogenously organized group will involve its members, not just in authorizing the ends for which the members of the group are to act, whether jointly or via representatives; it will also engage its members in the formation of the body of judgments by which such action is to be guided. The age-old suggestion is that this can be done by using majority voting to generate judgments on relevant matters, ranging from what ends to pursue, to what means to adopt, to other more complex questions. Hobbes and Rousseau<sup>15</sup> concur on this recipe, for example, when they consider how an assembly of citizens might serve in the role of sovereign. As Hobbes says: “if the representative consist of many men, the voice of the greater number must be considered as the voice of them all.”

However, the majoritarian recipe won't work reliably<sup>16</sup>; nor indeed will any recipe that relies on standard voting procedures.<sup>17</sup> The trouble is that voting can lead a group into inconsistent bodies or sets of judgment, even if all the members are individually consistent. Suppose that three individuals, A, B and C, consider the issues of whether p, whether q, and whether p-and-q. A and B may support the claim that p, with C against; B and C the claim that q, with A against; and A and C the claim that not-p-and-q, with B against: A will endorse this claim, because of rejecting q, C because of rejecting p. Thus, under majority voting, the group would have to endorse the inconsistent combination of judgments: p, q, not-p-and-q.

The upshot is that if a group is to organize itself endogenously, then it will have to follow a procedure like the following. The members take a straw vote on each issue that comes up. If a problem of inconsistency appears, then they negotiate in committee – perhaps in a committee-of-the-whole, perhaps in a sub-committee – about where they should revise the set of judgments: they debate, in effect, about whose initial judgments should be ignored in the group judgment. And then they act, when they act in the group's name, according to those endogenous judgments. Thus the members of our A-B-C group might agree that they and their representatives should act on the judgment that p, that q, and – despite the fact that two members individually reject this – that p-and-q.

The exogenously organized group agent will not involve members in the process of judgment formation in the same manner as the endogenous counterpart. On the contrary, the members will leave it to some individual or some other group of individuals, perhaps electorally chosen, to determine what they as a group shall be deemed to judge. They will outsource the formation of judgment rather than conducting it in-house. An example might be the shareholders in a company who allow the board or chief executive to speak and act for them. The shareholders' membership consists in providing the resources required for such representation and having the right to vote at the annual meeting; it has little or no participatory significance.

The people in Rawls's model does not have the participatory character that would be required in order to constitute an endogenously organized agent; it is too large and disorganized to be able to go through anything like the straw-vote procedure. Such a participatory image of the people was invoked in the medieval theory of the *populus* as a *corporatio* – in effect, an artificial person – and in those early modern writers who were influenced by that theory.<sup>18</sup> But it has no application in the context of contemporary, large-scale democracies. Rawls recognizes as much in arguing that on most fronts the people only acts via the actions of its government.

Is Rawls committed, then, to the passive, minimally participatory image of the people that would apply if the people were taken as an exogenously organized entity? Surely not. The one theorist who clearly endorses that sort of image is Hobbes. He argues that individuals come to constitute a people as distinct



from a multitude when they individually and unanimously authorize a sovereign king to speak for them, giving him a *carte blanche* about what to say and do in their name.<sup>19</sup> Rawls will have no truck with the idea that a people might be seen as a group that gives over the management of its voice and presence in this absolute measure. Clearly, he thinks that while the people has to be represented by government if it is to exist as an effective agent, government does not have an unlimited power of discretion in the manner of Hobbes's sovereign.

So what then is Rawls's positive image of the people as agent? I suggest that for him a people will be organized for agency, not purely endogenously and not purely exogenously, but in a manner that goes precisely with its having a well-ordered structure. This involves continuous interaction between an exogenously representative government and an endogenously responsive citizenry. The members of any well-ordered people will be party to certain shared ideas that are capable of being articulated into a theory of justice. And they will control the government that represents them, they will constitute it as their representative, to the extent that the government is ordered or regulated by those common reasons, and by the corresponding conception of justice.

So far as the government operates under the control of such common reasons, and ultimately under the control of the conception of justice implicit in them, it will be truly representative of the people. And so far as government is representative in this way, the people will get to be established as an agent that is domestically and internationally effective. The people-as-represented-in-government will meet the three conditions for group agency. It will act for the realization of certain ends; it will act under the guidance of a body of judgments that members authorize as common property; and it will display a modicum of rationality in how it holds and acts on those ends and judgments. The judgments endorsed as common property will be the judgments that government makes when it acts under the constraints imposed by common reasons; what makes them common property will be the reliance on and enforcement of this sensitivity to such ideas.

I hope that this discussion will help to spell out the agential nature of a well-ordered people, in Rawls's view of these matters. He depicts peoples as group agents but he avoids both the implausible picture under which this would require intense participation and the vacuous picture under which it would require nothing more than the authorization of a self-willed spokesperson. He represents a well-ordered people as a "civcity" – pronounced as in "velocity" – to use a term that I introduced elsewhere.<sup>20</sup> The members are not participants on the model of those in an endogenously organized group. But neither are they relatively passive presences like the members of an exogenously organized group. They are active in the manner characteristic of citizens, as citizens are traditionally conceived, being disposed to invigilate and interrogate those who act in the name of the collectivity.

### 3 Reconstructing Rawls's Rejection of Cosmopolitanism

And so, finally, to the denouement. We began this paper by noting that Rawls thinks there is a certain geography to justice and by asking about what can lead him to that view. The answer is, I think, that he sees his anti-cosmopolitan position as the only one that sits easily with the nature of well-ordered peoples. Rawls himself says in another context that "the correct regulative principle for anything depends on the nature of that thing."<sup>21</sup> My claim is that by his lights cosmopolitanism fails to take sufficient account of the nature of peoples. It fails to reflect an understanding of just what sort of thing a people is.

Anti-cosmopolitanism, as we presented it earlier, involves three claims:

1. *The domestic claim.* Justice makes substantive demands in any well-ordered society, dictating what the society as a whole should do for its members.
2. *The negative international claim.* Justice makes no such demands across the membership of different well-ordered societies; it dictates nothing that one such society or its members should do for the members of another.
3. *The positive international claim.* Justice requires well-ordered societies to relate to one another in a certain way, and to provide up to a certain limit for the victims of oppression or poverty.

I will consider each of these claims in turn, explaining how it fits quite naturally with Rawls's view of the nature of well-ordered peoples.

#### *The domestic claim*

Whenever something is claimed in justice, there must be considerations or reasons to be offered in support of the right or obligation alleged. Call these the grounding reasons for the obligation. Under Rawls's picture of well-ordered peoples, the grounding reasons for domestic obligations of justice are the received ideas that are licensed as reasons on the basis of which government can be required, uniquely, to act. If individuals are part of a single civcity, then they will each organize their lives around the assumption that just as they can make direct or indirect demands on their government or people, grounding them in the common reasons accepted by all, so others can do so too. They will give normative weight to those reasons, taking them to indicate what can and cannot be claimed in justice.

Does the capacity of these received ideas to support claims in justice derive, as some might want to suggest, from a contract to maintain the civcity on this pattern? Not necessarily. All that is required for the considerations to carry binding force is that it is a matter of common assumption and expectation that they

represent the terms on which members relate in a civicity. Given that assumption, each will manifestly rely on others – in particular, on the government and the people it represents – to deal with them on those terms. And each will manifestly supported in this reliance by the way that the civicity operates as an ongoing enterprise; the government and the people will acquiesce in the reliance of each and may be taken, in effect, to invite it. Such manifestly displayed and manifestly supported reliance is a plausible source of obligation, recognized under many different theories.<sup>22</sup>

We should not be surprised that Rawls thinks that obligations in justice have such social roots. Already in *A Theory of Justice* he traces the obligations of justice to the bonds that living together under a well-ordered regime involve. Persons do not have claims on the collectivity, and indirectly on one another, just in virtue of their humanity. They have such claims, rather, in virtue of the sort of social life they lead together: in virtue of the fact, as it is registered in his earlier work, that society is “a cooperative venture for mutual advantage, . . . marked by a conflict of well as by an identity of interests” (*TJ*: 4). If there is a shift on this matter in his later work, it is merely that he comes to recognize that living together under a regime of common reasons is the aspect of social cooperation that is crucial to claims of justice.

### *The negative international claim*

Domestic obligations of justice are grounded on the regime of common reasons in which people participate, then, and on the manifest mutual reliance that this involves. But, according to Rawls, there are no such grounds available to support similar obligations of justice towards the members of other well-ordered peoples. The members of a well-ordered people are not socially connected with the members of any other well-ordered people in the way in which they are connected with one another as partners in a regime of common reasons. And so, by his lights, there is nothing like the ground available in the domestic case, for why a well-ordered people or its members should have obligations in justice towards the members of another such people.

The relations between a well-ordered people or its members and the members of another well-ordered people might be compared to the relations that exist between the individuals considered in a well-known scenario discussed by Robert Nozick.<sup>23</sup> In this imaginary story a number of Robinson Crusoes live on the islands of an archipelago, mutually isolated from one another, and perhaps even mutually unknown to one another. According to the sort of view adopted by Nozick himself, those people, should they become aware of one another's existence, can make exactly the same claims in (non-contractual) justice on each other and on others collectively as the members of an ongoing society. He thinks that the claims involved will be of the minimal, self-protective sort defended in libertarian doctrine, of course, and he argues that those claims are grounded in

people's humanity, not in the contingent fact of their living with one another in a particular society. In this respect he is an archetypal cosmopolitan, though one who recognizes fewer obligations of justice than writers like Pogge and Beitz.

Nozick himself is quite clear that Rawls would take a different view from his own. He recognizes explicitly that Rawls derives his substantive obligations in justice from the character of social cooperation in a domestic society. But he thinks, as a good cosmopolitan would, that this is simply confused. He alleges that “the reasons for the view that social cooperation creates special problems of distributive justice otherwise not present, are unclear if not mysterious.”<sup>24</sup>

I hope that the points rehearsed in this discussion will remove the mystery alleged by Nozick. More positively, I hope they will help to explain the second thesis in Rawls's anti-cosmopolitanism. It is because they relate to one another in the dense, structured manner of a well-ordered society that the members of a people owe so much to one another. And it is because they do not relate to the members of another well-ordered society in that manner that they owe them so little.

If this line of interpretation is correct, then Rawls's theory is quite distinctive and contrasts, for example, with the contractualism about rightness that T. M. Scanlon defends.<sup>25</sup> Under Scanlon's view I should never behave towards others in a manner that breaches those principles that none of us would reasonably find objectionable were we, in a spirit of cooperation, to seek out principles for the general regulation of our behavior. Assuming that this also applies to the groups I form with others, it might well follow that we, a rich well-ordered people, ought to treat strangers from another well-ordered people as well as our own, or perhaps even better.

Rawls cannot make the issue of whether it is just to discriminate between compatriots and strangers turn so contingently on what principles for the regulation of behavior we would or would not find reasonably objectionable. The obligations in justice that he countenances derive, unlike Scanlon's obligations in rightness, from actual relationships of cooperation. And by his lights it is a matter of stipulation that relevant relationships will be present amongst the members of any well-ordered society and absent across the membership of different well-ordered societies. That a society is well ordered entails that the relationships will be present in the first case; that different well-ordered societies are distinct entails that they will be absent in the second.

### *The positive international claim*

We have seen that the intense, structured aspect of a well-ordered people explains why it can support obligations of justice towards its members that find no parallel in obligations towards the members of other well-ordered societies. The members of such a people constitute what I called a civicity where the members of different peoples – individuals across the world – do not. And that difference is relevant to



the claims that the members of a well-ordered people may make on other individuals or peoples. It explains the first two elements in the anti-cosmopolitan position.

The fact that well-ordered peoples are structured in this intense manner, however, also explains the third element in that position. Or at least it does so to the extent that it explains, as we have seen, why a Rawlsian people has the profile of a group agent. It is because well-ordered peoples are group agents, capable of performing like individual persons, that we can ask about how they relate amongst themselves and about whether that mode of relationship supports any obligations of justice towards one another or towards less fortunate societies. It is because of their standing in this regard, indeed, that we can think of such peoples being represented in a second original position, and can ask about what “basic structure of the relations between peoples” (*LoP*: 33) representatives would rationally endorse under a veil of ignorance.

Peoples have interests of their own, according to Rawls, just like individual agents. These include the protection of their territory, the security and safety of their members, the preservation of their political institutions and “a proper self-respect of themselves as a people” (*LoP*: 34). But peoples – as represented, of course, in suitable governments – can also recognize the diversity of these interests as a manifest fact and can see that if they are to organize their lives peacefully with other peoples, then they cannot each insist on the priority of their own interests.

Can they hope to find a common set of reasons on which to base their relations, as in the domestic case? Rawls claims that they can. Thus he argues that while they may be rationally moved by their own interests, they can distinguish what is rational from what is reasonable and can be moved to act reasonably. And, he explains, it is part of

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

When Rawls thinks of reflectively working out the terms that ought to govern relationships between well-ordered peoples, then by the account offered here he has to be thinking of explicating ideas that already have a presence, however ill developed, in the culture of the international world. If he thinks that he is merely spelling out an attractive ideal, as if from nowhere, then his complaint against cosmopolitans cannot stand; they will not be doing anything ill-conceived, as he suggests, but will be just trying to explicate a rival ideal of their own. I take Rawls

to endorse the line ascribed to him under the account developed here when he makes remarks to the effect that unlike cosmopolitan principles, his theory “proceeds from the international political world as we see it” (*LoP*: 83).

Not only should a government relate to its citizens reasonably or decently, then, as its claim to represent a people requires. It should also relate reasonably to other governments. But what exactly does public reason demand in the international sphere? The second original position directs us to a law of peoples that ought to govern how well-ordered peoples relate towards one another and towards other sorts of regime (*LoP*: 37). The very familiarity of the principles recognized in this law of peoples provides support for my claim that Rawls sees himself as working out the implications of ideas already implicit in international culture.

The principles will require well-ordered societies not to breach human rights, not to intervene in one another's territory, not to resort to war or to conduct war except under very demanding constraints, and so on; in a word, it will require well-ordered peoples to display mutual respect. What will the law of peoples require under the non-ideal assumption that some societies are oppressive or impoverished? Rawls thinks that it will require well-ordered societies to provide help – what sort of help is another question – for those whose human rights are violated by the oppression or aggression of states. And he holds that it will require well-ordered peoples to provide assistance for those who live under conditions of such poverty that they cannot achieve a well-ordered society. Rawls admits that well-ordered societies may have rival aims that could prompt aggression: “Peoples may often have final ends that require them to oppose one another without compromise” (*LoP*: 123). But he generally thinks that non-ideal theory will come into play only in dealing with disordered regimes.

Whether in helping individuals to resist the aggression or oppression of outlaw states, or in providing relief against the poverty endured in burdened societies, Rawls thinks that there is a clear limit to what is required in justice. Let the societies for which help is provided become well-ordered peoples, perhaps as a result of the assistance delivered, and further help ceases to be necessary or obligatory: this, in accord with the negative international claim.

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. Nor is there any justifiable reason for any society's asking for more than is necessary to sustain just institutions, or for further reduction of material inequalities among societies. (*LoP*: 119)

Does the second original position provide a good argument for the principles of international justice prescribed, according to Rawls, in the law of peoples? For example, is it proof against the cosmopolitan suggestion that the representatives

of well-ordered peoples behind a veil of ignorance would be bound to worry about how badly off they might be as individual peoples and would guard against that danger by prescribing for rules of international redistribution?<sup>26</sup>

The ontology of peoples gives us ground for thinking that both the relations between the members of a well-ordered people, and the relations among well-ordered peoples themselves, will underpin obligations of justice of a kind that can be explored via the original position device. But that ontology gives us no ground for thinking that the relations between one well-ordered people and the *members* of another are of the same justice-engaging kind. So to this extent it appears that the ontology will help Rawls meet the cosmopolitan criticism. If there is a weakness in Rawls's schema it shows up, ironically, with the principles on which radical cosmopolitans are likely to agree rather than disagree: namely, that well-ordered peoples should help those who live under oppressive and burdened regimes. For if those in the second original position represent only well-ordered societies, and not individuals across all societies, then it is unclear why they would have a rational motive for endorsing such altruism. But I leave this question open, since it does not bear on our theme.

To conclude, then, Rawls's view of the nature of well-ordered peoples helps in good part to explain his rejection of cosmopolitanism. The structure of relations within well-ordered peoples explains why domestic obligations of justice can be so demanding, as registered in the first anti-cosmopolitan claim. The absence of that structure in the relations between well-ordered peoples explains why, as in the second anti-cosmopolitan claim, no such obligations of justice obtain between one well-ordered people and the members of another. And the analogue to that structure in the relations within well-ordered peoples explains why they can behave like persons and, as in the third claim, recognize obligations of international justice in their interaction as collectivities. Rawls's normative views may seem surprising in isolation but, as suggested in the introduction, they become more intelligible when set within the context of his social ontology.

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## Notes

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