

RAWLS AND INTERNATIONAL JUSTICE

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1. Introduction

When John Rawls published *A Theory of Justice* (1971), one of the immediate reactions was to apply Rawls' ideas on justice to the international community. On the one hand, critics argued that Rawls (1971, 8; 1978, 70; 1987, 3) was *wrong when he limited his theory to domestic societies*. On the other hand, the fact that he (1971, 378-379) passed over the international community with few remarks was generally seen not as a reason to reject Rawls as irrelevant in problems of international justice, but rather as a reason to consider more carefully the roots of this limitation. If the principles of distributive justice are not applicable to international community, there must be a good reason why not.¹ Since the initial reactions to *A Theory* there has been considerable discussion about the international applicability of Rawls' views, much of it raised by Rawls and his followers. A good deal of recent literature on international justice concentrates on such issues as the defensibility of national identity (Miller 1993; Freeman 1994), environmental ethics (McCleary 1991), cosmopolitanism and communitarism (Linklater 1992), ethical dimensions of integration in limited geographical areas (Pogge 1994a), and special questions concerning humanitarian intervention and international order (Rosas 1994). Much of the recent literature presupposes that boundaries between nation-states (USA, UK etc.) make at least some moral difference in matters of international justice. Of course, this presupposition is intuitively plausible, since the contrary claim seems unreasonable. If boundaries are totally morally irrelevant, a nation-state may be free to collect taxes and intervene in other states whenever it pleases, for example.

One way to clarify this problem of whether boundaries make a moral difference to see it as arising from three apparently plausible but jointly incompatible claims: first, that some discrimination on the basis of citizenship is just; second, there is no obvious morally relevant property the existence of which would make such discrimination just; and third, that if there is no morally relevant property the existence of which make such discrimination just, then such discrimination is unjust. Clearly, these three (widely held) claims conflict with one another. Which is false?

The first claim, the claim that some national discrimination is consistent with international justice, is difficult to challenge. (cf. Goldman 1982, 437; Beitz 1983, 592; Miller 1988, 647; Nathanson 1989, 535). Most people believe, for example, that boundaries between nation-states make some difference with regard to the obligation *and* permission to oppose unjust acts and institutions. Although there is considerable discussion concerning the extent of justifiable discrimination here, virtually no one denies the permissibility of such discrimination *per se*. Notably, the view that discrimination on the basis of citizenship is in accordance with justice - *the priority thesis*² - (cf. Beitz 1983, 595; Baxter 1986, 113) is also presupposed by most philosophical theories of justice. Although most such theories are universalistic in the sense that they are meant to be applicable everywhere and at all times at least in some form (cf. Baxter 1986, 113; Goodin 1988, 664; O'Neill 1988, 705), they are still theories about the distribution of goods among *citizens* and about the liberties of *citizens* (cf. Nelson 1974, 411; Amdur 1977, 453; Gallie 1978, 484; Shue 1980, 139).

The second claim, the claim that there is no clear morally relevant property the existence of which would make discrimination on the basis of citizenship just, is also intuitively plausible. At least nowadays, philosophers tend to agree that membership in a society or citizenship in a nation-state is in itself a morally irrelevant ground for discrimination (see e.g. Nelson 1974, 411; Goodin 1988, 663). The reasoning behind this view is quite understandable: what could be so special about our fellow countrymen? It would be difficult to specify a feature that is common to all and only compatriots and then furthermore to justify grounding an entire moral tradition on that

feature. Indeed, a survey of the philosophical literature on the right of nation-states to self-determination indicates an unfortunate fact: it is extremely unclear what the "self" in question is and how it can have a "right" to anything in any reasonable sense of the word (French & Gutman 1974, 139; Goldstick 1976, 107; Beitz 1979, 106; Shue 1980, 139; Margalit & Raz 1990, 439; R  ikk   1991, 21).

The third relatively common claim (that if there is no morally relevant property the existence of which would make unequal treatment just, then unequal treatment is unjust) seems equivalent to what is usually called the *formal principle of justice*. According to the most common formulation of this principle, one should give similar treatment to those who are similar in morally relevant respects and dissimilar treatment to those who are dissimilar in morally relevant respects. Quite reasonably, many writers take this principle for granted when discussing social justice issues (e.g. Benn & Peters 1959, 111; Frankena 1962, 9; Feinberg 1973, 99; Berlin 1980, 82). But the principle seems to imply either that national discrimination is never justified or that there is some property that justifies the priority thesis and hence at least some national discrimination.

Not surprisingly, attempts to solve this problem usually appeal to some property and claim that it is the one that justifies discrimination on the basis of citizenship. This approach makes sense, since it takes into account a well-considered and widely-shared moral judgment, namely, that some discrimination on the basis of citizenship is justified. The challenge that remains is to avoid properties that are either unrelated to nation-states or morally irrelevant to national discrimination, since neither of these could justify discrimination on the basis of citizenship. Put another way, a solution should fill both the 'limitation condition', according to which the justifying property should relate only to nation-states (and to almost all of them), and the 'relevance condition', according to which the justifying property should be morally relevant with respect to national discrimination (and in proportion to the extent of discrimination).

In what follows, I shall reconsider Rawls' original answer¹ to the problem of whether boundaries between nation-states make moral difference. By reviewing and reconstructing the discussion I will argue that both Rawls' solution and his critics' objections are problematic.

The ultimate aim of the paper is to motivate a discussion of this profound problem of international justice in the context of recently raised more concrete problems.

II. Rawlsian international justice

John Rawls' most explicit argument about international justice is presented in *A Theory*. There he argues for the priority thesis by developing the notion of an *international original position* or, briefly, IOP. According to Rawls (1971, 378), "one may extend the interpretation of the original position and think of the parties as representatives of different nations who must choose together the fundamental principles to adjudicate conflicting claims among states." Rawls states that the IOP is formulated to nullify "the contingencies and biases of historical fate" between nation-states (ibid.), as the (proper) original position is formulated to nullify "social and natural contingencies" between citizens of a particular society (ibid., 19). In accordance with this task, the knowledge of the contracting parties is again limited in various ways. Rawls (ibid., 378) writes that while the representatives of nation-states "know that they represent different nations each living under the normal circumstances of human life, they know nothing about the particular circumstances of their own society, its power and strength in comparison with other nations, nor do they know their place in their own society". Thus, the parties do not have so much knowledge "that the more fortunate among them can take advantage of their special situation." Their knowledge suffices only "to make a rational choice to protect their interests". (ibid.)

Rawls does not precisely specify the interests of the parties in the IOP. However, it seems that their interests would be identical with states' interests, since the parties are, after all, "representatives" (ibid.). Indeed, the interests in question seem to be those of internally just states (as defined by Rawlsian standards). The IOP is held, according to Rawls, after "we have already derived the principles of justice as these apply to societies" (ibid., 377). Perhaps the interests of these kinds of states are different from those of "actual" states which, in Rawls' view, may be "moved by the desire for world power or national glory" (ibid., 379). In any case, the principles that would be acknowledged in the

IOP are, in Rawls' words, "familiar ones" (ibid., 378). Above all, he claims that the

basic principle of the law of nations is a principle of equality. Independent people organized as states have certain fundamental equal rights. (...) One consequence of this equality of nations is the principle of self-determination, the right of a people to settle its own affairs without the intervention of foreign powers. (Ibid.)

Other principles acknowledged are the rule that treaties are to be kept, the principle of justifiable self-defense and principles defining the means of war. In Rawls' view, these are the *only* principles of international justice. Rawls claims that the reason why anyone should take any interest in the principles derived from a hypothetical IOP is the same reason why people take an interest in the result of the (proper) original position: "the conditions embodied in the description of this situation are ones that we do in fact accept" (ibid., 587), and "these conditions are strong enough to yield a significant set of principles" which "match our considered convictions of justice" (ibid., 20).

Is Rawls' argument for the priority thesis acceptable?

III. The results of international original position

If we allow Rawls' argumentative method (the method of wide reflective equilibrium), then the only possible way to counter him is to show that the conditions of the IOP do *not* in fact yield the set of principles he claims or are *not* the ones "we" accept. Among others, Brian Barry (1975, 133) has objected that "on Rawls' own account of the way in which principles governing the relations between states would be chosen in the original position, his minimal liberal principles of non-interference and non-aggression are no more than a fraction of what would be agreed upon, if indeed they would not be superseded altogether by agreement on an effective system of collective security". Many philosophers accept this argument, which we may call the *wrong principles criticism*. Although they tend to disagree about what the correct principles are, they often agree with Barry that they are

not the ones Rawls suggests (see Richards 1971, 138; Danielson 1973, 334; Scanlon 1975, 202; Amdur 1977, 458; Singer 1977, 50; Beitz 1979a, 151; Barry 1982, 234; Luper-Foy 1988, 9; Pogge 1988, 236; Wenz 1988, 248). Thus the wrong principles criticism appears to be a serious objection to any defense of the priority thesis by means of Rawls' argument. If the conditions of the IOP do not imply the principles Rawls says they imply, then the principles that explicate the priority thesis lack support.

There are many formulations of the view that the parties in the IOP would not accept the principle of non-intervention. Some of the formulations seem to be clearly inadequate, but there is a stronger formulation. The crucial question is this: why would the parties choose non-interventionism, if they know (as they should know since they are familiar with the "general facts") that someday serious human rights violations might happen in their country and that the only successful way to resist them would be foreign help (cf. Wicclair 1979, 148)? Why would they fail to see the need for an international (rather than merely national) assurance of general respect for human rights? One might suggest that Rawls (1971, 8) is not interested in "principles of how to deal with injustice" and argue that thus the parties in the IOP would not raise the question of assurance (see Beitz 1979, 135; Wicclair 1980, 298). But this argument would be clearly mistaken. According to Rawls (1971, 315), the principles that solve the assurance problem do not belong among the principles of how to deal with injustice. This view is reasonable, since the assurance problem should be solved even in a world without injustice. Thus it seems that Rawls has no reason for the parties to accept the principle of non-intervention (rather than a principle which objects to non-interventionism).

The view that the parties in the IOP would not accept the principle of non-distribution is likewise presented in many forms, a number of which are clearly problematic. The argument that the principle of non-distribution would not be accepted because the starting points of the parties in the IOP are identical to those of the (proper) original position (Danielson 1973, 334) does not work. Its failure is familiar: it does not respect Rawls' description of the IOP. Obviously, Rawls' description of the IOP is *not* identical to that of the (proper) original

position only in the former do the parties represent states. They are therefore choosing "fundamental principles to adjudicate conflicting claims among states" (Rawls 1971, 378). Thus, if the principle of non-distribution is not accepted, it is not because the distributive principles which govern the relations of persons are accepted. Such principles are not under discussion at all.

But although the parties to the IOP cannot discuss distributive principles of justice between persons, they nonetheless might discuss distributive principles of justice between nation-states. They might choose, for example, a distributive principle to govern international relations similar to the one which governs the distributive relations of persons, i.e., a difference principle. The question is, why would they *not* choose something like this? Since the parties are familiar with the general facts, they know that there are terribly poor countries in the world, and surely it is in their interest to ensure that they will not find themselves inhabitants of such countries (cf. Pogge 1988, 236; Wenz 1988, 248; Singer 1977, 50). So, in this situation, why would they accept the principle of non-distribution? Rawls does not present an answer.

It seems that there are plausible forms of wrong principles criticism. The priority thesis cannot be supported by the Rawlsian IOP, since the principles which explicate the priority thesis simply do not arise from the IOP, as described by Rawls. However, contrary to some writers' views (e.g. Wenz 1988, 248), it does not follow from the above argument that the priority thesis cannot therefore be defended by means of Rawls' argument. This conclusion would follow only if Rawls' description of the IOP is the correct one. But what if it is *not* correct? Does the *correct* description of the IOP imply that the parties would accept the principles of non-intervention and non-distribution?

IV. Towards a realistic international original position

Is Rawls' description of the IOP realistic (in the sense that IOP's can be realistic)? According to Barry, it is not. For he (1975, 133) argues that "Rawls does not and cannot defend the assumption that principles will be chosen in the original position by men as members of pre-existing societies rather than by men as men who may wish to form sovereign states or may wish to set up an overriding international

state". Like the wrong principles criticism, this argument, which we may call the *wrong description criticism*, is widely accepted, although again there is no consensus as to what in fact is the correct description of the IOP. Critics agree with Barry only that it is not the one Rawls presents (Beitz 1979, 151; Wicclair 1980, 299; Luper-Foy 1988, 9; Pogge 1988, 241). According to the wrong description criticism, the correct description of the IOP would make it even more transparent than the Rawlsian description that the principles that explicate the priority thesis would not be accepted in the IOP. An alternative to this destructive criticism is the more constructive claim that although Rawls' description is not correct, the correct description does entail the principles of non-intervention and non-distribution. Both the destructive view and the constructive view, then, agree that Rawls' description of the IOP is not justified.

Clearly, those who wish to use Rawls' argument to defend the priority thesis should reject his description of the IOP since, *pace* Rawls, it does not imply the principles that explicate the thesis. Interestingly enough, this kind of constructive criticism seems to be perfectly compatible with, indeed almost necessary to, Rawls' own account of how to describe the IOP. If possible the description should (not only be independently plausible but also) imply principles that "match our considered conviction of justice (...)" (Rawls 1971, 20). Since the priority thesis is generally accepted, the IOP should imply the principles which explicate it.

Some suggest that the IOP implies the principles of non-intervention and non-distribution only if it includes a "number of strong and questionable assumptions" (Wicclair 1980, 301). However, there is one relatively plausible assumption that can be added to the original description of the IOP so that the desired results are achieved. As many writers have argued, one may assume that the parties think that any alternative principles to the principles of non-intervention and non-distribution are in practice impossible to enforce (see Galston 1980, 124; Hoffmann 1981, 155; Martin 1985, 44). The parties to the IOP "know" that there are not (and cannot be any) sufficient political mechanisms of international enforcement, and they also "know" how selfish nations (necessarily) are. One may even suppose that this assumption is part of Rawls' original description, since the parties

know the general facts (Boxill 1989, 156). However, this supposition probably overreads Rawls, since the view that (because of the enforcement problem) there cannot be any other principles than non-intervention and non-distribution presupposes a theory of international relations that is too controversial to be characterized as a "general fact" or as a presupposition of such fact. We may nevertheless add this theory to the description of the IOP, since, in Rawls' view, if we do not accept the conditions of the IOP "then we can be persuaded to do so" (ibid., 587) by means of supporting explanations (ibid.). So, if one defends the theory of international relations in question (as Rawls does not) then one may say that the principles of non-intervention and non-distribution do follow from the IOP.

However, since the IOP does *not* include anything that would uncontroversially imply these principles, the burden of proof belongs to those who wish to defend the priority thesis by a modified version of the IOP. The burden is not met by the simple claim about enforcement: it is anything but obvious that this claim is sound. The constructive view is suspect, if not wrong.

But whether or not one can reasonably reformulate the IOP so that the principles that explicate the priority thesis follow, proponents of the wrong description criticism have a strong rejoinder: the description of the IOP *necessarily* includes at least one questionable assumption if it really implies the principles of non-intervention and non-distribution. That assumption is that the parties represent nation-states and, accordingly, choose principles for nation-states (Barry 1975, 133; Beitz 1979, 151; Wicclair 1980, 299). Without this assumption, one cannot accept the principles of non-intervention and non-distribution. If the questions in the IOP concerned principles which govern the relations of individual persons, how could the parties choose principles which are related to the claims of nations? It is probable that they could not, and thus the assumption that the parties represent nation-states is necessary to those who defend the priority thesis. However, the status of this assumption is not clear. To forego any explanation of why the parties to the IOP represent nation-states is to deny that there must be some reason why discrimination on the basis of citizenship is justified, since the description implies discrimination.

Some representatives of the wrong description criticism think that Rawls lacks an argument for having the parties to the IOP represent nations and not persons. Without further discussion they conclude that it is thus not possible to argue for the priority thesis in Rawls' way (e.g. Luper-Foy 1988, 9). These theorists may be too quick, however, since many writers have pointed out the following argument in Rawls. (See Amdur 1977, 453; Beitz 1979, 130-131; Barry 1982, 232; Richards 1982, 288; Shue 1982, 719; Beitz 1983, 594; Mack 1988, 58-63; Pogge 1988, 233). In an international community there is no social cooperation. Without social cooperation, there can be no principles of distributive justice. Therefore, in an international community there can be no principles of distributive justice. But if this is so, then having the parties in the IOP represent nation-states is justified (thus making it possible or even probable that the principles that explicate the priority thesis will be accepted).

This interpretation of Rawls may well be mistaken, but it has some textual support. Rawls often expresses the view that the principles of justice are closely related to the existence of social cooperation. In the first section of *A Theory* he writes that a

set of principles is required for choosing among the various social arrangements which determine (...) division of advantages and for underwriting an agreement on the proper distributive shares. These principles are the principles of social justice: they (...) define the appropriate distribution of the *benefits and burdens of social cooperation*. (1971, 4; emphasis added; cf. *ibid.*, 5.)

Rawls repeats the point frequently: the primary subject of justice is "the *basic structure* of society, or more exactly, the way in which the major social institutions (...) determine *the advantages from social cooperation*" (*ibid.*, 7; emphasis added; cf. *ibid.*, 10). So if there are no "benefits and burdens of cooperation" or "social advantages" (basic structure), then in Rawls' view there cannot be principles of distributive justice either. Rawls undoubtedly accepts the "social cooperation requirement" (cf. Mack 1988, 58) according to which

RAWLS AND INTERNATIONAL JUSTICE

social cooperation is a necessary condition for principles of justice to apply. Furthermore, Rawls clearly thinks that there is no social cooperation in an international system (1971, 8).⁴ Finally, it seems clear that Rawls believes that if there cannot be principles of distributive justice in an international community, then the parties in the IOP can represent nation-states. At least, in Rawls' view, the idea that there cannot be distributive principles in an international community will restrict the question of justice to persons in domestic systems.

At some level there must exist a closed background system, and it is this subject for which we want a theory. We are (...) prepared to take up this problem for a society (illustrated by nations) conceived as a more or less self-sufficient scheme of social cooperation (...). (Rawls 1978, 70.)

Various responses to this argument have focused upon the "social cooperation requirement" and the view that societies are "closed systems." This focus is not surprising: to defend the "social cooperation requirement" and to conceive of a society as a closed cooperative scheme is in effect to say that with respect to the applicability of distributive principles there is a morally relevant property that is connected only with nation-states, i.e. cooperation. Or, to put it another way, Rawls seems to say that there are two cases, namely the domestic and the international, which differ with respect to the property 'non-cooperative', and non-cooperativeness implies the norm 'do not apply the principles of distributive justice'.

Is Rawls' view correct? Is it realistic (justified) to claim that parties in the IOP are representatives of nation-states? Is cooperation a morally relevant property in this context? Is cooperation in a relevant sense limited inside nation-states?

V. Social cooperation requirement challenged

Charles Beitz, among others, has argued that Rawls hasn't solved the problem of the moral significance of boundaries. For in Beitz's

view, cooperation is not a morally relevant property (cf. Richards 1982, 288; Hoffman 1988, 74). He writes,

If the original position is to represent individuals as equal moral persons for the purpose of choosing principles of institutional or background justice, then the criterion of membership is possession of the two essential powers of moral personality a capacity for an effective sense of justice and a capacity to form, revise and pursue a conception of the good. Since human beings possess these essential powers regardless of whether, at present, they belong to a common cooperative scheme, the argument for construing the original position need not depend on any claim about the existence or intensity of international social cooperation.(1983, 595)*

Beitz offers two special reasons for accepting his argument. First, in Beitz's view, Rawls himself is committed to thinking that all persons come within the scope of the principles of distributive justice. It is obvious that Beitz thinks Rawls is thus committed, since he carefully refers to Rawls' text when he argues the point (*ibid.*, 595). It is also obvious why he does so. If Rawls is committed to the view that all persons come within the scope of the principles of distributive justice, and if some persons do not belong to a cooperative scheme, then Rawls cannot consistently hold that cooperativeness is a necessary condition for the applicability of the principles of distributive justice. Now, it seems that Rawls is indeed committed to the view mentioned. As Beitz points out (*ibid.*), Rawls (1980, 525) assumes "that the parties represent developed moral persons (...)" and that moral persons have, among other things, "a capacity for an effective sense of justice". Since surely everyone has a sense of justice, and if parties represent all those who have such a sense, all persons must come within the scope of the principles of distributive justice even in Rawls' view, properly understood. Thus, Beitz argues, Rawls cannot say that cooperativeness is a necessary condition for the principles of distributive justice to apply.

Beitz's interpretation of Rawls is suspect, however, for Rawls never claims that parties (to a particular original position) represent *all* those who are persons, i.e. have a sense of justice. On the contrary, in Rawls' view parties represent, first of all, *citizens*. True, parties also represent "developed moral persons", who have "a capacity for an effective sense of justice" (ibid.), but these properties are simply properties of citizens. This becomes clear when Rawls, in almost the same place that Beitz refers to, says that "the *citizens* of [a well-ordered] society regard themselves as moral persons (...)" (ibid., 524; emphasis added). As elsewhere, he presupposes that only citizens come within the scope of the principles of distributive justice. Rawls' characterization of persons (i.e. citizens) as "moral persons" has nothing to do with the scope of the distributive principles. Rather, it is made "to settle a fundamental disagreement over the just form of basic institutions *within a democratic society* under modern conditions" (ibid., 518; emphasis added). So the first reason behind Beitz's argument appears to rest on a mistaken interpretation of Rawls' view.

But Beitz's second reason is different. He seems to hold that not only is Rawls committed to the view that all persons come within the scope of the principles of distributive justice, but that the view is justified. Beitz (1983, 595) says that he is "accepting a criticism (...) advanced by David Richards", who argues that principles of distributive justice are universally applicable (1982, 288-289). Clearly, if Richards and Beitz are right, then Rawls is wrong. If all persons come within the scope of the principles of distributive justice and if some persons are not part of a cooperative scheme, then cooperativeness cannot be a necessary condition of the applicability of the principles. According to Richards (ibid., 278; cf. 289), "[w]hen we engage in moral argument, of which arguments of justice are one subspecies, we appeal to forms of practical reasoning whereby we inquire whether certain conduct would be acceptable to persons whether on the giving or receiving end". In Richards's (ibid., 290) and Beitz's (1983, 595) view, it follows that principles of distributive justice are self-evidently universally applicable. If the applicability of the principles of distributive justice follows directly from the idea of (universal) "role reversibility" (Richards 1982, 277), then all persons come within their scope.

However, this counter-argument against Rawls is indecisive. Why not draw the opposite conclusion, that since cooperativeness *is* a necessary condition of applicability, then if some persons do not belong to a cooperative scheme, then some persons do not come within the scope of the principles of distributive justice? The point is that there should be a reason for choosing Richards' and Beitz's view rather than Rawls'. Indeed, if no further reason is presented, then Rawls' view may be the more plausible one, since Rawls explains why discrimination on the basis of citizenship accords with justice by pointing out a morally relevant property. Richards and Beitz, on the other hand, cannot explain this point instead they simply deny it.

Beitz seems to realize this need for an independent argument for choosing his view over Rawls', for he immediately goes on to fault Rawls' claim: "[u]nless international cooperation according to the principles of justice can be shown to be *infeasible*, limiting the scope of the principles to national societies on the grounds that international cooperation does not *exist* today (...) would arbitrarily favor the status quo" (1983, 595; emphasis added). According to Beitz, Rawls' reason for considering cooperation to be morally relevant with respect to the applicability of the principles is that without cooperation there is no basic structure to which the principles are meant to be applied. But this reason is faulty, says Beitz, since people can *create* a basic structure and then apply the principles. What is relevant is not the actual existence of cooperation (as Rawls thinks) but the feasibility of cooperation.

Despite the reasonableness of Beitz's reading of Rawls (if there is no basic global structure, then obviously there cannot be global principles in practice) there is much textual evidence against it. Rawls' reasoning seems less trivially practical than Beitz claims, for Rawls' reason for considering cooperation as morally relevant seems to rest on the moral claim that if we live together and collectively affect each others' lives, then these collective effects must be just (cf. Pogge 1988, 231). Clearly, this claim is silent with respect to situations where people do not live together or collectively affect each others' lives thus the relevance of cooperation. Rawls (1971, 7) writes that the "basic structure is the primary subject of justice because its effects are so profound and present from the start". Questions of social justice

arise just because of social arrangements and their effects. There are no obligations based on social justice which commit us to create sociality. The point is reiterated, for example, in "The Basic Structure as Subject" (1977) where Rawls says that the "role of the basic structure is to secure just background conditions against which the actions of individuals and associations take place" (*ibid.*, 160). Justice obligates us to create *just* "background conditions" for actions that have background conditions, but it does not commit us to create background conditions when there are no background conditions. Therefore, Beitz's argument fails, for it rests on a mistaken reading of Rawls.

Of course, Beitz's error does not entail that Rawls' view is correct. But perhaps for the time being we can accept Rawls' claim that cooperation in the relevant sense is morally relevant with respect to the scope of the principles of distributive justice.

VI. Self-sufficiency of nation-states

However, we should also consider Rawls view that cooperation in the relevant sense does not transcend national boundaries. Isn't the claim that there is no international cooperation plainly false? As Beitz (1979, 143-144) writes, "the world is not made up of self-sufficient states", since states "participate in complex international economic, political, and cultural relationships that suggest the existence of a global scheme of social cooperation". Beitz's objection seems plausible, and it has gained widespread acceptance (Amdur 1977, 453; Shue 1982, 718; Pogge 1988, 233; Pogge 1989). If one has to choose between the claim that nation-states are self-sufficient and the claim that nation-states do cooperate in many ways, the choice is not too difficult. They are not self-sufficient.

One wonders whether Rawls counts "complex international economic, political and cultural relationships" as relevant social cooperation as Beitz presupposes. Presumably he does not, since he must know that states participate in international economic, political and cultural relationships. True, Beitz and others frequently point to so called interdependence theories of international relations (*ibid.*, 143-153; Shue 1982, 718; cf. Linklater 1990, 6). Perhaps Rawls is not familiar with these theories, and instead believes in more old-fashioned

theories, in which states are indeed described as (more or less) self-sufficient. But this explanation is doubtful. Whether or not Rawls has accepted a version of an "interdependence theory" or indeed any theory of international relations, he cannot be ignorant of the relations themselves. All current theories are naturally sensitive to the fact of complex relations between states, as is even common, pre-scientific knowledge. Beitz's objection is problematic, since his interpretation of "cooperation" should collapse.

An alternative interpretation of the notion of cooperation is offered by Brian Barry (1982) and Eric Mack (1988). They agree that "Rawls is broadly right in (implicitly) denying that the whole world constitutes a single cooperative partnership", and they point to the same interpretation of the notion of cooperation. Relevant cooperation exists only when there is *cooperative surplus* so that when it is distributed *with pre-cooperative shares* every agent is better off. (Barry 1982, 232-233; cf. Mack 1988, 62-63). According to Mack (*ibid.*, 62), Rawls' view that a "perch for principles of distributive justice is established only with the advent of cooperation" seems to imply that "those principles would take agents' pre-cooperative 'shares' as given and would address only the distribution of the cooperative surplus" (cf. Barry 1982, 232). The reason why Rawls obviously does *not* take agents' pre-cooperative shares as given is, in Mack's view, simple: one can perhaps "cite a number of reasons in support of [amalgamation of pre-cooperative shares and cooperative surplus]", namely, "for the specific case of *individuals and their respective societies*" (Mack 1988, 62). For example, "each individual's pre-cooperative share would be very small", and thus "there is little danger that a distribution of total income will leave people worse off" (than they were in their pre-cooperative state) (*ibid.*). But in Mack's (*ibid.*, 63) view, the same is not true about nations. He writes that there is a danger that "what some nations would receive under a global [i.e. international] distribution principle (...) would be less than their respective pre-cooperative incomes". Barry agrees, for he does "not think that international redistribution can plausibly be said to be advantageous to rich as well as poor countries" (Barry 1982, 232). In short, Barry's and Mack's argument claims that in the international community there is no relevant cooperative surplus, and this claim implies that there is no

international cooperation (the existence of which in turn is a precondition for the justified application of the principles) (cf. Nelson 1974, 425-429).

Barry's and Mack's claim is certainly plausible. It avoids the problem faced by Beitz's interpretation, since it does not suggest that Rawls is ignorant of commonly known facts. Barry's and Mack's reasoning is also intuitively reasonable. Their argument reiterates the traditional idea that principles of justice exist just because advantages of cooperation should be distributed fairly. Furthermore, the argument makes relatively uncontroversial empirical prediction: surely it would be unreasonable for rich countries to participate in a global redistributive scheme. Finally, there is some textual evidence that suggests that Rawls holds this view. As is well known, he frequently writes about "advantages from social cooperation" (e.g. Rawls 1971, 7), which suggests Barry's and Mack's interpretation. If Barry and Mack are correct, then Rawls is right to hold that cooperation in the relevant sense cannot transcend national boundaries.

However, the textual evidence for Barry's and Mack's view is wanting. Rawls does not seem to think that cooperation exists (and that the principles can thus be applied) only when there is a cooperative surplus at least he never says so, and it would be odd indeed to leave such an obviously problematic point unargued (cf. Barry 1982, 232; Mack 1988, 62). Furthermore, recall Rawls' reason for considering cooperation as morally relevant, namely, that if people live together and affect each others' lives, the collective effects must be just (see e.g. Rawls 1971, 7; 1977, 160). "The basic structure is the primary subject of justice because its effects are so profound and present from the start" (Rawls 1971, 7). This account suggests a definition of cooperation a definition of cooperation quite different from Barry's and Mack's: it is common for a person to affect other persons' lives, although it would be unreasonable for the same person to accept common principles to cover this cooperation. Therefore, Barry's and Mack's interpretation of the Rawlsian concept of cooperation is probably wrong.⁷

Interestingly enough, however, Beitz's original interpretation of Rawls' concept of cooperation seems to meet the above definition. In Beitz's view cooperation exists whenever the actors participate in a

complex economic, political and cultural relationship, and, of course, when actors do so, they affect each other. Thus, Beitz's limitation criticism appears quite serious. But now, of course, the problem of Beitz's objection arises again. If Rawls means by cooperation just the collective product of the effects on different actors, how can he fail to see that in an international system there *is* cooperation? How can this problem be solved without assuming that he does not know facts familiar to everyone?

Now, there seems to be a solution which explains why Rawls argues as he does. The solution may be surprising: *Rawls in fact never defends the view (which he seems to be presenting) that it is justified to have the parties to the IOP represent nation-states*, nor does he defend the view that in an international system there cannot be principles of distributive justice. Let us recall that Rawls is committed to defend his description of the IOP: *some* reason has to be given for having the parties represent nation-states. This follows from the idea that national boundaries cannot be morally significant without justification. As the above discussion shows, many philosophers have thought that Rawls presents this defense when he writes about the significance of the basic structure and its scope (e.g. Rawls 1971, 4-11; 1977, 159-161). They believe that Rawls denies that there can be principles of justice in the international system. According to the common interpretation, Rawls then uses this denial in his justification of the the IOP, where parties represent nation-states: "[o]n the assumption that national societies are self-sufficient schemes of social cooperation, Rawls restricts membership in the original position to compatriots until after the principles of distributive justice have been chosen" (Beitz 1983, 594). But there are several difficulties in this common reconstruction of Rawls' position. First of all, Rawls never in fact claims that there is no international cooperation. What he does claim is far less dramatic. He writes, for example, that we must "*assume, to fix ideas*, that a society is a more or less self-sufficient association (...)" (Rawls 1971, 4; emphasis added). A few pages later he says that society is "*conceived for the time being* as a closed system (...)" (ibid., 8; emphasis added). In another context Rawls confess that his limitation is merely the explication of "*a first approximation*" of the problem of social justice and that at "*some level* there must exist a

closed background system (...)” (Rawls 1978, 70fn; emphasis added). It does not seem to be necessary at all for this level to be a nation-state. Nor is his approach necessarily final. These sentences make it doubtful, to say the least, that Rawls is seriously *defending* the view that international cooperation in fact does not exist (and thus that there are no global distributive principles). Indeed, Rawls' comments have confused some writers: "sometimes Rawls himself seem to realize" the existence of international cooperation, it is said (Amdur 1977, 453; cf. Pogge 1988, 233). True: he realizes it all the time.

The reason why Rawls (1971, 4) provisionally assumes that "society is a more or less self-sufficient association" has nothing to do with the *justification* for rejecting international distributive issues. This already seems probable when it is noted that discussions of the justification of the (non-distributive) principles of international justice (*ibid.*, 378-379) occur in a totally different context from discussions of national self-sufficiency (*ibid.*, 4-11). Of course, the self-sufficiency rhetoric could still be an implicit defense of Rawls' views about international justice, as Barry (1982, 232) suggests. But this suggestion is implausible. Rawls is not saying that one should consider the problem of domestic justice, since nation-states are self-sufficient. Rather, he is saying that since one does consider the problem of domestic justice, she should assume that nation-states are self-sufficient. Rawls (1978, 70fn) writes that "we are better prepared to take up this problem for a society (illustrated by nations) conceived as a more or less self-sufficient scheme of social cooperation and as possessing a more or less complete culture". He is right. The problems of domestic justice are more familiar to our tradition than those of international justice. The assumption he asks us to make on this ground in no way has to be true even in Rawls' own view (cf. Pogge 1988, 233).

The above points suggest that it is unreasonable to think that when Rawls writes about self-sufficiency, he is defending the view that in an international system there cannot be principles of distributive justice. He surely thinks that there are no such principles (at least when he writes about international justice) (Rawls 1971, 378-379). But he does not defend his view by the thesis of self-sufficiency. It follows that he does not defend his description of the IOP either.* Once we realize that

Rawls does not pretend to justify his description of the IOP by his talk of national self-sufficiency, we can understand how he can say that there is no international cooperation without defining the notion of cooperation in any other way than as a relationship of mutual influence. For the reasons explained above, we merely provisionally assume that there is no such cooperation.

But the misreadings of Rawls' position do not help him. Rawls never meets the burden he is committed to in his description of the IOP. He never tells us why it would be justified to have the parties to the IOP represent nation-states and not individual persons.

VII. Conclusion

Rawls' argument about international justice simply cannot work. Rather than making some of the mistakes attributed to him, he merely leaves unargued the point where argument is most badly needed. Rawls' description of the IOP is not justified, since it includes the unwarranted feature that rational choosers represent nation-states. This feature should not be allowed to belong to the description of the IOP without argument, for it probably entails prescriptions that discriminate with respect to citizenship. On the other hand, most discussions of Rawls' position have included the questionable assumption that Rawls defends his description of the IOP by claiming that there is no international cooperation. In fact, he never does so, as becomes evident when his argument is adequately interpreted. Because of these dubious interpretations of Rawls' intentions, it has been difficult to find a satisfactory solution.

In *Political Liberalism* (1993) Rawls is silent about international issues, but in "The Law of the Nations" (1993) he has again considered them. Since that paper focuses exclusively on the problems of the international community, it presents a more refined discussion of his views about the IOP than before (*ibid.*, 60-68). There has also been renewed interest in Rawls' explicit argument on international justice: both Thomas Pogge (1994, 205-208) and Bruce Ackerman (1994, 364-386) have attempted to carefully reconstruct his position. Since Rawls' central argument remains essentially unchanged, it is not surprising that Pogge and Ackerman have little to add to the previous discussion. They claim that Rawls is too conservative, that he doesn't sufficiently

RAWLS AND INTERNATIONAL JUSTICE

emphasize the point that *in fact* nations are *not* self-sufficient, and that his principles do not and should not follow from liberal principles (Pogge 1994, 209-214; Ackerman 1994, 381-383). They may be right: nevertheless, the crucial point about whether boundaries make any moral difference (and if they do, why they do) remains untouched.

Much of the recent literature on international ethics has followed Rawls in neglecting this crucial point. Discussions about international aid argue either that aid should be increased or decreased or left where it happens to be (Agassi 1990) but they presuppose that it is justified not to distribute goods on international level *at the outset*. Discussions about intervention argue that intervention is justified when human rights, minority rights or international order are violated (Smith 1994), but they presuppose that *some* justification is required since nations have a moral right to self-determination. Discussions of international environmental ethics include questions like whether Brazil alone has an obligation to preserve Amazonian rainforests because it "has state sovereignty over Amazonia" (McCleary 1991, 696), but they presuppose that states and their citizens may *own* natural resources which happen to be located where citizens live.

John Rawls' work on the moral significance of national boundaries provides little help in solving these concrete problems of international ethics. Yet such help is acutely needed. Either boundaries are relevant *for some reason*, or they are not. Perhaps a solution that deserves further development is the claim that citizenship is morally relevant itself.⁹ If it can be demonstrated that citizenship is a morally relevant property, then there may be no need of a special justification for favoring compatriots as is usually done in contemporary international ethics. This possibility, however, is mere speculation and proving it to be more than mere speculation is far easier said than done.

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NOTES

- * I have greatly benefited from comments by Alan H. Goldman (University of Miami, Florida) and John F. Corvino (University of Texas at Austin).

- ¹ On the basis of the attention and support given to their views, John Rawls and (to a lesser extent) Michael Walzer are the most important modern contributors in the area of international justice. Classics of international law aside, the discussion concerning the problem of the moral significance of boundaries between nation-states has largely centered upon Rawls' and Walzer's views.
- ² The two most common claims explicating the priority thesis are the principle of non-intervention (a nation-state is not justified in intervening in the affairs of another nation-state) and the principle of non-distribution (a nation-state is justified in not distributing its resources to other nation-states). These principles may vary in degree, depending on what limits one accepts on them. We may perhaps grant that a person's favoring the athletes (artists etc.) of her own country is not sufficient proof of her acceptance of the priority thesis.
- ³ Rawls has discussed international ethics in his *Oxford Amnesty Lecture on Human Rights* ("The Law of Nations") (1993).
- ⁴ For example, the view that the parties would accept interventions on behalf of human rights because they know that there are unjust regimes (Galston 1980, 123-124) is untenable, since it does not respect the conditions of the IOP in the form Rawls puts them. The IOP is held, according to Rawls (1971, 377), in a world of *just* states, and thus the parties simply cannot know that there are unjust regimes and reason in the way suggested. (Cf. Beitz 1979, 135; Wicclair 1980, 298.) Similarly, the view that the parties would certainly address the assurance problem of international relations and solve the security question with the naked principle of non-intervention (see Barry 1975, 132; Pogge 1988, 236) is irrelevant. Even if the accepted principle of non-intervention is assured rather than "naked", it is still a principle of non-intervention: assured non-interventionism explicates the priority thesis, too.
- ⁵ According to Rawls (1971, 8) the function of his theory of justice is "to formulate a reasonable conception of justice for the basic structure of society conceived (...) as a *closed system* isolated from other societies" (emphasis added). In his (*ibid.*, 377) view the questions of international justice are relevant only after "we have already derived principles of justice as these apply to societies *as units* and to the basic structure" (emphasis added). Moreover, in considering the political stability of the social systems, Rawls tells us that the "relevant systems here of course are the basic structures the well-ordered societies (...)". He

RAWLS AND INTERNATIONAL JUSTICE

assumes "that the boundaries of these schemes are given by the notion of a *self-contained national community*". (Ibid., 457; emphasis added.)

⁶ According to Beitz, the existence of social cooperation is not a morally relevant fact with respect to principles of distributive justice, i.e. social cooperation is not a necessary condition for the existence of principles of distributive justice. Beitz (1983, 595) reasons that since the (proper) original position represents equal moral persons, then the criterion of membership is possession of the character of a moral personality (having a capacity for an effective sense of justice and a capacity to form, revise and pursue a conception of the good). But if the criterion of membership is possession of the character of a moral personality, and if human beings possess this character regardless of their participation in a cooperative scheme (and Beitz believes that they do), then the original position can be formulated without any claim about cooperation. Furthermore, if the original position can be formulated without any claim about cooperation, then there can be principles of distributive justice without social cooperation. Therefore, Beitz concludes, there can be principles of distributive justice without social cooperation, i.e. it is not the case that if there is no social cooperation, then there cannot be principles of distributive justice.

⁷ One might suggest that whether or not Barry and Mack are correct, they have nevertheless solved the problem of what justifies the principle of non-distribution. But this viewpoint is too optimistic. In short, the view that the "social cooperation requirement" holds is strongly counter-intuitive if the notion of cooperation used is Barry's (1982, 232) and Mack's (1988, 62-63). Surely social justice and not merely morality requires at least something even if there is no cooperation in Barry's and Mack's sense (cf. Nagel 1977, 57). And even if this (remarkable) problem could be successfully avoided by drawing the line between justice and morality (Barry 1982, 248), there would be other problems. The view they are defending probably leads to traditional controversies concerning contractualism. And it is not clear that one can distribute cooperative surplus and pre-cooperative shares in the case of international relations. Amalgamation may be justified (necessary) there, too, as it may be in relations of individuals in society. Thus Barry's and Mack's argument is of little help here.

^{*} It should be noted that there is a philosophical difficulty (and not merely contradictory textual evidence) concerning the claim that Rawls defends his description of the IOP by defending the view that since there is no international cooperation, there cannot be principles of

international distributive justice. It is a mistake to claim that if in international system there cannot be principles of distributive justice, then it is justified to have the parties to the IOP represent nation-states. The mistake is this: if one demonstrates a property which justifies discrimination (only) *with respect to distribution*, one cannot without further argument move to a mechanism (i.e. the IOP) which prescribes other kinds of discrimination as well for example, discrimination with respect to interventions. Thus, those critics who attribute this view to Rawls attribute a transparently mistaken view to him. Perhaps it should be added that this attribution has no support whatever from Rawls' writings. All of this suggests that Rawls does not defend this description of the IOP.

Michael Walzer and also Joseph Carens have made this kind of suggestion.

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