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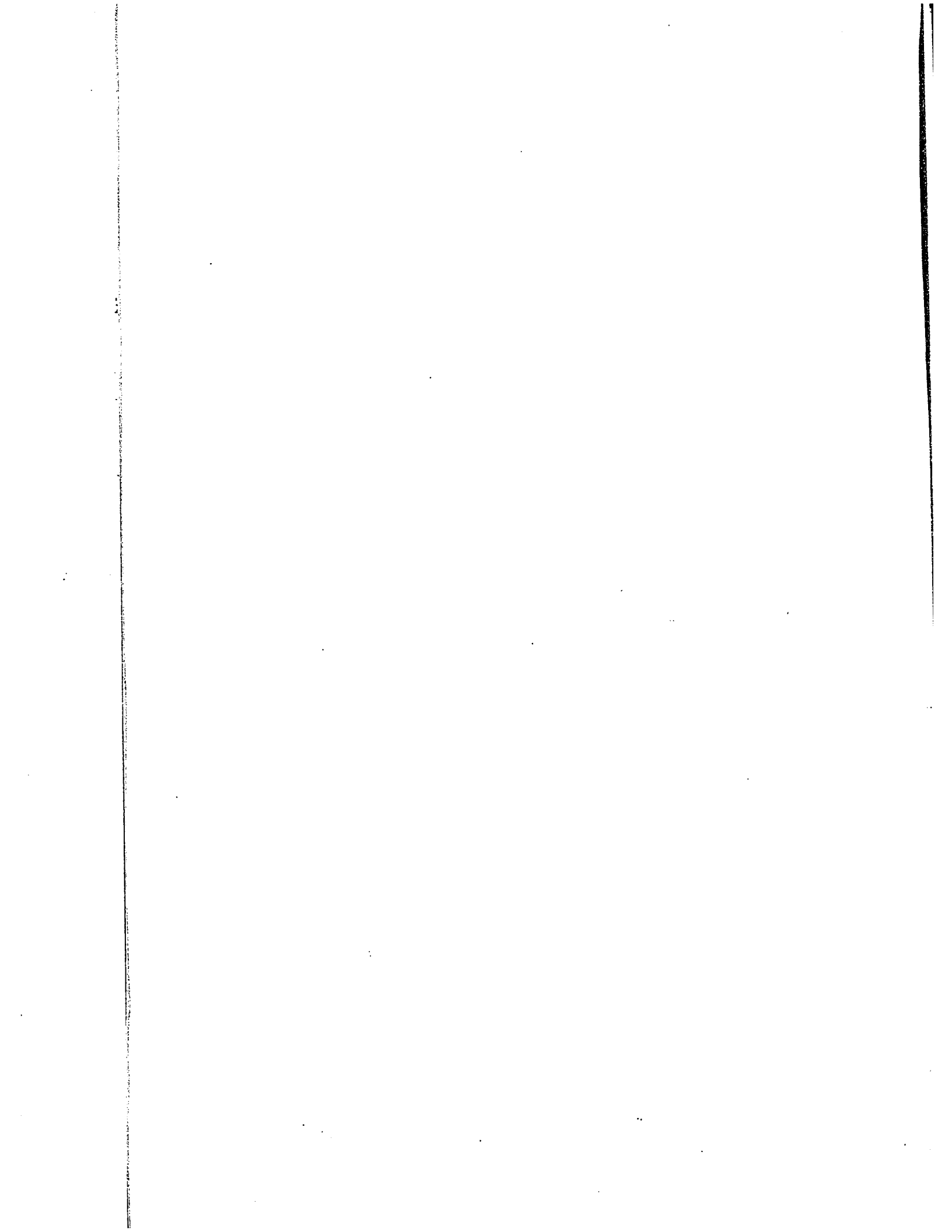
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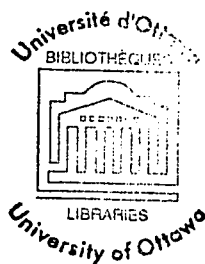
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*ETHICS AND OBLIGATIONS OF JUSTICE IN INTERNATIONAL RELATIONS:
THE IMPLICATIONS OF RAWLS'S LAW OF PEOPLES*

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TABLE OF CONTENTS

Introduction..... p. 1

CHAPTER ONE
John Rawls: On the Law of Peoples..... p. 9

CHAPTER TWO
Rawls's Theory of International Justice: Justice as Impartiality or Justice as Mutual Advantage? p. 51

CHAPTER THREE
Individualism and Anti-Cosmopolitanism in Rawls: The Parochial Justification..... p. 97

CHAPTER FOUR
Charles Beitz: His evolving theory of international justice and departure from Rawls..... p. 136

Conclusion..... p. 178

INTRODUCTION

The impact of John Rawls's work on contemporary western political thought has been enormously significant. He has emerged as, perhaps, the most influential contemporary philosopher of the social contractarian tradition. His works, and primarily, The Theory of Justice, have been mostly devoted to a vision of domestic social justice; a vision which is based on a social contract that takes place behind a veil of ignorance, in an original position which places subjects in ideal circumstances to derive principles of justice.

In a Theory of Justice, and other earlier works, Rawls also briefly addresses the issue of an international theory of justice. However, nowhere has he elaborated a more full theory of international relations and justice than in his more recent article, "The Law of Peoples", where he develops a much more explicit liberal theory for the international domain. In chapters one and two we will provide an overview of some of the more important ethical and political implications of this theory. This 'law of peoples' contains assumptions and consequences for issues as varied and as fundamental to international relations as: global distributive justice, international human rights, the role of state sovereignty, and the conception and role of the person in international affairs.

The objective of this paper will be mainly to provide an analysis of some of the implications of Rawls's theory of a law of peoples for these issues and for ethics in international relations, but our primary topic of concern will be its consequences for global distributive justice. As such, in the first chapters we will analyze the methodology Rawls utilizes to derive his principles of international justice, as well as some of the assumptions of his particular model of international relations.

Brian Barry comments that what makes much of Rawls's work so rich is the fact that he is driven towards synthesis on the one hand and the desire to "get everything in--to keep hold of a mass of disparate insights without sacrificing any of them"¹ on the other. As a consequence, he does not do injustice to the complexity he sees, by forcing everything into an orderly, neat package of simple principles. However, this drive to want to include everything has led to important tensions and inconsistencies in his work. We argue, along with Brian Barry in chapter two, that one of the most important tensions in Rawls's theory of justice is between two irreconcilable conceptions of justice, namely justice as mutual advantage and justice as impartiality. His domestic theory of justice, which applies to society understood as a cooperative venture for mutual benefit, already contains the seeds of this tension and may ultimately

¹Brian Barry, Theories of Justice, of A Treatise on Social Justice, vol. 1, (Berkeley: University of California Press, 1989) p. 147.

because of this, not be able to successfully deal with the 'difficult' cases of justice within society; cases such as the infirm or those with expensive medical conditions who can be seen as 'draining' the resources of society rather than contributing to them. Understanding this tension within Rawls's domestic theory, between a conception of justice which has as its primary objective the redressing of morally arbitrary factors and one which has as its objective the regulation of mutually advantageous cooperative ventures, enables one to better understand the rationale behind his international law of peoples.

We believe that at the level of international relations, Rawls takes a decisive step out of this ambiguous position and in the direction of justice as mutual advantage. Rawls proposes that his methodology and theory of international justice is really meant to extend a generally liberal, but sufficiently neutral and reasonable law of peoples to other non-liberal societies. As such, his theory of a law of peoples, seems to possess inclusionary ambitions where liberal premises are relaxed sufficiently to include other 'reasonable' conceptions of the good and of ordering societies. However, we argue throughout this paper that in fact, the result is an exclusionary and conservative theory of international relations and justice that serves the interests of the status quo by sanctioning the existing distribution of power and wealth.

Even more explicitly than in his domestic theory, international justice must be productive and mutually advantageous for its participants, and only the most advantaged (and "well-ordered") societies are permitted to take part in the 'international' original position. The principles of a law of peoples that are chosen by these preselected states are familiar ones regulating international conduct of nations, and the protection of national integrity through the principle of nonintervention, and defensive alliances etc. No principles of global distributive justice are included however, in this law of peoples. We argue, that the built-in biases in Rawls's methodology and his underlying requirement that justice must be mutually advantageous, has much to do with this result; a result which would in our opinion have been quite different had Rawls begun with an all-inclusive global original position.

So rather than being an inclusionary and expansive law of peoples, we argue that Rawls's theory is fundamentally regressive for questions of ethics, global justice and human rights--it is one that places the morality of states, expediency and national interest far above the moral obligations demanded of our common humanity. The dichotomy that Rawls draws between domestic and international justice, particularly on the issue of distributive justice, is one that is intimately linked to the tensions in his work between a mutual advantage and an impartiality-based conception of justice--two theories of justice that are

irreconcilable and have very different practical implications.

But, we believe that this dichotomy between the domestic and the international domains, also stems from what Samuel Black has described as the tension in Rawls's work between universalizable principles of liberal individualism and parochial concepts of justice which restrict the scope of justice to national societies. Black refers to this problem of liberal theories of justice as the "fallacy of restricted universalism".

In his theory of a law of peoples, Rawls maintains his position that distributive obligations are only appropriate between members of a society, understood as a cooperative venture for mutual advantage; and this despite the existence of complex international cooperative schemes and our increasing global interdependence. But he also introduces a relatively new rationale for this restriction, namely that the liberal premises supporting distributive equality, such as its conception of the person, and the very idea of distributive justice itself, are parochial conceptions which are particular to liberal societies and inappropriate for societies which may have a very different conception of the good. We argue in chapter three that this appeal to parochialism is not only not convincing on its own terms nor consistent with Rawls's own premises, but also that it threatens the very moral fibre of human rights and the progress that this movement has made in both informing conceptions of

political legitimacy and commanding respect for the equal moral personality, needs and dignity of all human beings.

The work of Charles Beitz, as well as the very evolution of his thought, on the issue of global distributive justice have represented important contributions to this topic. Beitz's project to extend Rawlsian principles of domestic justice to the international realm, was exciting and valuable both for how it informed and exposed the erroneous assumptions of the more traditionalist models of international relations, (such as Rawls's working model) but also for the new possibilities which it presented--cosmopolitan possibilities which Rawls himself clearly rejects. Beitz has held that the "prevailing theoretical conceptions of international relations are inadequate and [therefore] lead to incorrect normative principles of international practice"², but we believe that some of Beitz's own working assumptions in his early work also led to incorrect normative principles of international justice. His extension of Rawlsian principles to the international realm meant that Beitz's early work inherited some of the inconsistencies and tensions present in Rawls's theory of justice which continue to be important obstacles to the idea of global distributive justice.

But in chapter four we hope to show that despite some shared

² Charles Beitz, Political Theory and International Relations, (Princeton: Princeton University Press, 1979), p. 179.

assumptions, common contractarian roots, and even similar tensions in their earlier work, Beitz and Rawls have developed fundamentally different approaches to international justice, and particularly global distributive obligations. While Rawls's law of peoples proposes an increasingly restrictive interpretation and scope for justice based on mutual advantage, reciprocity, the traditionalist concept of sovereignty and arguments characterizing the liberal premises supporting distributive equality (such as the conception of the person) as parochial, Beitz's theory of international justice on the other hand, increasing lets go of such requirements and of the tensions inherent in Rawls's foundations of justice. The result is a much more consistent, powerful and critical theory of international justice.

Like Brian Barry, Beitz believes that justice has mostly to do with impartiality and that it is both justified and required by the very moral personality of the person, not the advantages that it could procure for its participants. This means that we can no longer assume as a matter of common sense morality that the sectional values of national communities necessarily have priority, in the way that Rawls does. Moreover, while the inequalities engendered and maintained by our international order and increasing global interdependence emphasize the problem of international justice as a pressing one, Beitz concludes that it is not the existence of these international schemes of

cooperation that is the criteria for membership in the international original position or its distributional principles. The only criteria for membership is the (universal) moral personality of the person, which simply requires that one possess a capacity for a sense of justice and a conception of the good. It is on this basis, that Beitz finally rests his foundation for global distributive justice--and parts ways with Rawls.

In the main chapters of this thesis (chapters two, three and four), we will want to explore the inconsistencies, dangers and implications of Rawls's law of peoples, especially with regard to global distributive justice. Since the potential consequences of his theory go beyond the issue of distributive justice however, we will inevitably have to touch on some of the other issues mentioned above. The critical insights of authors such as Brian Barry, Samuel Black and Charles Beitz amongst others, are used to help us in our analysis of some of the more controversial dimensions of Rawls's thought. These dimensions, which often take the form of irreconcilable ethical positions, become particularly important when we wish to understand why and how a philosopher of social justice can draw such a dichotomy between the nature of ethical discourse and obligation at the level of domestic society and at the level of humanity at large.

CHAPTER ONE**JOHN RAWLS: ON THE LAW OF PEOPLES**

In the recent and important essay entitled "The Law of Peoples", Rawls finally sketches out a long-awaited theory of international justice which he has developed from a revised version of his original position, and liberal ideas of justice, best represented in his work, A Theory of Justice. By a "law of peoples", Rawls means a "political conception of right and justice that applies to the principles and norms of international law and justice"⁹ and that is based on an essentially liberal framework.

Rawls believes that a law of peoples can be developed out of liberal ideas of justice similar to but more general than the concept of justice as fairness he elaborated in a Theory of Justice. As in the domestic sphere, Rawls's ideas on international justice are connected to the concept of the social contract. And as this "society of peoples" will not only be constituted by liberal societies, one of the issues Rawls addresses is how the latter will come to accept non-liberal societies as members in good standing of this family of well-ordered states. Rawls believes that the law of peoples must include the liberal principle of tolerance for "other reasonable

⁹. John Rawls, "The Law of Peoples", in On Human Rights: The Oxford Amnesty Lectures 1993, Stephen Shute and Susan Hurley (eds), (New York: BasicBooks-Harper Collins publ., 1993) p. 42.

ways of ordering society..."⁴ In the same way that liberal societies must respect the individual's right to freedom of religion and conscience for example, Rawls holds that a law of peoples based on liberal ideas of justice must respect the freedom of other societies to organize differently, namely, in non-liberal, ways.

Rawls's basic position is that so long as a society's political and social institution meet certain basic domestic conditions and respect the law of peoples, non-liberal societies (example, hierarchical societies) must not only be tolerated but must be given full membership in the society of peoples. Thus, in his ideal theory, both liberal and non-liberal well-ordered societies accept to be governed by the same law of peoples, even though it is founded on general liberal principles.

The important prerequisite for joining the society of peoples is that they be "well-ordered" societies. More specifically, Rawls requires that they be societies which are peaceful, non-expansionist and whose domestic and legal system commands both a certain basic level of legitimacy in the eyes of its own people and respect for basic human rights. Once these societies are found to have satisfied the domestic requirements (the first part of the constructivist contract) they will be able to enter the second stage of his constructivist contractarian theory, namely,

⁴. IBID., p. 43.

the original position at the international level. At this second stage, the different well-ordered societies will, under the fair conditions established by the original position and the veil of ignorance, work out and agree upon the principles of a reasonable law of peoples. In this (partial) international original position, the preselected nation states are deemed to be fairly representative of their citizens, free, equal, reasonably situated and rational. Furthermore, in keeping with the concept of the veil of ignorance, the parties do not know the size of their territory, population, natural resources, or stage of economic development, etc. Rawls makes an important exception to this however. Those parties who are part of liberal or democratic societies will, he states, inevitably know "that reasonably favourable conditions obtain that make democracy possible" for them.⁵ This is a significant exception indeed and we will comment on it at a later point. But for now, Rawls explains his constructivist methodology in the following manner:

[There are two parts to a constructivist conception of justice]. One part is worked up to apply to the domestic institutions of democratic societies, their regime and basic structure, and to the duties and obligations of citizens. The other part is worked up to apply to the society of political societies and thus to the political relations between peoples. After the principles of justice have been adopted for domestic justice, the idea of the original position is used again at the next higher level. As before, the parties are representatives, but now they are representatives of peoples whose basic institutions satisfy the principles of justice selected at the first level.⁶

⁵ IBID., p. 54.

⁶ IBID., p. 48.

Rawls is confident that these societies will agree on a common law of peoples, because he believes that his theory of international justice possesses a level of political and ideological neutrality that renders it acceptable to both well-ordered liberal and well-ordered non-liberal societies alike despite their potentially very different visions of the good.

Hence, Rawls's theory of the law of peoples sets out conditions of inclusion and exclusion from membership into this club of nations in good standing. His constructivist model of international justice, which is based on an ideal theory, results in a very selective international original position which includes only liberal and hierarchical type societies. His conditions at the first level of the construction process, namely, at the domestic level, are capable of accommodating hierarchical societies but they effectively exclude peoples of both "outlaw" and disadvantaged societies from participation in the international original position.

It is only as part of his non-ideal theory, that Rawls considers the issue of non-compliance (associated with "outlaw" regimes) and unfavourable conditions (disadvantaged regimes) affecting different societies. According to Rawls, the "outlaw regimes" are neither well-ordered law-abiding societies domestically nor in their international relations. Disadvantaged societies on the other hand, are those nations which are unfortunately plagued by

unfavourable conditions; conditions which make their socio-political and economic development difficult. Rawls believes that the federation or family of societies must establish rules and principles regulating their relations with such states. He envisions this relationship as being characterized both by a collective defense plan against possible attack by outlaw regimes and the promotion of the long term objective of eventually bringing all societies into the realm of the family of well-ordered societies.

In the body of this first chapter, we will be looking more carefully at the different stages of Rawls's constructivist conception of a law of peoples, as well as at his ideal and non-ideal theories in order to provide the reader with an account of the general approach to international relations, he has elaborated in his recent essay. But first, it might be useful to provide a brief account of Rawls's position on international relations and his domestic principles of justice, as developed in his earlier work, A Theory of Justice. We take this apparent tangent both so that we can situate Rawls's present views in the broader context of his general philosophy and also so that we may more easily refer back to his principles of social justice in our later discussions.

Although we will be looking at some of the ethical and philosophical tensions in both Rawls's domestic and international

theories of justice, especially in chapter two, the primary purpose of this paper will not be to compare Rawls's domestic principles of justice to his principles at the international level. Rather, as we mentioned in the introduction, we are interested in the work of John Rawls for its implications on certain important questions of international ethics, and more particularly for its impact on the question of global distributive justice. This having been stated however, the contrast between Rawls's domestic theory of justice which centers on fair social institutions and the principle of distributive equality on the one hand, and his law of peoples which explicitly excludes issues of global distributive justice on the other hand, is glaring and needs to be addressed.

Rawls's Domestic Theory of Justice:

For Rawls, the objective of a domestic theory of justice is to identify principles with which we can evaluate the basic structure of that society. Thus, Rawls, in a Theory of Justice, develops what he calls a 'general conception of justice' as well as two principles of justice and two priority Rules for domestic social justice. He formulates his general conception of justice in the following manner:

All social primary goods--liberty, and opportunity, income and wealth, and the bases of self-respect-- are to be distributed equally unless an unequal distribution of any or all of these goods is to the

advantage of the least favored. ⁷

However, because the general conception of justice does not apply easily to non-ideal situations, Rawls also developed more specific principles which he further ranks by two priority Rules. He acknowledges that in extreme non-ideal cases, even these particular principles and their priority rules may fail to provide a satisfactory answer. However, the ranking of the principles which he provides with the Priority Rules, does guide the application of these principles to non-ideal situations and "identifies which limitations need to be dealt with first."⁸ The two basic principles proposed by Rawls in his theory of domestic justice and their corresponding Priority Rules are the following:

First Principle

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

Second Principle

Social and economic inequalities are to be arranged so that they are both:

- a) to the greatest benefit of the least advantaged, consistent with just savings principle, and
- b) attached to offices and positions open to all under conditions of fair equality of opportunity.

First Priority Rule (The Priority of Liberty)

The principles of justice are to be ranked in lexical order and therefore liberty can be restricted only for

⁷. John Rawls, A Theory of Justice, (Cambridge: Harvard University Press, 1971), pg. 303.

⁸. IBID.

the sake of liberty. There are two cases:
 (a) a less extensive liberty must strengthen the total system of liberty shared by all;
 (b) a less than equal liberty must be acceptable to those with the lesser liberty.

Second Priority Rule (The Priority of Justice over Efficiency and Welfare)

The second principle of justice is lexically prior to the principle of efficiency and to that of maximizing the sum of advantages; and fair opportunity is prior to the difference principle. There are two cases:

- (a) an inequality of opportunity must enhance the opportunities of those with the lesser opportunity;
- (b) an excessive rate of saving must on balance mitigate the burden of those bearing this hardship. ⁹

These principles of justice are chosen in an original position where all parties are covered under a thick veil of ignorance, making them ignorant of any knowledge about themselves which could bias their judgment about justice.

It is clear in A Theory of Justice, that Rawls's subject of social justice is the basic structure of society conceived as a "closed system isolated from other societies".¹⁰ His primary subject for exploration are the major social institutions (i.e., the principal political and economic and social arrangements) and how these "distribute fundamental rights and duties and determine the division of advantages from social cooperation." In other words, Rawls's theory is meant to address the basic structure of social institutions which when taken together, define a person's "rights and duties and influence their life-prospects, what they

⁹. IBID, p. 302, 303.

¹⁰. IBID., p. 8.

can expect to be and how well they can hope to do."¹¹ He expresses this best in the following passage:

[t]he notion here is that this structure contains various social positions and that men born into different positions have different expectations of life determined, in part, by the political system as well as by economic and social circumstances. In this way the institutions of society favor certain starting places over others. These are especially deep inequalities. Not only are they pervasive, but they affect men's initial chances in life; yet they cannot possibly be justified by an appeal to the notions of merit or desert. It is these inequalities, **presumably inevitable** in the basic structure of any society, to which the principles of social justice must in the first instance apply.¹²

While recognizing the problem clearly at the domestic level, Rawls retreats from applying the same conclusions, principles and programme of social justice at the global level however, even though the deepest of inequalities are engendered by our current international order and institutions. In fact, he postulates already in A Theory of Justice, that the same principles of domestic justice may not work for other circumstances and subjects, subjects such as nation states and international relations. He expresses his position in the following way,

The conditions for the law of nations may require different principles arrived at in a somewhat different way. I shall be satisfied if it is possible to formulate a **reasonable conception of justice for the basic structure of society conceived of for the time being as a closed system isolated from other societies.** The significance of this special case is obvious and needs no explanation. It is natural to conjecture that

¹¹ IBID., p. 7.

¹² IBID., p. 7.

once we have a sound theory for this case, the remaining problems of justice will prove more tractable in the light of it.¹³

Clearly Rawls's assumption that it is acceptable to conceive of our society as a closed system and to favor it as a "special case" needs further analysis. This position is not as self-evident as he took it to be. Indeed, further in his theory, Rawls states that in order to be able to consider the stability and feasibility of the social structures of well-ordered societies, he must "assume that the boundaries of the schemes are given by the notion of self-contained national communities". This assumption is central to the privileged status he accords national communities and he maintains it long after ample evidence and the strongest of arguments have been levelled against it. Yet, he acknowledges that his working assumption that national communities are self-contained cannot be fully "relaxed" until the subject of international justice is addressed.¹⁴

Some Assumptions in Rawls's Law of Peoples:

Although admittedly sketchy, in A Theory of Justice, Rawls proposes a theory of the law of nations which derives its moral basis and its political principles from a contractarian doctrine. He envisages a contract between self-contained, self-sufficient nation states. In order that they may agree on the principles for

¹³ IBID., p. 8. Emphasis added.

¹⁴ IBID., p. 457.

the law of peoples, the parties to this 'global' social contract, namely the representatives of the different nation states, are placed in an original position. This original position characterized by a thick veil of ignorance is fair, according to Rawls, since it "nullifies the contingencies and biases of historical fate" by depriving the parties of any knowledge about "the particular circumstances of their own society, its power and strength in comparison with other nations and even the representatives' place in their own society."¹⁵

But as we shall see in chapter two, Rawls modifies his position and methodology with regard to international justice significantly in "The Law of Peoples". For example, it is interesting to note how in this later work, Rawls's veil of ignorance is thinned and less stringent for democratic societies. Allowing these societies to know that they benefit from favourable conditions which make democracy possible, places them in an advantaged position when deriving principles of international justice. Despite this privileged position accorded democratic societies however, Rawls continues to assert that by placing nations in this (restricted) original position we can derive certain fundamental principles of the law of nations that are "just". These principles he believes, will be familiar ones such as, the principle of equality between nations, the right of self-defense, non-intervention and the principle of respect of

¹⁵ IBID., p. 378.

treaties between nations.¹⁶ They are generally speaking the same set of principles he discussed in A Theory of Justice. For Rawls, these principles specify when a nation has a legitimate or just cause to go to war, and as a consequence also establishes the rules for peaceful relations between nations.

In the following chapters we will want to show how for Rawls, the primary purpose of the international principles regulating the conduct and relationship between nations is to protect the principles of sovereignty and the boundaries of well-ordered national societies. They serve an important function for Rawls since by protecting the principle of national sovereignty and territorial integrity of states, they allow him to rely on one of his primary working assumptions, namely, that of self-contained and self-sufficient national communities. As Charles Beitz points out in his article, "Sovereignty and Morality in International Affairs", the concept and rights associated with sovereignty are linked to exclusive control over one's population but they are also about the "entitlements to the resources and wealth that exist within the territory. The requirement of respect for a state's exclusive domestic jurisdiction functions as a kind of collective property right for the citizens of the state -- it entitles the state to exclude foreigners from the use or benefit of its wealth and resources except on terms it voluntarily

¹⁶ IBID., p. 379-380.

accepts."¹⁷ For states, which are primarily western liberal nation states, who are doing well or benefiting under the current distribution of resources along state boundaries, the principles of this traditionalist model of international relations ensure the maintenance of the status quo. Rawls's own subscription to this traditionalist and simplistic model of international relations (which resembles that of a "morality of states" in important respects) also means that he can continue to ignore the wider reality of global interdependence, the more complex issues of global justice and the inequalities engendered by the current international system. Thus, despite providing a more thorough account of his theory of international relations in his recent article, "The Law of Peoples", many of the same objections to Rawls's theory continue to stand and significant new ones are raised. We will provide a critique of his position on international justice in the chapters to come but for the moment we will concentrate on providing a thorough description of his most recent account of his law of peoples.

Rawls's Methodology:

One of Rawls's basic premises in his theory of a law of peoples, is that the philosophy of the social contract based on his constructivist approach is universal in its reach. The constructivist approach not only applies to societies

¹⁷ Charles Beitz, "Sovereignty and Morality in International Affairs", in David Held (ed), Political Theory Today, (Cambridge: Polity Press, 1991), p. 243.

domestically, but can be extended to a law of peoples and set out the terms of how societies are to legitimately relate to each other.

According to Rawls, this constructivist liberal doctrine derives its authority from the principles of practical reason, which are always suitably adjusted to apply to different subjects as they arise. An additional condition is that these principles must also be endorsed on due reflection by the reasonable agents to whom the principles actually apply. Rawls explains that in contrast to other universalist doctrines that claim universality because of their source of authority (for example, God, divine reason, or human reason), a constructivist liberal view of justice does not have its source in "universal first principles having authority in all cases" but rather it adapts to each subject and eventually becomes universal "once it is extended to give principles for all politically relevant subjects, including a law of peoples for the most comprehensive subject, the political society of peoples."¹⁸ In this article, Rawls not only offers us his own sequence of subjects but also offers us the different principles which he deems to apply to each subject as they arise. Indeed, we will see that different principles are even applied to different types of societies.

Rawls's liberal constructivist approach is broadly divided into

¹⁸. Rawls, "The Law of Peoples", op. cit., p. 46.

two parts; the domestic sphere and the international sphere. It is also composed of two stages of construction. The first stage entails adopting the domestic principles of justice and the second stage, using the original position once again (by well-ordered democratic and hierarchical societies) at the international level to derive principles of justice this time for the law of peoples.

Rawls chooses to begin constructing his theory of the law of peoples with liberal societies; he believes that they are a good starting point for the extension to the law of peoples since they have a shared understanding of justice, and similar social and historical conditions. As we shall argue further on, however, this starting point is a very significant decision, which affects the entire rest of the process and influences the types of principles that will be agreed upon for the law of peoples. In effect, we believe that it results in principles of international law and international relations that not only are already familiar to us (as even Rawls acknowledges) but which, by endorsing the status quo, can only continue to deepen the existing global injustices.

Extending the Liberal Idea of Justice to the Law of Peoples: the Case of Liberal Societies:

This basic process having been sketched out, Rawls proceeds to explain his framework for extending the liberal idea of justice

to the law of peoples. He divides this process into two stages, namely, the Ideal theory and the Non-Ideal theory, each stage having two separate steps. Rawls chooses to deal with Ideal theory first; a choice which will once again significantly influence the interpretation given to the state of the world, its problems, and the principles that are to constitute the law of peoples. Nonetheless, Rawls argues that working within this ideal or strict compliance theory means that one is working with preselected parties to the original position which have satisfied domestic requirements and are deemed to be non-expansionist, peaceful members of the international community. For this reason Rawls chooses to work only with two types of societies, namely, well-ordered liberal and hierarchical societies.

Firstly, Rawls works out how well ordered liberal societies come to extend themselves and form a "family" of democratic peoples. The second step consists in explaining how well-ordered hierarchical societies, (which may be for example, religious states) can come to accept the same law of peoples as liberal societies and thus become members of the 'society of the just peoples of the world'.

As previously mentioned, Rawls believes that his law of peoples can be agreed upon by both liberal and non-liberal (hierarchical) well-ordered societies because the general liberal ideas of justice which he proposes are not particular to western

democracies. He believes they are sufficiently neutral and general to be acceptable to other types of non-liberal societies. For example, his general liberal ideas of justice, (unlike the particular idea of justice as fairness) do not include strong egalitarian elements. Rawls's international liberal idea of justice contains only three principle elements, namely:

- i) certain basic rights, liberties and opportunities similar to those in democratic regimes;
- ii) a high priority for these fundamental freedoms especially when they are challenged by claims of the general good;
- iii) measures which ensure that all citizens are given the means to effectively use their freedoms.

This methodological framework being set up, Rawls begins constructing his law of peoples by first examining how liberal societies go about adopting a law of peoples. Firstly, Rawls believes we must ensure that these liberal societies are properly represented domestically and that the original position with its veil of ignorance, is indeed the proper device of representation for them. The test for this is whether the original position satisfies the following three conditions: i) it represents the citizens fairly or reasonably (i.e., as equal and free); ii) it represents them as rational; iii) and places them in a situation where they are deciding between "available principles for appropriate reasons."¹⁹ Once it is determined, as Rawls

¹⁹ IBID., p. 53.

determines that the original position really is a representative model for liberal societies (or in Rawls's words, a model which ensures "fair conditions for the parties, as representatives of free and equal citizens, to specify the terms of cooperation regulating the basic structure of their society")²⁰, then one can proceed to the second step and apply it to the international context.

Rawls concludes that the original position continues to be a proper device of representation for democratic societies at the international level since it places them in conditions which are perceived as fair for arriving at a law of peoples. Like in the domestic sphere, the parties (i.e., each state) at the international level are presumed to be free, equal, reasonably situated and rational. Being placed in the original position, these free and equal parties (democratic states), then decide on the principles of the law of peoples (for democratic states) based, according to Rawls, upon the fundamental interests of democratic societies in general and their principles of domestic justice in particular.

Moreover, because the parties are also subject to the veil of ignorance, they are ignorant of such things as the size of their territory, their population, their natural resources, economic development and their "relative strength" as a society. However,

²⁰. IBID.

as we have previously mentioned, Rawls provides an important exception. Democratic states do know that "reasonable favourable conditions obtain that make democracy possible..."²¹

We will attempt to show throughout this paper, that not only is the decision to begin the constructivist process with democratic societies significant, but that this knowledge that as democratic states they benefit from reasonably favourable conditions effectively precludes, in our opinion, the possibility of arriving at fair and impartial principles of justice with other types of societies. The veil of ignorance has been thinned to the advantage of democratic states to the point where it no longer guarantees either impartiality or an original position of true equality between democratic states and other states. Furthermore, as in Rawls's constructive methodology, democratic societies are the first to set foundational principles of inclusion and exclusion from the society of peoples (through the domestic test for example), this privileged information that democratic societies have about their background conditions is all the more significant. Perhaps not surprisingly therefore, in Rawls's model the law of peoples amongst liberal societies results in cooperative associations and principles of international relations already familiar to us. We will return to these arguments later.

²¹ IBID., p. 54.

For Rawls the principles of a law of peoples include the following:

1. Peoples (as organized by their governments) are free and independent and their freedom and independence is to be respected by other peoples.
2. Peoples are equal and parties to their own agreements .
3. Peoples have the right of self-defense but no right to war.
4. Peoples are to observe a duty of nonintervention.
5. Peoples are to observe treaties and undertakings.
6. Peoples are to observe certain specified restrictions on the conduct of war (assumed to be in self-defense).
7. Peoples are to honour human rights.²²

In addition to the above principles, Rawls believes other agreements, such as rules for fair trade, and for forming and regulating possible federations of peoples or cooperative ventures will result from this framework. There should also be according to Rawls, agreements for more mutual assistance between democratic nations:

certain provisions for mutual assistance between peoples in times of famine and drought, and were it feasible, as it should be, provisions for ensuring that in all reasonably developed liberal societies people's basic needs are met. These provisions will specify duties of assistance in certain situations, and they will vary in stringency depending on the severity of the case.²³

²². IBID., p. 55.

²³ IBID., p. 56. Emphasis added.

We see, therefore, that Rawls provides for provisions of mutual assistance between developed liberal societies which ensure that basic needs are met, yet we will note that the same provisions do not exist in this explicit form with regard to other types of societies. Closer or privileged moral ties seem to exist and are maintained between liberal societies in Rawls's constructivist theory. Thus, not only do national societies take priority with regard to social justice, but privileged obligations of mutual assistance also seem to obtain between members of the family of democratic states in the international realm.

But these liberal states also have certain responsibilities, ascertains Rawls. They must be effective agents by taking care of their territory, population level and their "environmental integrity and its capacity to sustain them"²⁴ According to Rawls this can only be effectively achieved with the institution of property, since it has the effect of attributing responsibility for maintaining this territory (and of living with the consequences of its deterioration or fruits) to a particular agent. Without particularizing possession or responsibility, Rawls believes that the asset in question will usually deteriorate.

Rawls does briefly address the issue of the sometimes historically arbitrary nature of state boundaries in his non-

²⁴ IBID., p. 57.

ideal theory. He suggests that the law of peoples can perhaps include guidelines to deal with this problem, but for the moment, he takes state boundaries at face value and a state's natural resources as objects of possession. He adds that states "cannot make up for irresponsibility in caring for their land and conserving their natural resources by conquest in war or by migrating into other people's territory without their consent."²⁵ Yet, one could comment that the state of our global environmental deterioration, and our depleted natural resource are perhaps evidence enough to the effect that the concept of private property and territorial sovereignty are at the very least insufficient by themselves to secure sound environmental policies nationally or globally; and we shall return to this issue in due course.

Rawls has two other conditions for the establishment of this family of democratic peoples: (1) this "family" must be stable in their respect for the principles of the law of peoples; and (2) their citizens must endorse "the principles and judgments of this law on due reflection."²⁶ In other words, liberal states must not only respect the law of peoples when they happen to be in a favourable position of power but they must also respect it and find it to be in the common good when they are in less favourable conditions (whether it be economic, social or political well-

²⁵IBID., p. 57.

²⁶IBID., p. 59.

being).²⁷ Rawls firmly believes that this would in fact be the case, and points to studies indicating that established democratic societies do not tend to go to war with each other. The last condition requires that citizens of democratic states endorse this law of peoples because it reflects and expresses their political and moral convictions more coherently than any other doctrine.

Extending the Theory of a Law of Peoples to Hierarchical Societies:

Having completed the first step of his ideal theory by extending the liberal view of justice to a law of peoples for democratic societies, Rawls must now extend it to include hierarchical societies also.

In keeping with Rawls's two part constructivist theory, hierarchical societies must first satisfy certain conditions domestically in order to be considered "well-ordered" and accepted by liberal societies. They are the following:

- i) they must be peaceful and not use illegitimate means to attain their goals. Trade and diplomacy are considered peaceful means to pursue their aims;
- ii) they must have a system of law that imposes moral duties and obligations on everyone within their territory, and that is guided by peoples essential interest and a "common good"

²⁷IBID., P. 58.

conception of justice." Judges and other legal functionaries must sincerely believe that the law really is guided by this common good conception of justice. All of these elements of the legal system are necessary, says Rawls, if the regime is to possess a certain legitimacy in the eyes of its people;

iii) they must respect certain basic human rights.²⁸

Furthermore, in order for a non-liberal society to both possess legitimacy in the eyes of its own peoples and respect basic human rights, its political institutions must be marked by a "reasonable consultation hierarchy."²⁹ Despite the fact that in hierarchical societies persons are not seen as free and equal citizens, they are nonetheless considered responsible citizens with moral obligations and for this reason, argues Rawls, the representative bodies look after the important interests of all members and elements of society. Rawls believes that even in a society where free speech and political dissent is limited, it is still possible to have a consultation hierarchy which offers "an opportunity for different voices to be heard..."³⁰ He envisages a stage in the consultation process where persons, in their capacity as members of associations and corporate bodies have the opportunity to express their political dissent, and the government has a corresponding duty to listen and reply

²⁸IBID., p. 61.

²⁹IBID., p. 62.

³⁰IBID., p. 62.

conscientiously to their concerns. For Rawls, this is what permits judges and other officials to sustain their belief in the possibility of dissent and in the regime's legitimacy. He maintains that in contrast to this, a regime that would refuse to listen to its people, regarding them as ignorant, would no longer be a consultation hierarchy but rather a "purely paternalistic regime".

In his opinion, the institutional basis of this hierarchical society together with its conception of the common good, "secures for all persons at least certain minimum rights to means of subsistence and security [the right to life], to liberty [freedom from slavery, serfdom, and forced occupations] and [personal] property, as well as to formal judicial equality as expressed by the rules of natural justice [for example, that similar cases be treated similarly]." ³¹

However, we will want to argue throughout this paper that what Rawls is in fact defending is a regressive vision of human rights, that not only relativizes them, but also strips them of their real moral authority; an authority which has its source in the premise of the inherent equality and dignity of all persons. If human rights do not repose on these universal and inherent moral qualities of all human beings, a view which Rawls labels as parochial and inappropriate for the international level, then in

³¹IBID., p. 42.

our opinion, it is a slippery slope to the disintegration of even the most basic human rights for they then rely on whatever arbitrary factors and characteristics the more powerful members of society decide upon, whether these be religious, cultural, social, economic etc. Furthermore, one cannot help but question whether the 'consultation hierarchy' is not simply an opportunity for the interests of the elite to be heard. The history and nature of the domination of women alone, serves to show how even without extreme violations of 'basic' rights (for example, to physical integrity), regimes can successfully oppress women and deny them equal freedom and rights in the name of a male-dominated vision of the good. We will conclude our comments here by saying that in our opinion, what Rawls is ultimately proposing is an international legitimization of a paternalist system of government, regardless of his dubious theoretical safeguards and artificial distinctions.

Although Rawls has concentrated mostly on the model of a hierarchical religious state, he points out that a regime whose institutions realize the above three requirements can take many forms. His point is that the three domestic requirements for membership in a reasonable society of peoples, including the requirement of respect for basic human rights, do not require a society to be necessarily liberal.

Moreover, Rawls is of the opinion that the representatives of

hierarchical societies adequately represent their domestic population at the international level. He believes that this is confirmed by the fact that the representatives of that society actually care about the good of the society, they believe in their society's conception of justice, and wish to take advantage of the benefits of international trade and assistance between nation states. Hierarchical societies, argues Rawls, are well-ordered in their own conceptions of justice and the society's interests are understood by its representatives in accordance with this internal conception of justice and of the good. As such, he deems these regimes to be domestically legitimate and the original position to be an appropriate device for international representation.

Moreover, although hierarchical societies accept basic inequalities (for example, persons do not have equal liberty of conscience) between their citizens, it is not inconsistent according to Rawls, for these societies to insist on having an equal voice in the original position and on being treated equally within the law of peoples. While internally (domestically) the society and its members may accept to live with basic inequalities, this has no bearing on the requirement that they have equal status in relation to other societies, argues Rawls. At the international level, these nation states must be considered equal parties since they are representatives of peoples whose basic institutions satisfy their own idea of the

"good" and their own basic principles of justice domestically. Rawls explains that while at the national level, domestic justice incorporates "a political conception of the person rooted in the public culture of a liberal society" the original position at the international level does not do this or need to do this. Rawls's concept of the person and of human rights at the international level, thus reveals itself to be relativistic.

In the chapters to follow, we will explore the inconsistencies in Rawls's position, the practical problems with this idea of political legitimacy and human rights, and the ethical implications of this theory of international justice. The increased dichotomy Rawls draws between domestic and international justice is one which inevitably raises fundamental questions about the nature and possibility of international ethics. However, for the moment, suffice it to say that Rawls believes hierarchical societies will indeed accept the original position as fair between peoples and that their population will also endorse the law of peoples adopted by their representatives since they too will perceive it as fair terms of political cooperation.

Finally with respect to the issue of religion, Rawls states that hierarchical societies may rely on it as a source of authority for certain matters but they must neither wish to extend this authority to other societies or to prohibit all liberty of

conscience or religion domestically. Not all citizens hold these freedoms equally, but it is an essential condition of being a well-ordered society, that no one is persecuted because of their religious practices or convictions. In order to ensure this, Rawls believes that it is fundamental that hierarchical societies allow their citizens the right to emigrate.³² Much could be said about Rawls's position with regard to freedom of religion and emigration, but perhaps we can simply make some preliminary remarks to the effect that there are serious reasons to doubt the adequacy of these minimalist protective measures. For example, Rawls cannot predict that a situation where some persons have more religious rights than others can in fact be maintained without persecutory acts by the state. With regard to the guaranteed right to emigrate, this also is an inadequate solution in our view, since not only is it inappropriate to require persons to abandon their home country but it provides no real resolution to the domestic problems; furthermore, it is not even a real safety net since citizens must not only have the right to emigrate but they must also be given the right by another state to enter its borders--with the increasingly protectionist immigrations policies this cannot be taken for granted.

Non-ideal Theory: the questions of non-compliance and unfavourable conditions:

We have so far, followed the development of Rawls's ideal theory

³² IBID., p. 63.

of the law of peoples. Nonideal theory on the other hand, attempts to develop a method whereby we would, given the context of nonideal conditions, take steps to gradually reach the goal of the ideal conception of a law of peoples. Rawls distinguishes between two types of nonideal theory. The first type deals with the issue of noncompliance, i.e., where certain "outlaw regimes" simply refuse to respect or acknowledge the law of peoples. By "outlaw regimes", Rawls has in mind governments or societies that recognize no conception of justice and that use terror and coercion to rule. He is also referring to regimes which wish to propagate their religious or philosophical views in an imperialist fashion, by not respecting national boundaries. Furthermore, these outlaw regimes are not, according to Rawls's model, victims of unfavourable conditions; on the contrary they simply have adopted unjust and oppressive political traditions that are reinforced by their legal and property system, their class structure, beliefs and culture.

One of the functions of the law of peoples, maintains Rawls, is to provide guidance to the well-ordered regimes as to how they should deal with such outlaw regimes. He states that at best, law-abiding societies can "establish a 'modus vivendi' with the outlaw expansionist regimes and defend the integrity of their societies as the law of peoples allows."³³ The law-abiding societies have a primary duty to their own society, to other

³³IBID., p. 73.

well-ordered societies and to the people being subjected to the outlaw regimes but they live in a state of nature with respect to the outlaw regimes and their rulers. However, they are only justified in going to war against such regimes when it is in the defense of their own society, or in grave cases when it is to protect innocent persons subject to outlaw regimes (extreme violations of human rights for example).³⁴

Hence, the first aim of this family of well-ordered societies with regard to outlaw regimes, is to ensure their own defense. The second is the long-term goal of eventually bringing all societies to respect the law of peoples and become full members of the family of well-ordered societies; tied to this goal is that of securing the respect of basic human rights for all peoples.

In order to achieve this second aim, Rawls proposes that we develop an adequate foreign policy and have well-ordered societies establish "among themselves new institutions and practices to serve as a kind of federative centre and public forum of their common opinion and policy toward the other regimes."³⁵ This federative centre can either be part of the UN or of a separate alliance of well-ordered peoples formed to deal with such issues as, unjust institutions, human rights violations

³⁴IBID., p. 73.

³⁵IBID., p. 73-74.

or oppressive and expansionist regimes; they would provide a public forum for the exposure of such regimes. Rawls believes that public exposure and denunciation of oppressive regimes can work to eventually pressure them into affecting change, especially if they cannot dismiss the law of peoples as a biased western or liberal ideology. He also believes that if it is to be effective, this type of moral pressure must be accompanied by a firm position on the part of well-ordered states not to provide outlaw regimes with any military aid, economic assistance or acceptance into the mutual assistance and cooperative institutions of states in good standing.³⁶ The practical result of such policies is that the populations of such states more often than not become the real victims. Although Rawls seems to admit that the rulers of such regimes may not have popular support, his state-centered traditionalist model of international relations and his unquestioning acceptance of domestic jurisdiction, means that there is no truly effective way of challenging the legitimacy of such tyrannical governments, and as such innocent populations are further penalized.

The second type of non-ideal theory is that which deals with societies suffering from unfavourable conditions (we will call them "disadvantaged" societies). By "unfavourable conditions" Rawls means everything from the lack of human know-how and monetary, material and technological resources to the absence of

³⁶IBID., p. 74.

appropriate political and cultural traditions. In discussing how well-ordered societies may assist in promoting better conditions for these societies however, Rawls rejects the idea that others, such as Charles Beitz, have proposed of adopting a difference principle or a liberal type distributive principle to deal with world-wide economic inequalities.

Rawls adds that this does not mean that wealthier nations do not have any duties towards such disadvantaged societies. After all, the ideal conception of the society of peoples directs that in due course all societies are to achieve the favorable conditions which make well-ordered societies possible, namely the respect for human rights and the satisfaction of basic human needs. As such, according to Rawls,

[the] basis of the duty of assistance is not some liberal principle of distributive justice [but rather] the ideal conception of the society of peoples itself consisting of well-ordered societies, with each people, as I have said, a full and self-standing member of the society of people, and capable of taking charge of their political life and maintaining decent political and social institutions as specified by the three requirements earlier surveyed.³⁷

Thus, Rawls neither situates the duty of assistance in the fair economic redressing of the inequalities and exploitation engendered by our current international system, in the existence of human need itself, or in the concept of the moral personality of the person which views them as ends in and of themselves. His motivating force is his ideal theory, which we will argue in this

³⁷IBID., p. 76.

paper is itself based on mutual advantage, protectionism, and the securing of 'stable' (but not necessarily fair) international relations. A global theory of justice or ethics (based for example on the moral personality of the person), argues Rawls, would be too strong of a political conception to impose on the world. In our further discussions on this topic in the chapters to follow (particularly chapter three), we will show that this is a major point of contention in international ethics, especially since the allegedly neutral assumptions of ideal theory continue, in our opinion, to serve the interests of the status quo and to exclude the most needy and vulnerable (persons) from the international domain.

Global Distributive Justice:

Rawls's position on distributive justice is that domestic liberal principles of distributive justice should not be generalized to the international arena; a constructivist system holds that each kind of subject is governed by its own rules and principles. One cannot simply extend or transpose domestic principles to the international level. The principles adopted to deal with unfavourable conditions at the international level must be adopted from an appropriate starting point, namely the international original position.

Yet, Rawls's 'international' original position does not yield any principles of global distributive justice in any form. He

maintains that it would constitute an inappropriate imposition of western values; values and liberal principles of distributive equality which other types of societies may not wish to adhere to or promote. He predicts this would be particularly true of hierarchical societies which do not recognize any principles of distributive domestic justice or the liberal conception of the person which supports them. Thus, according to Rawls the idea of distributive equality and the premises which support it belong to the ideal theory of democratic societies and cannot be extended to the international realm where they may infringe on another society's conception of the good.

As previously noted, Rawls does believe that as part of working towards ideal theory, wealthier, well-ordered societies have certain obligations to less fortunate societies. This obligation arises from one of the goals set out in the law of peoples of well-ordered societies, namely that all societies eventually reach conditions favourable enough to allow them to maintain decent political and social institutions, respect basic human rights and ensure that basic human needs are met. Ultimately, the objective of ideal theory is that these societies be able to join the society of peoples as full members in good standing. Despite this mention however, Rawls does not include any new concrete suggestions or effective steps in his constructive theory, that well-ordered states might take to promote sustainable economic, political and technological progress in these states, or to

assist the populations of outlaw and impoverished nations in their struggle for better life conditions.

He explains instead, how often it is the case that unfavourable conditions are not caused by an absence of natural resources but rather by "... the nature of the public political culture and the religious and philosophical traditions that underlie its institutions."³⁸ He points to the social evils created by oppressive governments, corrupt elites and religion, as well as the social evils related to the oppression of women and overpopulation, which results from banning contraception. His belief is that much of the solution to these problems lies in human rights work and some other types of assistance; gradually, these methods may be able "...to moderate, albeit slowly, oppressive government, the corruption of elites, and the subjection of women."³⁹ He also states:

Perhaps there is no society anywhere in the world whose people, were they reasonably and rationally governed, and their numbers sensibly adjusted to their economy and resources, could not have a decent and worthwhile life.⁴⁰

Perhaps we can take a brief pause here in order to make a few preliminary comments which we will pursue further in the upcoming chapters. At the risk of oversimplifying Rawls's position, one

³⁸ IBID., p. 77.

³⁹ IBID, p. 77.

⁴⁰ IBID.

could say that for him, the problem of unfavorable conditions seems to lie elsewhere; in ineffective political and economic institutions, government corruption, philosophical or religious traditions, and in the mismanagement of national resources, but not in the unequal distribution of the world's resources, the gross imbalance of power at the international level and the injustices engendered by our current international economic and political schemes and institutions. Although it is clear to authors such as Charles Beitz, Onora O'Neill and various others, that the problem of world poverty and deep inequalities between nations requires a global solution and a transformation of the international order, it is not so for Rawls. His theory of international relations and particularly his analysis of distributive justice, reduces international obligations to little more than charity on the part of wealthier well-ordered societies and fails to grasp the international dimensions of national poverty.

With regard to the issue of natural resources in particular, we have noted that Rawls does concede that the historically arbitrary nature of state boundaries may in some cases have to be addressed in guidelines, which he does not elaborate here. Despite this brief mention however, we wish to show that Rawls's basic position is most accurately described by Beitz's theory that the domestic jurisdiction held by states (the principle of national sovereignty) functions as a type of collective property

right for its citizens. This, which we believe to be Rawls's assumed working premise, is in our opinion an incomplete view of global resource problems; it not only fails to properly address the sometimes arbitrary character of historical and natural boundaries, but also ignores such important aspects as the inequitable exploitation of the world's resources by the developed world, the environmental interdependence which renders state boundaries completely irrelevant to our global ecological and natural systems, and the fact that capitalist incentives (eg., structural adjustment programmes imposed by the IMF and the World bank (SAPS)) as well as multinational interests all contribute to dig into the foreign soil of poorer nations which rely heavily on exportation of primary resources to repay their foreign loans.

The combination of Rawls's simplistic explanation of the distribution of natural resources and wealth, and an ideal theory of a law of peoples which excludes issues of global distributive justice for reasons of cultural appropriateness, results in a *de facto* protectionist policy; a policy which ignores the structural and moral dimensions of the problem of world poverty, as well as the capacity of the human person to be self-originating sources of valid claims. In the chapters to come, we will explore Rawls's position on international justice, its critical failures, and particularly the inconsistencies in his theories of justice which ultimately lead one to question the very nature of international

justice, the person, and ethical obligations. In the end, we believe and will want to argue that Rawls cannot successfully justify or maintain a coherent theory of justice that builds on this dichotomy between justice at the domestic and at the international level.

Human Rights:

While Rawls's theory on human rights, particularly as presented in his recent article, "The Law of Peoples", certainly merits a most thorough critical analysis, we will not attempt to provide one in this paper since it should be the subject matter for a dissertation on its own. We will however, provide an overview of the most essential characteristics of this theory.

Firstly, at the international level, Rawls does not believe that human rights depend on any "particular comprehensive moral doctrine or philosophical conception of human nature."⁴¹ A particular moral conception of human rights, which provides a grounding for the equal worth and rights of persons, requires a philosophical foundation that might be rejected by hierarchical societies because of its association to western type liberalism and culture. Rawls proposes instead, the following approach to human rights:

Basic human rights express a minimum standard of well-ordered political institutions for all peoples who belong, as members in good standing, to a just

⁴¹ IBID., p. 68.

*political society of peoples.*⁴²

Rawls prefers to think of human rights in the context of a system of law that imposes moral duties and obligations on all its members and which is binding on judges and other officials because of their sincere belief their society's conception of justice. The requirement in Rawls's law of peoples, that member states have such a system of law, would mean that at the minimum these states must,

at least uphold such basic rights as the right to life and security, to personal property, and the elements of the rule of law, as well as the right to a certain liberty of conscience and freedom of association, and the right to emigration. These rights we refer to as human rights.⁴³

Therefore, Rawls rejects the idea that human rights must be tied, at the international level, to the liberal conception of rights which regards all human beings as inherently free and equal members of society. Instead, he suggests a system of law which imposes duties and obligations on its citizens, is based on a common good conception of justice and requires good faith on the part of its officials (and judicial body). In Rawls's view, such a conception of rights is sufficiently 'politically neutral' to be accepted as a foundation for a 'minimally decent regime' and for basic human rights by even hierarchical societies. He believes that "human rights, understood as resulting from these requirements, could not be rejected as particularly liberal or

⁴² IBID., p. 68.

⁴³ IBID.

special to our Western tradition."⁴⁴ Rawls's vision of international human rights is also demonstrated in the following passage:

*Human rights are a special class of rights designed to play a special role in a reasonable law of peoples for the present age.*⁴⁵

We will make some preliminary remarks on this point before we proceed to the next chapter. Rawls's position appears to clearly offer a relativist conception of human rights. Yet, he seems to see it, on the contrary, as universalist. Perhaps he views it as universalist due to the instrumentalist role that human rights play in his theory of international relations and law of peoples—a role which he seems to associate more with securing "stable" domestic and international relations than with a particular moral conception of human rights which attributes an inherent moral character to the person. He explains this role of international human rights in the following manner;

*They are a special class of rights of universal application and hardly controversial in their general intention. They are part of a reasonable law of peoples and specify limits on the domestic institutions required of all peoples by that law. In this sense they specify the outer boundary of admissible domestic law of societies in good standing in a just society of peoples.*⁴⁶

Rawls views basic human rights as having the following three

⁴⁴ IBID., p. 69.

⁴⁵ IBID., p. 70.

⁴⁶ IBID., p. 71.

essential roles therefore;

1. They are a necessary condition of a regime's legitimacy and of the decency of its legal order.
2. By being in place, they are also sufficient to exclude justified and forceful intervention by other peoples, say by economic sanctions, or in grave cases, by military force.
3. They set a limit on pluralism among peoples.⁴⁷

Hence we can see that for Rawls, international human rights have an instrumental rather than an inherent value or morality. Their foundation and primary function does not lie in the actualization or affirmation of the inherent dignity and equality of all human beings but rather in securing 'sufficient' domestic stability to ensure the establishment of a law of peoples and a peaceful stable international environment. While this represents a worthy objective, it subjects human rights to the exigencies of international politics (whatever they may be at any one time), rather than the moral personality of the person; this is why we suggest that human rights inevitably become relativistic for Rawls.

Although, as we have already mentioned, the issue of human rights must on the whole be left for another occasion beyond the present work, the issue naturally raises important questions for international justice and we will continue to address some of these in the chapters to come.

⁴⁷ IBID.

CHAPTER TWO

**RAWLS'S THEORY OF INTERNATIONAL JUSTICE: JUSTICE AS IMPARTIALITY
OR JUSTICE AS MUTUAL ADVANTAGE ?**

Many of the assumptions and implications of Rawls's recent account of international justice are likely to cause much concern for those who have relied on aspects of his theory to defend global distributive justice. It is also likely to cause concern for others who are committed to moving beyond the traditional state-centered assumptions and barriers, in order to reach the real people behind the formal and legalistic, often obsolete trappings of traditionalist models of international relations.

Several aspects of Rawls's constructivist theory of international justice may strike us as particularly problematic. Some examples are: the fact that he starts constructing his theory of international justice with democratic states; the manner of his extension of the law of peoples to hierarchical societies; the preferential duties of mutual assistance which he attributes to and between democratic societies; and the regressive, relativistic accounts of human rights and political legitimacy he proposes in order to accommodate hierarchical societies. Equally problematic is his uncritical adherence to the concept of national sovereignty and the assumption of the self-sufficient, insular nation state, even in the face of our current global interdependence. Finally there is the issue of the exclusion of

'outlaw' and disadvantaged societies from the original position and Rawls's categorical rejection of global distributive justice. Although we will clearly not be able to address the multitude of worthwhile issues brought to the fore by Rawls's article, we hope to provide, amongst other things, a context for better understanding the nature of international justice for Rawls and his controversial model of a law of peoples. Ultimately, we will also want to suggest that both on philosophical-moral grounds, and on empirical grounds, Rawls's theory is one of the least plausible or desirable alternatives for the future of global relations.

The dichotomy drawn by Rawls between the domestic and the international spheres of justice has long been a topic of vivid debate and speculation. In his article, "A Law of Peoples", he elaborates a clear account of his position on the topic and confirms once and for all his view that distributive justice is to be restricted to the domestic realm of national societies; he considers it inappropriate for the international sphere. However, critiques of this anti-cosmopolitan position view this as an arbitrary restriction which demonstrates a favouritism towards nationals that has never convincingly been argued for. One of the leading advocates of global distributive justice that rejects this dichotomy between domestic and international justice is Charles Beitz, whose position on the topic we will examine in chapter four. Yet, other important contributions to this debate

have been offered by such authors as Brian Barry, Will Kymlicka, and Samuel Black, for example. Some of these authors have helped us better understand this debate by exposing important tensions in Rawls's theory of justice, both domestic and international. Exploring the nature and implications of these tensions in his work, for international justice is the focus of this chapter as well as the next.

One such tension in Rawls's work, as explained by Brian Barry, is between his commitment to a conception of justice as mutual advantage on the one hand and justice as impartiality on the other. This tension manifests a fundamental ambivalence about what precisely constitutes justice (what its nature is) and, as we shall see, it is an issue which is intimately linked to the question of whether distributive obligations cross national boundaries.⁴⁸

But Samuel Black argues that Rawls's theory is also incoherent because of his irreconcilable commitments to both universalizable principles of liberal individualism and parochial conceptions of justice (or put otherwise, an individualistic orientation and an anti-cosmopolitan restriction on justice). In the next two chapters we will provide an account of both these tensions in Rawls's work, particularly in their application to his most

⁴⁸ Stanley Hoffman, Duties Beyond Borders: On the Limits and Possibilities of Ethical International Politics, (New York: Syracuse University Press), 1981, p. 142.

recent account of international justice. We will begin in this chapter with Brian Barry's critique, where we will argue that ultimately, Rawls's theory of a law of peoples is fundamentally based on a conception of justice as mutual advantage.

Rawls's Two Irreconcilable Conceptions of Justice:

According to Brian Barry, Rawls's conception of justice, is rooted in the "idea that justice represents the terms of rational cooperation for mutual advantage under the circumstances of justice."⁴⁹ It is a view of justice which is defined by the general advantage that can be obtained by adopting a "system of mutual constraints on the pursuit of self-interest."⁵⁰ And it leads to a vision of the social contract whereby "people agree out of self-interest to enter a social group providing mutual protection and support; obligations exist between members of the group but those outside are not owed anything."⁵¹ Rawls acknowledges certain limited and long-term imperfect duties to poor and oppressed peoples, as we noted in chapter one. But these are discretionary 'duties' based on nothing more substantial than the good-will and the "ideal conception of the society of peoples"⁵² of wealthier, more powerful states--they are not

⁴⁹ Barry, Two Theories of Justice, op.cit., p. 148

⁵⁰ IBID.

⁵¹ Andrew Belsey, "World poverty, justice and equality", in International Justice and the Third World, Robin Attfield & Barry Wilkins (eds), (New York: Routledge, 1992), p. 39.

⁵² Rawls, "The Law of Peoples", op. cit., p. 76.

duties based on justice for Rawls definitively rejects the existence of any obligations based on any theory of global distributive justice.

Despite this strong tendency towards justice as mutual advantage, however, Barry also sees evidence in Rawls's work of "the fundamental idea of a link between impartiality and justice."⁵³ The most notable example of this is his device of the original position and the veil of ignorance. Rawls does not attribute the impartial standpoint to a person, or accept that there is such a thing as an external, independent criterion of justice, but he does propose that impartiality can be ascribed to a "choice situation", which is to specifically disregard morally arbitrary factors. It is also noteworthy for Barry, that whether one is speaking of justice as mutual advantage or impartiality, justice is fundamentally conventional in nature for Rawls. Issues of justice arise because of the conflict of interests that inevitably occurs between people, but justice is conceived of by Rawls as what we can reach a rational agreement on.⁵⁴ Justice

⁵³ Barry, Theories of Justice, op.cit., p. 149.

⁵⁴ In "Two Theories of Justice", Inquiry, 33, p. 99-119, Will Kymlicka, accepts Brian Barry's argument on the distinctions between justice as impartiality and justice as mutual advantage, but he disagrees with him with regard to his insistence that both approaches to justice necessitate or apply to the idea of reaching an agreement on justice. Kymlicka believes that "our moral motivation is not reaching agreement, but responding to legitimate interests [...]" (p. 111) This idea that our approach to justice must "apply to the (male-dominated) realm of interaction between competent adults" (p. 116), argues Kymlicka, does not take into account the fact that the realm of

is derived from a social contract, not an independent standard or moral position.

Thus, in his theory of justice, Rawls offers (and partly adopts) elements of both the mutual advantage and the impartiality basis of justice, but he is unable to successfully reconcile these two approaches. As Will Kymlicka points out, in "Two Theories of Justice", this is because these two approaches differ fundamentally in their motivation and in the circumstances within which the agreement is reached.⁵⁵

The first approach, namely, justice as 'mutual advantage', "concedes the central point that justice is founded in advantage, but argues that in the actual conditions of human life, people can expect to advance their interests more effectively through cooperating with other members of their society than through all-out conflict with them."⁵⁶ Rational prudence and self-interest are the primary motivators. So justice amounts to simple rational prudence which is pursued in situations where one must necessarily cooperate with others in order to be able to get what we desire. We will see that for Barry it is fair to conclude therefore, that in this first approach, the agreement that is

interaction' has traditionally rested on the sexist distinctions of the public-private (domestic) domains.

⁵⁵ Will Kymlicka, "Two Theories of Justice", Inquiry, no.33, p. 99.

⁵⁶ Barry, Theories of Justice, op.cit., p. .6

reached between the parties will probably reflect their unequal bargaining power.⁵⁷

On the other hand the second approach, justice as 'impartiality', holds that the motivation for behaving justly is not reducible to or simply a function of pursuing one's self-interest. There is also no requirement that justice be necessarily to the mutual advantage of the parties. And as such, it becomes possible to detach justice from bargaining power. Barry describes justice as impartiality as the view that "justice should be the content of an agreement that would be reached by rational people under conditions that do not allow for bargaining power to be translated into advantage."⁵⁸ And instead of self-interest, the motivation for acting justly comes from the desire to find a basis of agreement that is acceptable from all points of view, not just one's own. Barry describes it as:

[the] desire to act in accordance with principles that could not reasonably be rejected by people seeking an agreement with others under conditions free from morally irrelevant bargaining advantages and disadvantages.⁵⁹

Thus, justice as impartiality is detached from bargaining power both because of its motivational and its "choice situation" (circumstance) requirements.

⁵⁷ IBID., p. 07.

⁵⁸ IBID.

⁵⁹ IBID., p. 08.

Kymlicka comments that the tension between these two opposing conceptions of justice,

takes the general form of a conflict between the impartiality-based idea that morally arbitrary disadvantages are unjust, and the mutual advantage-based idea that justice concerns the benefits of cooperation.⁶⁰

We believe that Rawls's constructivist methodology itself embodies these tensions. The methodology can be described as basically consisting of a two part theory whereby Rawls first specifies the parties by their potential for mutually beneficial cooperation, and secondly, moves from there to then specify the terms of cooperation in accordance with the requirements of impartiality.⁶¹ It involves a process of 'selective impartiality' so to speak, and it is roughly this same rationale and methodology which we will argue, Rawls also applies in working out the law of peoples.

One of the keys to understanding how Rawls's theory is able to discreetly appeal to both elements of mutual advantage and impartiality at the same time, is also by understanding how the circumstances of justice (which require mutual advantage) are linked to the original position (which seeks to impose impartiality through the use of the veil of ignorance). The original position, explains Barry, is really a way of

⁶⁰ Kymlicka, "Two Theories of Justice", op. cit., p. 105.

⁶¹ Barry, Theories of Justice, op. cit., p. 152.

guaranteeing an impartial choice of principles by asking what people would choose "if they were denied knowledge of a kind that would enable them to rig the principles in their own favor." It is a device which allows one, to determine "what is relevant to justice and what is not" and in that way arrive at principles that would be chosen in a 'fair choosing situation'.⁶² But while people in Rawls's original position do not have knowledge about their particular attributes or position in the social scheme, they do have a notion of the general "characteristics of human beings and human societies", points out Barry.⁶³ As such, they will know if circumstance of justice or conditions conducive to bring about cooperation and self-restraint prevail or not. What this effectively means is that "Rawls's principles of justice are claimed to hold only in the conditions that Rawls specifies [namely, in the 'circumstances of justice']".⁶⁴ The following passage from A Theory of Justice, provides a good description of such conditions:

First there are the objective circumstances which make human cooperation both possible and necessary. Thus, many individuals coexist together at the same time on a definite geographical territory. These individuals are roughly similar in physical and mental powers; or at any rate, their capacities are comparable in that no one among them can dominate the rest. They are vulnerable to attack, and all are subject to having their plans blocked by the united force of others. Finally, there is the condition of moderate scarcity understood to cover a wide range of situations. Natural

⁶² IBID., p. 180.

⁶³ IBID.

⁶⁴ IBID.

and other resources are not so abundant that schemes of cooperation become superfluous, nor are conditions so harsh that fruitful ventures must inevitably break down. While mutually advantageous arrangements are feasible, the benefits they yield fall short of the demands men put forth.⁶⁵

The objective circumstances of justice therefore, are those conditions which render self-restraint and cooperation, both necessary and desirable given the promise of mutual advantage. It means that reasonably equal capacities and power relations must exist between the participants because these are the conditions which make cooperation and justice desirable (but these conditions as we shall see further are not satisfied in international affairs).⁶⁶ Barry argues that the doctrine of circumstances of justice requires in effect, that justice be productive, it must produce mutual benefits and it must not represent a loss for any of the parties--this is why justice must be confined to those engaged in cooperative and fruitful relations.⁶⁷ On a different note, the 'subjective circumstances' of justice on the other hand, include for Rawls such things as different conceptions of the good and life plans, and as we will see in chapter three, these seem to play a

⁶⁵ IBID., p. 181.

⁶⁶ Barry himself also believes that motivation to behave justly is most likely to be aroused under conditions in which cooperation is necessary, but he makes a crucial distinction between his theory and the doctrine of circumstances, stipulating that his theory does not make this the reason for behaving justly--but rather simply a condition which is conducive to acting justly.

⁶⁷ Barry, Theories of Justice, op.cit., p. 241.

significant role in his theory of a law of peoples.

Thus, Rawls introduces the device of the original position because he objects to the idea of exploiting one's bargaining power. Through the veil of ignorance imposed in the original position he tries to eliminate power relations and the problem of the appropriate status quo.⁶⁸ However, by insisting on the circumstances of justice and on the consequent requirement of mutual advantage, Rawls effectively undermines the promise of impartiality contained in his original position; this is true at the domestic level but even more so at the international level. In Barry's opinion it was clearly a mistake for Rawls to require the presence of the circumstances of justice in his theory. He puts it in the following manner:

[I]t seems hard to see what is the use of eliminating the actual strategic advantages and disadvantages of the actors in drawing up principles of justice that are suppose to regulate their interaction if we are also told that justice applies only in the Humean circumstances of justice. For this is to introduce through the back door the strategic relations that have just been expelled through the front door.⁶⁹

The Tensions in Rawls's Domestic Theory of Justice:

Barry argues therefore, that even in Rawls's domestic theory of justice, his insistence on the doctrine of the circumstances of justice and the idea that society be understood as a cooperative

⁶⁸ IBID., p. 183.

⁶⁹ IBID.

venture for mutual advantage may essentially undermine his difference principle. This is especially visible, suggests Barry, in relation to persons in that society who may have unusually expensive medical needs for example, and who will be a 'drain' on a society's resources throughout their lives.

Through the idea of the circumstances of justice, Rawls uses the baseline of noncooperation to show that all gain in comparison to it. But Barry does not believe that this means that disabled persons or those with expensive medical needs will automatically be welcomed into this cooperative venture simply because we would all be better off cooperating than reverting to the nonagreement point of general egoism or state of nature. He argues that in fact, because of Rawls's conception of society as a cooperative venture for mutual advantage (and the very logic of mutual advantage), the baseline of noncooperation is really "a comparison between what the better off get under the difference principle and what they could get if the less well off withdrew their cooperation--that is if they simply did not form part of the economy."⁷⁰ He furthers this point by observing that "once we ask what is the contribution of different social groups to the national income and how it compares with what they get out, we are bound to wonder why we are still applying the difference principle as the distributive criterion."⁷¹ To Barry it is

⁷⁰ IBID., p. 242-243.

⁷¹ IBID., p. 243.

clear that the underlying idea that we are building on, is no longer that of neutralizing morally arbitrary advantages at all. But Rawls does not confront this.

Although it is clear, that according to his requirements of mutual advantage, the remainder of able-bodied healthy persons in society would be better off if the disabled members withdrew from the contractual situation, Rawls repeatedly leaves the issue unanswered, points out Barry. Instead he chooses to work out principles of justice, on the assumption that all citizens are healthy and able-bodied cooperating members of society. Rawls's explanation for proceeding with his constructivist theory in this manner is that one should start from "the clearest and most central case, and only later try to extend it".⁷²

The rationale is that once we have established a theory of justice for this ideal situation then we can see about how we could extend the principles of justice to those initially left out. We will recall from chapter one, how this is also the procedure and rationale Rawls used in his theory of international justice, where he justified along similar lines starting with democratic societies (which he takes to be the easiest, clearest cases) and ideal theory in order to then extend the principles of justice arrived at to hierarchical societies, and exclude the others.

⁷² IBID., p. 245.

But, once Rawls does try to extend his principles of justice to the non-ideal (and supposedly 'unclear') cases, we see then how much difficulty he has in doing so, remarks Barry. For example, in domestic society, the infirm or persons with special needs, present "peculiar difficulties for a theory of justice", while justice between nation states does not address the issue of global economic and resource distribution, and the issue of justice for future generations simply depends on the good will of present generations.⁷³ None of the above cases, which Rawls considers to be problematic for a theory of justice, would present any difficulties of principle, according to Barry, if we acknowledged that what makes them all 'problematic' is Rawls's adherence to the doctrine of circumstances of justice and the idea that we must stand to gain from being 'just'.⁷⁴ These cases represent morally arbitrary factors, such as one's physical condition, country of origin and generation, and from an impartiality point of view they should really be the most obvious, central cases for justice, argues Barry. Yet, for Rawls they are "special" cases and present difficult problems for justice.

Will Kymlicka remarks that Rawls's two main ideas, one being that morally arbitrary disadvantages are unjust and the other that justice really applies to relations of mutually advantageous

⁷³ IBID., p. 245.

⁷⁴ IBID., p. 246.

cooperation, seem "to come together most closely in what Rawls takes to be the 'fundamental case' of justice, i.e., the relations between able-bodied adults who are contemporaries within a given society."⁷⁵ However, once we consider our obligations to the infirm, to future generations or to other societies, Rawls's theory unravels and we are "forced to choose between impartiality and mutual advantage, for these cases involve arbitrary inequalities between people who are not engaged in fruitful co-operation", argues Kymlicka.⁷⁶ Thus, even in the clearest case for justice, i.e., domestic society, there are problems with this idea of mutual advantage, for some members will be considered to be a 'drain' on society's resources rather than as contributing to the mutual benefits. At the international level however, where human (and community) ties are more distant, the consequences of this logic of mutual advantage are more serious, especially with regard to the issue of distributive justice.

How the Tensions in Rawls's Theory of Justice Work Themselves out in the International Context:

At the international level, this restriction that justice be confined only to those engaged in fruitful cooperation presents an even bigger obstacle because of Rawls's working assumption that international realm is composed of self-sufficient, self-

⁷⁵ Kymlicka, "Two Theories of Justice", op. cit., p. 105.

⁷⁶ IBID., p. 105.

contained national communities having no noteworthy cooperative relations of any kind. Diverse authors on international relations, as well as contemporary common sense, have successfully challenged the truth or the wisdom of operating on such an assumption. We will look more closely at this issue in chapter four. But for now, let us see how the tensions that Barry pointed to, allows us to better understand and challenge the logic of Rawls's theory of international justice. We hope to provide a critical interpretation of his theory of international justice, which shows it to be predominately based on a conception of justice as mutual advantage.

When speculating about what Rawlsian international justice might look like, given the tensions in his work, Brian Barry proposed that because the circumstances of justice do hold to a minimal point in international affairs, "rational prudence would [probably] support some principles of international morality" so that there is at least some restraint in the pursuit of national interest.⁷⁷ These principles might very well resemble the rules of non-aggression that Rawls suggested in a Theory of Justice for example, since they fulfil the requirement of mutual advantage if compared to a non-agreement baseline of a Hobbesian 'war of all against all'. But Barry warns us that these principles would most certainly also reflect the unequal power relations, particularly

⁷⁷ Barry, Theories of Justice, op. cit. p. 247.

*prevalent in international affairs.*⁷⁸

*As Barry has already shown us with the case of domestic society, the logic of mutual advantage does not simply imply that all must be satisfied with the advantages of going beyond the non-agreement point (i.e., a 'free for all' and war) but rather, that all must stand to gain equally from justice in the sense that the principles must reflect the actual bargaining power of the parties.*⁷⁹ We now see, with Rawls's new article on international justice, that Barry was not too far from target: both in understanding Rawls's strong tendency towards justice as mutual advantage rather than impartiality, and, in his assessment of the impact the logic of mutual advantage would have on the international realm.

We can perhaps best demonstrate these points by analyzing the fundamental framework or methodology Rawls utilizes in "A Law of Peoples". As in his domestic theory of justice, he chooses to work with a constructivist theory of international justice which goes from the simplest and the ideal cases to the more complicated and non-ideal subjects. At the domestic level we saw that this meant working on the assumption of a self-contained society made up of able-bodied healthy and cooperative persons. In the international realm, this means starting off with the

⁷⁸ IBID., p. 247.

⁷⁹ IBID., p. 249.

easiest case, that of cooperative democratic societies. In this constructivist methodology, explains Rawls, the principles of practical reason are both applied and adapted to the different subjects as they arise. As we noted in chapter one, he claims that the advantage of this constructivist liberal view is that one is not imposing or beginning with "universal first principles having authority in all cases", and thus one can adapt principles to fit each new subject. We will want to suggest that this is not quite true in practice.

The practical implications of this approach, which we exposed in the previous chapter, are very serious indeed. Rawls's seemingly innocuous choice to begin constructing his theory of international justice by beginning with liberal societies is an important one as it sets certain foundational premises and principles of relations between states. A constructivist approach which starts by building its foundations on the interests and philosophy of wealthy democratic societies, is most certainly likely to produce profoundly biased principles of international justice. Moreover, what is even more serious is that these foundations and principles of justice, seem to carry over to the next stage of construction, namely the extension of the law of peoples to include other types of societies (such as, hierarchical societies).

When discussing the extension of the law of peoples to

hierarchical societies, Rawls goes to great lengths to elaborate 'suitably adjusted' domestic requirements that will be acceptable to both hierarchical and democratic societies, and he also explains in considerable detail why hierarchical societies will accept the device of the original position internationally (i.e., they will perceive it as establishing fair terms of cooperation) and endorse a liberal theory of a law of peoples. But he does not elaborate on the new principles of justice that would be derived from this new original position composed of both democratic and hierarchical states. In fact, throughout the text, Rawls gives one the impression that he simply assumes that the principles of justice already agreed upon by democratic societies would simply be accepted and extended to hierarchical societies; that there would be agreement on these principles without necessarily requiring placing everyone in a new and broader original position. However this may be, in "A Law of Peoples", Rawls does not elaborate new principles of justice after hierarchical societies have been included in the international original positions. As such, the principles of the law of peoples, which democratic societies originally established remain unchanged, for Rawls assumes them to be either simply extended to or accepted by hierarchical societies.

As such, even after hierarchical societies have been permitted to join the family of well-ordered states, the agenda (and rules) seems to continue to be dominated by democratic societies. An

important example of this is that there continues to be no mention of redistributive principles of income or unequal resources. Is it because hierarchical societies see no benefit in bringing up this topic? We should note after all, that while democratic states know they benefit from favorable conditions, hierarchical societies do not and would probably be motivated to prepare therefore, for the case where they might be the worst-off of the group. Yet, Rawls dismisses this point by speculating that these societies would not be interested in such distributive principles for philosophical and cultural reasons. According to Rawls they would regard distributive equality as a parochial and 'western concept'. We will address this particular argument in the following chapter. But for now, we will simply hold that it would have been natural for hierarchical societies to have addressed the topic in the original position, especially given their lack of knowledge about themselves.

In this connection, there is another noteworthy sign of favouritism towards democratic states in Rawls's international theory. We will recall that when democratic societies are deriving international principles of justice between them, Rawls goes so far as to make the specific suggestion that there should be agreements for mutual assistance between democratic nations as well as "provisions for ensuring that in all reasonably developed liberal societies people's basic need are met".⁸⁰ While this

⁸⁰ Rawls, "The Law of Peoples", op. cit., p. 56.

may not amount to a principle of distributive justice, it does demonstrate a favouritism for and between democratic societies regarding obligations to meet basic needs, that are neither specifically extended to hierarchical nor to "outlaw" and impoverished societies. As such, although Rawls does not elaborate on this argument, stronger obligations based on need seem to be owed between democratic states than to others, who may have comparatively greater needs. One must wonder what this favouritism is based on, and how Rawls has come to rationalize it as part of his theory of international justice.

Thus, Rawls's choice to begin constructing a law of peoples with liberal societies strikes us as extremely significant: the family of democratic societies set the agenda, foundational premises and principles of relations between states; they set the rules of inclusion and exclusion; and of how one should look at the world and deal with its problems. The fact that Rawls thins or partially lifts the veil of ignorance for the case of democratic societies by allowing them to know that they benefit from reasonably favourable conditions also contributes to fundamentally self-serving and biased principles for it is, in our opinion, an important factor in explaining the absence of any international principles of distributive justice. Democratic societies know they are doing well under the current economic and political schemes and this acts as a disincentive for adopting principles of global distributive justice. Equally important is

the fact that liberal societies take it upon themselves to set and to "adjust" the standards of domestic justice, as they see fit, thereby relativising human rights and diluting the concept of political legitimacy (of governments) when it suits their purpose. This is what occurs when democratic societies decide to accept hierarchical societies into the club of privileged societies that will form amongst other things, a bloc for peaceful and profitable cooperative relations and a powerful defensive alliance. In our view, Rawls's law of peoples reflects a built-in bias in favor of democratic nations whose principles of international justice reveal a conception of justice as mutual advantage. It seems Barry was correct when he argued that, although certain international principles of cooperation and national self restraint might obtain internationally, Rawls's concept of justice as mutual advantage meant that the unequal relations of power in international affairs would ultimately lead to principles which reflected the unequal bargaining power of the parties.

The Exclusionary Nature of Rawls's International Theory and its Connection to his "Ideal" and "Non-ideal" Theory:

The results of this logic of mutual advantage, especially when applied to the international sphere, are even more apparent when one considers the exclusionary nature of Rawls's theory of international justice. We have seen that the selective or exclusionary nature of Rawls's theory means that those societies which are not deemed fit to be part of his ideal theory and have

not passed the test of the domestic requirements (established by democratic societies) will not be included in the original position at the international level. Being outside the web of justice, they are left essentially at the mercy of the good will of other nations. The populations of so called 'outlaw' and impoverished societies thus never have an opportunity to make their case at the level of an all inclusive original position. Rawls's acceptance of the traditional concept of national sovereignty, which makes the state, not persons, the ultimate unit of international consideration has much to do with his position as we shall see in chapter four.

We believe that like at the domestic level, the doctrine of the circumstances of justice and the requirement that justice be to everyone's mutual advantage is at the root of the preselection of societies in Rawls's international theory of justice. The selection of the nations who will partake in the original position is based on their potential for mutually beneficial cooperation, which at the international level, Rawls takes to be the securing of profitable cooperative and peaceful relations, as well as a strong defensive alliance among 'well-ordered' societies. Seen from this perspective, Rawls's requirement that societies satisfy minimum domestic standards (established by the family of democratic states), in order to be able to join the family of well-ordered states, can be viewed as a barometer of domestic stability and prosperity, which are prerequisites for

international cooperation with such countries (since they ensure that cooperation will be mutually advantageous). From this same perspective, one could also argue that Rawls adapts and reduces his own domestic liberal standards to fit the case of well-ordered hierarchical societies, essentially for self-interest reasons, i.e., because these societies offer the promise of fruitful international cooperation and an even stronger defensive alliance. In trying to accommodate hierarchical societies however, Rawls relativizes the idea of the universal moral personality of persons, (i.e., the idea that people are free and equal), and the liberal concept of domestic political legitimacy. Relativising such fundamental liberal premises in the pursuit of one's international self-interests, or international "justice", which is understood here as little more than cooperation for mutual advantage, is perhaps one of the more shocking moves that Rawls makes in "A Law of Peoples".

With regard to those states that are excluded by Rawls's preselection process, we believe that beyond his rhetoric and caricature-like descriptions of these 'evil' and 'impoverished' regimes, Rawls excludes them because he does not consider them candidates with sufficient potential for mutually beneficial cooperation. These societies are part of Rawls's non-ideal theory; so, in much the same way that he deals with the infirm in his domestic theory, these unattractive (non advantage-producing societies) societies will be dealt with according to the terms

and good will deemed appropriate by the family of well-ordered societies, but they are not to benefit from negotiations in the original position. These 'outcast' societies, like the infirm of domestic society, are in other words, the difficult or peculiar or 'unclear' cases for justice, which Rawls deals with last --and unfortunately unsuccessfully.

So, Rawls excludes both these types of societies by relegating them to the realm of non-ideal theory. But what does this mean? With regard to so called 'outlaw' regimes, he justifies this decision presumably based on the problem of non-compliance. They fail to pass the domestic test and presumably refuse to respect the principles of the law of peoples. They are portrayed by Rawls in an exaggerated, caricature-like manner as evil, expansionist or unruly regimes that recognize no conception of justice, domestic or international. Moreover, he specifies that these societies are not victims of unfavorable conditions, they have simply adopted unjust and dangerous political traditions.

But this caricature-like description is quite counter productive and deceptive in its simplicity, because very few regimes would in fact fit Rawls's definition. Firstly, the great majority of countries governed by tyrannical regimes or dictatorships also typically suffer from unfavorable conditions, so to try to completely dissociate poverty and political tyranny is unrealistic and inaccurate; they generally coexist and are often

inter-related due to the disempowerment of the national population through such factors as poverty and illiteracy. Secondly, if one accepts that conceptions about the role of justice in society and the person as free and equal are indeed parochial, as Rawls affirms, then it will be more difficult, if not impossible, to argue that 'outlaw' regimes recognize no conception of justice at all domestically or internationally. We will take up this argument again in chapter three. Finally, one must ask why Rawls accords these "outlaw" regimes international legitimacy by recognizing these governments, even when they have in fact, no domestic political legitimacy at all. We will recall that Rawls stipulates they recognize no domestic conception of justice. In virtue of what does such a regime claim international legitimacy at all? The answer, we believe, is because Rawls accepts the traditional model of international relations whereby states and their regimes are accorded a moral personality and rights through the concept of national sovereignty regardless of domestic legitimacy. It is a view which gives priority to the rights of states over the rights of persons or citizens. And so states (and their regimes) have a moral personality of their own that is not a derivative of the persons that constitute it. This is why Rawls deems it appropriate to construct an international original position with nation states, not persons, and this is also why he excludes "outlaw" societies even when this unfairly and further penalizes the population of these states.

Societies suffering from unfavorable conditions for their part, are included in non-ideal theory because they lack human, material, financial or appropriate political resources. Rawls does not elaborate much beyond this description or offer further justification for excluding them from the international original position. But it would seem that the reason that Rawls relegates these societies to non-ideal theory is because he does not believe that they would be able to fulfil the requirements of "strict compliance theory" (i.e., "a theory of justice constructed on the assumption that the 'parties can depend on one another to conform to them'")²¹ which is part of his ideal theory. Brian Barry, in his article, "Can States be Moral?", offers his own critique of ideal theory. He also offers an interpretation of what Rawls really means by "the strains of commitment", which he essentially takes to refer to the idea that one should not consider principles which will be too psychologically difficult or burdensome in practice or upon reconsideration. He formulates it in the following way;

What Rawls says is that, even when designing an ideal theory, we should throw out 'principles which may have consequences so extreme that [people] could not accept them in practice.' And Rawls' example of such an 'extreme' principle is the utilitarian principle that people should act to maximise overall well-being. For it requires some people 'to accept lower prospects of life [than what? presumably than their prospects under some alternative principle] for the sake of others' [...] Without one word of discussion, Rawls

²¹ Brian Barry, "Can States be Moral?", in Ethics and International Relations, Anthony Ellis (ed), (London: Manchester University Press, 1986), p. 71.

assumes that this cannot be done...⁸²

Rawls's ideal theory is a combination of concerns about non-compliance and of the "strains of commitment" which can be summarized as the idea that people may find it psychologically difficult to accept some principles if they are deemed too extreme or burdensome. Barry criticizes this approach:

By incorporating the problem of compliance (as I have defined it) into ideal theory under the description of "strains of commitment", Rawls moves too fast towards practicality, while at the same time stopping short of it. His "ideal theory" is an unsatisfactory hybrid of ideal and practical considerations. It is neither really ideal nor really practical.⁸³

Thus, for Barry, Rawls's ideal theory presents an unsatisfactory group of ideal and practical considerations that are really neither ideal nor practical at all because of his fear of making too large concessions. Furthermore, by beginning with ideal theory, Rawls begins not by looking at the world globally as it is, but rather with the limitations and pre-conceived vision of what it ought to be like, based on the interests and favourable conditions of well-ordered liberal and hierarchical societies. Despite its name, Rawls's ideal theory is an inherently conservative theory which builds on existing limitations, and as such, endorses the status quo.

Unfortunately, Rawls's non-ideal theory is as conservative as his ideal theory. For example, it fails to recognize the inequalities

⁸² IBID.

⁸³ IBID.

between nations and peoples engendered by our current international order and institutions. Even Rawls's description of "outlaw" regimes is but a caricature of reality, in the way he depicts them as prosperous regimes that are simply inherently evil. And his depiction of societies facing unfavourable conditions is equally unhelpful. He fails to acknowledge the adverse effects that our interdependent global economy has on disadvantaged societies: the disastrous impact of the third world debt and the structural adjustment programs (imposed by the IMF and the World Bank) on domestic economies and the already impoverished populations of these countries; the exploitative and devastating effects of the flourishing international arms trade; the power that the developed world exercises in setting the market prices for the natural resources of the developing world; and the environmental abuse by the consumer oriented economies of the developed world.

Rawls's constructivist division between ideal and non-ideal theory can only depict a caricature of the state of world--a caricature which fails dangerously to grasp the complex political and economic dynamics that characterize relations between the developed and the developing worlds. As Andrew Belsey put it:

Poverty is a characteristic not simply of this country or that country but of a system, that is to say a structure of relationships between countries, especially the unequal relationship, economic and political, that exist between the Third World countries of the South and the industrialized countries of the capitalist North.

The idea that poverty is the product of systemic,

exploitative power relations between countries is one that [has become] central to a critical analysis of world poverty.⁸⁴

Rawls cannot continue to ignore this reality and still hope to have any semblance of a viable or plausible theory of international justice. It is a critical element to any rigorous examination of our global distributive obligations. Had Rawls begun with an accurate account of international economic and political reality, and an all-inclusive original position, one can safely assume that principles of global distributive justice would have been part of the agenda of international justice.

Why Not Begin With an All Inclusive Original Positions?:

In "A Law of Peoples", Rawls does address the question of why in working out the law of peoples, he chose to begin with "societies well-ordered by liberal views somewhat more general than justice as fairness"⁸⁵ (i.e., liberal and hierarchical societies), rather than with a global original position that would start with the world as a whole. And he also offers us his own sequence of subjects (i.e., democratic states first and then hierarchical states), despite acknowledging that it may not be the most appropriate, and this constructive methodology itself may inherently require much trial and error. He admits that there are no clear answers with regard to this question of method and

⁸⁴ Andrew Belsey, "World Poverty, Justice and Equality", in International Justice and The Third World, (London: Routledge, 1992) p. 37.

⁸⁵.Rawls, John, "The Law of Peoples", op. cit., p. 50

"order", and that there are alternatives to his proposition of starting with well-ordered liberal societies but he definitively rejects starting from an all-inclusive original position.

We saw earlier in this chapter, that Rawls defends beginning with well-ordered liberal societies because he views them to be an "apt starting point for the extension to the law of peoples" since, amongst other reasons, their convictions about justice will resemble each other. We also argued earlier on that the sequence of subjects (beginning with democratic societies) and Rawls's method in general contained built-in biases and was itself based on a conception of international justice as mutual advantage.

As in his domestic theory, he takes the position that he should begin with the easiest or clearest cases (namely, able-bodied healthy persons domestically, or rich and stable states internationally) for a theory of justice first, and that later he will deal with the 'problem' or non-ideal cases. But we have seen how much difficulty Rawls then has in going beyond these ideal cases or subjects, in order to deal with the more difficult cases for justice. Barry has argued, and we agree, that this has much to do with the idea of justice as mutual advantage, and that these cases would not present a 'problem' were they to be treated according to a conception of justice as impartiality. At the level of international relations, these difficult cases simply

get excluded from the original position, as does the issue of global distributive justice. Although Rawls may concede that there are no clear answers to the issue of method and appropriate sequence of subjects, we argue that by beginning the construction of his theory of a law of peoples with democratic states and adopting morally arbitrary rules of exclusion (especially as they relate to persons), Rawls is setting the ideal conditions for deriving principles of justice as mutual advantage.

We noted in the section in this chapter on Rawls's domestic theory of justice how the doctrine of the circumstances of justice effectively introduces morally arbitrary factors and unequal power relations (i.e., bargaining power) into the idea of the original position. From this perspective of the doctrine of the circumstance of justice, it is clear that the lack of a balance of power in the international realm precludes the application of truly global original position, because only those states powerful enough to fulfil the requirements of the circumstances of justice and offer the possibility of mutual advantage will be included. So, while Rawls does not explicitly invoke the doctrine of the circumstances of justice or mutual advantage in "A Law of Peoples", they are in our view, the ideas operating behind the exclusion of the outcast societies. The idea in Rawls's theory that justice only applies to society because it is a cooperative venture for mutual advantage therefore has its counterpart in the international sphere, where only those states

fairly equal in power and likely to offer the fruits of mutual advantage will be included in the cooperative venture of the law of peoples. At the international level, mutual advantage means that they will benefit from a common defensive alliance and political, and economic cooperation. But as we have already noted, it interestingly enough does not include any distributive obligations.

Rawls comments that the very idea of an international distributive principle is inappropriate and ethnocentric, but what is clear is that at the international level, his constructive methodology and his conception of justice as mutual advantage, precludes the introduction of such a principle. By starting with democratic societies that benefit from favorable conditions and then excluding those that do not from the original position, Rawls sets the conditions necessary for avoiding the issue of global distributive justice altogether. As Barry correctly pointed out in his critique of Rawls's domestic theory of justice, this is a two part theory of justice that includes the irreconcilable elements of both mutual advantage and impartiality; Rawls first specifies the parties by their potential for mutually beneficial cooperation, and only later, moves to the second step of specifying the "terms of cooperation in accordance with the requirements of impartiality."⁸⁶ This is what he did at the international level: he preselected the

⁸⁶Barry, Theories of Justice, op. cit., p. 152.

privileged states first and only later did he apply the original position in order that there be fair terms of cooperation between those privileged societies. But as we mentioned previously, there is some reason to believe that even at this stage of the restricted international original position Barry was correct in pointing out how the principles of justice derived from the original position would be tainted by the unequal bargaining power of the parties. Barry argued that if justice is truly to be to everyone's advantage, then everyone will want to gain equally, not in the sense of simply benefiting from moving beyond the noncooperation baseline, but in the sense of 'equally' relative to their original bargaining power. When one looks at Rawls's extension of the law of peoples to hierarchical societies for example, we have already seen that there is some evidence that democratic societies still retain a privileged position which reflects their superior bargaining power--they devised the domestic test, first established the principles of a law of peoples, and set the agenda so as not to introduce distributive obligations.

Yet, despite all of the above arguments and the ample evidence of morally arbitrary factors which exclude the entire populations of the outcast societies from the original position, Rawls does not seem to see the problem. When further explaining why he did not start with an all-inclusive original position constituted by the representatives of all the individual persons of the world, Rawls

responds that in his opinion, this would not have made any significant difference in the result. It is true that if one began with an all-inclusive original position, the question of whether there should be separate societies and the question of the relations between them, would be settled by all the parties behind a veil of ignorance, admits Rawls. However, he does not see how this would lead to a different result than if he chose to "proceed from separate societies outward".

He holds this opinion, despite the fact that his method leads to the exclusion of the entire populations of outcast societies from the original position, dismisses the importance of political legitimacy, and ignores the reality of global cooperative schemes that only deepen the existing inequalities in international power relations. We believe he dismisses the advantages of beginning with an all inclusive original position (constituted by the legitimate representatives of all the individual person of the world) much too off-handedly. For one thing, tyrants, dictators and corrupt rulers would no longer hold illegitimate control over their citizens, or represent them. They would be outnumbered by their populations who would, once in the original position, adopt more favorable principles for everyone in accordance with their needs.

But Rawls has another objection to beginning with an all inclusive original position. He formulates it as such:

The difficulty with an all-inclusive, or original position is that its use of liberal ideas is much more troublesome, for in this case we are treating all persons, regardless of their society and culture, as individuals who are free and equal, and as reasonable and rational, and so according to liberal conceptions. This makes the basis of the law of peoples too narrow.⁸⁷

There are many objections one could bring against this position and they are the chief topic of our next chapter, where we deal with the question of whether this liberal conception of the person is indeed parochial or not. But there is another reason why this explanation given by Rawls is suspect. This justification rings hollow, when we see that this alleged fear of imposing ethnocentric liberal values on foreign cultures does not deter him from beginning his construction of the law of peoples with an exclusive club of liberal states whom as we have shown, set everything from the ground rules, the agenda, and the basic principles of the law of peoples to the rules of inclusion and exclusion. Contrary to his ambition and his claim to have derived a law of peoples that is politically and ideologically neutral, we believe that in the end, his theory is profoundly biased, in the sense that any theory of justice based on mutual advantage will be, it privileges the already privileged.

A truly global original position made up of all the individuals of the world or their legitimate representatives on the other hand, would most certainly have a different result; for at least,

⁸⁷ Rawls, "The Law of Peoples", op. cit., p. 66

such morally arbitrary factors as, domestic poverty, inequalities in natural resources, and despotic or illegitimate leaders would no longer bear influence on the international principles of justice. From the perspective of justice as impartiality, discarding such morally arbitrary factors would be a necessary condition for truly "neutral" and just principles of justice. Starting with a world-wide truly impartial original position would also have eliminated the doctrine of the circumstances of justice and with it the unequal bargaining power that characterizes international affairs--and would clearly have produced a different outcome.

But Rawls concludes that a "two level bottom-up procedure" which begins with requiring basic domestic justice and then moves to a law of peoples is the most appropriate method to proceed, even if the effect is to exclude the populations of outcast societies. He explains:

Hence, I think it best to follow the two-level bottoms-up procedure, beginning first with the principles of justice for the basic structure of domestic society and then moving upward and outward to the law of peoples. In so doing our knowledge of how peoples and their governments have acted historically gives us guidance in how to proceed and suggests questions and possibilities we might not otherwise have thought of. But this is simply a point of method and settles no questions of substance.⁸⁸

This simple question of "method" however, has as we have seen for the many reasons mentioned above, turned out to be a crucial one.

⁸⁸ IBID., p. 66.

Moreover, in working from domestic societies outward, it is clear that Rawls fundamentally accepts the nation state as the privileged unit of international relations.

Preliminary Comments on the Role of the Concept of Sovereignty in Rawls's Law of Peoples:

There are many advantages for Rawls in accepting the traditional concept of national sovereignty. First, it allows him to continue working with the assumption of equal, self-contained, insular societies, and thus disregard the inequalities that our increasing political and economic interactions engender. It also permits him, argues Beitz, to continue assuming that nations are 'de facto' entitled to "the resources and wealth that exist[s] within [their] territory."⁸⁹ And finally, it allows him to exclude the populations of so called outlaw and disadvantaged regimes from the original position, because the concept of sovereignty (and non interference) is linked to the idea of exclusive control over one's population, such that the population and its rulers are considered a single unit that make up the 'nation state'. As will discuss in chapter four, this is the traditional approach to international relations which posits the state as the ultimate unit of international affairs, but which commits the error of acting as if states have moral ends in themselves apart from the persons that constitute them.

⁸⁹ Beitz, "Sovereignty and Morality in International Affairs", op. cit., p. 243.

Moreover, Rawls's slightly nuance, modernized concept of sovereignty which purports to limit a state's right to war and internal autonomy over its population, does not represent any significant change. It does not change the fact that Rawls excludes entire peoples from participating in an original position based on the type of government and domestic conditions already imposed upon them. It also does not change the fact that sovereignty for Rawls, continues to mean that each state, whether they possess sufficient (and equitable) resources or not continues to be held exclusively responsible for providing for its population. Nuance or not, this concept of sovereignty, clearly plays a key role in Rawls's rejection of global distributive justice.

In his article, "What is so Special about our Fellow Countrymen?", Robert Goodin defends a more interesting interpretation of sovereignty which challenges many of the more traditional aspects of this concept. He challenges the idea that the duties which states owe their citizens are special and exclusive in any way, and suggests instead that they are merely a convenient method of discharging what in fact are our larger duties toward people in general. If this is so and we wish to maintain this system of discharging duties, then nation states must be given sufficient resources to allow for the "effective

discharge of those responsibilities", argues Goodin.⁹⁰ Seen from this perspective, it would therefore be right for nations to take on burdens that would not benefit their own citizens, for this would be a discharging "of the duties that all of them share..."⁹¹ While Goodin does not claim to be suggesting any "special theory of justice", he clearly goes beyond a conception of justice rooted in mutual advantage, and works from a position that supports some type of principles of global redistributive justice. For Goodin, the logic of mutual advantage means that "transfers across international boundaries are permissible only if they constitute mutually beneficial exchanges. [And] the practical consequence [of this, concludes Goodin] is, characteristically, that the rich get rich and the poor get poorer."⁹²

We have seen in this chapter, that according to the mutual benefit logic, which we believe Rawls to adhere to, nations do not take on burdens that would not benefit their citizens. Thus, so called 'outlaw' and disadvantaged societies are excluded from negotiations in the original position, as is the entire issue of distributive justice, which can only burden liberal societies since they already benefit from favorable conditions. According

⁹⁰ Robert Goodin, "What is so Special about our Fellow Countrymen?", *Ethics*, vol. 98, no. 4, 1988, p. 685.

⁹¹ IBID., p. 687.

⁹² IBID., p. 685.

to this logic, nation states owe special duties to their own citizens which do not derive from any other general duties to humanity; and ultimately this is what seems to justify restricting the scope of justice to one's own domestic society.

On the other hand, Goodin offers an alternative model which fixes the source of responsibility in the "person and the general duty that we all have toward him [because this is what] matters morally." When seen from this perspective, "citizenship is merely a device for fixing special responsibility in some agent for discharging our general duties vis-a-vis each particular person" argues Goodin.⁹³ This model of the relationship between the state and its citizens poses not only an important challenge to many of the traditional assumptions underlying the concept of sovereignty, but also Rawls's refusal to consider the issue of global redistributive justice and his conception of justice as mutual advantage. These are only some preliminary thoughts on the important role that the concept of sovereignty plays in Rawls's law of peoples and in his rejection of global distributive justice--a topic which we will further pursue in chapter four.

Justice as Impartiality:

Because Brian Barry's critique predates Rawls's recent account of international justice in "A Law of Peoples", he expresses puzzlement at the fact that Rawls consistently remains silent on

⁹³ IBID., p. 686.

the issue of global distributive justice. He cannot understand why, if all countries are participating in the original position and are behind a veil of ignorance as Rawls seemed to suggest in A Theory of Justice, they would not consider the possibility they might be the worst-off and hence wish to address the issue of distributive justice.

Furthermore, he argues that in the same way that people are born into a society, they are also born into the world, so that everything that Rawls says about "people being born into and living in particular societies points toward making the application of the difference principle universal [because] the world as a whole is surely [...] the most uncontroversial field of application for the principles of justice."⁹⁴ He agrees with Rawls that one needs particular principles of justice that fit the particular structure one is dealing with. But this is, according to Barry, all the more reason for extending the sphere of distributive justice to the international realm, not for restricting it to domestic societies. He argues this point in the following manner:

The basic structure of the world - the institutions that (by omission and commission) define differential life chances--is no less open to criticism on the basis of the principles of justice than is that of any single country. It is surely obvious that among the most important things that determine people's prospects--including the elementary one of their chance of surviving to celebrate their first birthday --is the

⁹⁴ Barry, Theories of Justice, op cit., p. 236.

country in which they are born.⁹⁵

Barry observes that judging from Rawls's own statements, "the background condition for the application of the difference principle would thus seem to be the existence of institutions that determine life chances."⁹⁶ Yet, as we have clearly seen, especially in "The Law of Peoples", Rawls is not satisfied with this criterion alone and insists that the society (or societies), to which we apply the principle of justice must be marked by a productive and fruitful cooperative scheme, such that we do not have a zero-sum situation where one could not gain unless someone else loses.⁹⁷ This would clearly not have been a likely result had Rawls begun his theory of a law of peoples with an impartial all-inclusive original position that included impoverished societies; only a conception of justice as mutual advantage, could satisfy such requirements of profitability from justice.

So we are clearer now about why Rawls did not consider the question of global distributive justice in A Theory of Justice or in "The Law of Peoples". Barry was correct in his speculations that Rawls's doctrine of the circumstances of justice fundamentally undermined his use of the original position. We have seen how when it is applied to the international context, it leads to a process of pre-selection of states that introduces

⁹⁵ IBID., p. 237.

⁹⁶ IBID.

⁹⁷ IBID.

unequal bargaining power and morally arbitrary factors through the back door, and it applies a (diluted) impartiality-based morality only to those few states privileged enough to have been selected into the exclusive club of well-ordered nations that are to participate in the original position. Both the international circumstances, which are largely those of unequal power relations, and the motivational constraints Rawls imposes at the level of international justice, partake in a conception of justice as mutual advantage-- which do not lend themselves to principles of global distributive justice.

Kymlicka correctly notes that for Barry, justice as mutual advantage "does not even count as a theory of justice."⁹⁹ Instead, Barry proposes a conception of justice as impartiality that contains fundamentally different circumstances and motivations for justice. As we noted at the beginning of this chapter, this conception of justice works on the premise that the motivation for acting morally stems from seeing people as well as their claims matter as ends onto themselves, and from a genuine desire to see the situation from all points of view, not merely our own. Put otherwise, we are compelled to act morally by the "desire to be able to justify our conduct" or to behave in a way which will be accepted by others without coercion.⁹⁹ But this motivation, states Barry, does not come about under just any

⁹⁹ Kymlicka, "Two Theories of Justice", op. cit., p. 100.

⁹⁹ Barry, "Can States be Moral?", op.cit., p. 81.

conditions. The motivation to act justly will most likely be aroused under conditions of approximate equality of power and in this way, it resembles Rawls's original position and veil of ignorance. However, what is fundamentally different, argues Barry, is that his theory of impartiality does not reduce the motive to behave morally to the simple pursuit of one's own advantage through cooperation with others for mutual benefit. The reason for acting morally remains the desire to justify one's conduct, to see things from the point of view of the other, and the inherent moral status of persons.

At the international level, we have seen how Rawls's original position is only used at the second stage, after he has already preselected those societies likely to mutually benefit from cooperation. This methodology we know, results in a complete rejection of any principles of global distributive justice, the exclusion of outcast societies and an endorsement of the existing unequal power relations. Barry on the other hand, is committed to a conception of justice that does not allow the morally arbitrary inequalities of real life to translate into bargaining strength, and that does not make the unrealistic requirement that everyone gain from being just; his approach to justice however, does affirm the inherent moral status of persons and the genuine motivation to look out for their interests as well as ours. As Kymlicka puts it,

The two approaches are, morally speaking, a world apart. And, from the point of view of everyday

*morality, mutual advantage is an alternative to justice, not an alternative account of justice.*¹⁰⁰

But Brian Barry's account of the tensions inherent in Rawls's work are not the only ones that plague this theory of justice. Samuel Black's critique of the incoherence and tensions in Rawls's theory are also extremely worthwhile, particularly as they bring up the topic of the moral personality of the person -- which is a pivotal idea in these discussions on international justice. It is to this discussion that we will now proceed in order to then turn to the contributions made by Charles Beitz in chapter four.

¹⁰⁰ Kymlicka, "Two Theories of Justice", *op. cit.*, p. 103.

CHAPTER THREE

**INDIVIDUALISM AND ANTI-COSMOPOLITANISM IN RAWLS:
THE PAROCHIAL JUSTIFICATION**

The issue of global distributive justice is at the centre of a conflict in international thought between those who believe that we have duties beyond our own borders and those who generally believe that moral questions (and obligations) should be restricted to national societies. The argument that collectivities or societies (nation states) should enjoy prerogatives not open to those lying outside its boundaries, has even been advanced by some as simple 'common-sense morality'. And conventional wisdom until perhaps 20 or 30 years ago held that issues of social justice and morality were to be confined to national societies. However more recently, some have argued that revisionist liberals (those putting forth liberal theories of justice) such as John Rawls who agree with this anti-cosmopolitan position, nonetheless threaten the special commitment we have to our domestic societies, by their uncompromising individualist assumptions.

Many communitarians have argued along these lines and authors such as Michael Sandel, David Miller and Samuel Black are only some of the authors who believe that this commitment to individualism should be qualified so as to accommodate a more collectivist or communitarian theory of justice. We will not go into this debate in this paper. However, authors such as Samuel

Black have in the context of this debate, made excellent points regarding the internal inconsistencies inherent to liberal theories of justice. He believes they run the danger of leading revisionist liberals to finally embrace cosmopolitan ideals and sacrifice the privileged domain of the national societies in order to remain coherent. These inconsistencies are brought on by an insistence on individualism on the one hand, which assumes mutual disinterest by its members and an anti-cosmopolitan bias that restricts distributive justice to the confines of national boundaries on the other. As in the previous chapter, it is the tensions and inconsistencies in Rawls's theory, especially in their international implications, which Black brings to the fore that interest us in this chapter.

In his article, "Individualism at an Impasse", Black observes that it is "an egalitarian concern for the individual welfare rights of each member of society" that distinguishes revisionist liberals such as Rawls.¹⁰¹ The three characteristic theses of revisionist liberalism, according to Black are:

- (1) the ideal of distributive equality (which holds that unequal distribution of social and economic resources are only justified if they are to the benefit of the less advantaged members of society);
- (2) an anti-cosmopolitan bias, which restricts the scope of

¹⁰¹Samuel Black, "Individualism at an Impasse", Canadian Journal of Philosophy, vol. 21, no.3, 1991, p. 348-349

justice to national boundaries; and finally

(3) an 'individualist constitutional' orientation, which requires that we assume mutual disinterest (i.e., that we assume we do not possess shared ends in common even though we are members of the same society).¹⁰²

In turn, the principle of egalitarian distributive justice in particular rest on three fundamental ethical premises, according to Black, namely: (1) the universal moral personality of all persons; (2) the commitment to contractualism and; (3) the principle that undeserved inequality deserves to be redressed.

Let us turn briefly to these premises, since they play a pivotal role for the issue of global distributive justice.

This first premise of the universal moral personality of the person is based on the idea that all persons possess morally important qualities, i.e., the capacity to have a conception of the good and a sense of justice. In A Theory of Justice, Rawls put it in the following terms:

It seems reasonable to suppose that the parties in the original position are equal. That is, all have the same rights in the procedure for choosing principles; each can make proposals, submit reasons for their acceptance, and so on. Obviously the purpose of these conditions is to represent equality between human beings as moral persons, as creatures having a conception of their good and capable of a sense of justice. The basis of equality is taken to be similarity in these two respects.[...] Together with the veil of ignorance, these conditions define the

¹⁰² IBID., p. 349.

principles of justice as those which rational persons concerned to advance their interests would consent to as equals when none are known to be advantaged or disadvantaged by social and natural contingencies.¹⁰³

Hence, Rawls bases the assumption of the equality of persons and their moral personality, on the fact that they all possess the capacity for a conception of the good and a sense of justice. Moreover, as notes Black, Rawls assumes that these qualities are possessed by the "overwhelming majority of mankind".¹⁰⁴ In fact there is no doubt that in A Theory of Justice, Rawls takes the idea of the moral equality of all human beings to be a universal one. For instance, in certain passages he questions why we attribute equality to human beings and treat them in accordance with the principles of justice but we do not do the same for animals.¹⁰⁵ In other passages, Rawls asks why the principles of justice require that equal basic rights be assigned to all persons ? His answer, again, is that it is because of their moral personality which is dependant on their capacity for a sense of justice and a conception of the good. He puts it as such:

Thus equal justice is owed to those who have the capacity to take part in and to act in accordance with the public understanding of the initial situation.[...] We see, then, that the capacity for moral personality is a sufficient condition for being entitled to equal justice. Nothing beyond the essential minimum is

¹⁰³ Rawls, A Theory of Justice, op. cit., p. 19. Emphasis added.

¹⁰⁴ IBID., p. 506.

¹⁰⁵ IBID., p. 504.

required.[...] It should be stressed that the sufficient condition for equal justice, the capacity for moral personality, is not at all stringent. When someone lacks the requisite potentiality either from birth or accident, this is regarded as a defect or deprivation. There is no race or recognized group of human beings that lacks this attribute.¹⁰⁶

Unequivocal statements such as this one, clearly demonstrate beyond a doubt that Rawls justifies the equality of persons on universal grounds. Despite this clear position in A Theory of Justice, however, Rawls seems to want to shift his position on this critical issue in his later works. In fact, he will later label this conception of the morality of the person as parochial instead of universal.

The second premise, the liberal commitment to contractualism, also supports egalitarianism since it holds the view that "institutions shared in common should be justifiable in principle to each reasonable participant."¹⁰⁷ But since contractualism does not necessarily lead to egalitarian principles of distribution, points out Black, revisionist liberals must add another condition, namely that the hypothetical contract must be derived under specific types of conditions; these correspond for example, to Rawls's original position and the veil of ignorance.

Finally the third premise, the idea that undeserved inequalities should be compensated, plays a crucial role in supporting the

¹⁰⁶ IBId., p. 505-506.

¹⁰⁷ Black, op. cit., p. 351.

liberal principle of distributive equality. In fact, this idea that one should not be penalized for morally arbitrary factors is the rationale behind such devices as the veil of ignorance and the original position. As Black puts it, "[t]here exist a consensus among revisionist liberals that persons should not be penalized for circumstances for which they are not responsible. [They] judge that these factors are morally arbitrary."¹⁰⁸ As such, they stand committed to redressing these undeserved misfortunes or circumstances (which can include one's social class and upbringing as well as natural talents and attributes, for example) through equitable schemes of distribution. Rawls affirms his commitment to this principle in the following passage:

*The idea [of the original position] here is simply to make vivid to ourselves the restrictions that it seems reasonable to impose on arguments for principles of justice, and therefore on these principles themselves. Thus it seems reasonable and generally acceptable that no one should be advantaged or disadvantaged by natural fortune or social circumstances in the choice of principles.*¹⁰⁹

As Black notes, there exists some debate between different theorists about the fine lines between misfortune and personal responsibility or initiative, but the idea that morally arbitrary factors are the business for justice to redress remains fundamental for these theories of justice.

¹⁰⁸ IBID., p. 353.

¹⁰⁹ Rawls, A Theory of Justice, op. cit., p. 18. Emphasis added.

However, these three premises which support distributive equality conflict profoundly with the second major characteristic of revisionist liberalism, namely its anti-cosmopolitan bias. This is the view (which Rawls shares) that relations of justice and distributive obligations should be limited to the boundaries of national societies and its members. This clash between these major premises of liberal revisionist theories means that they hold a fundamental "asymmetry between the principles of justice and the principles of humanity."¹¹⁰ Black describes this inconsistency in liberal theories of justice as the "fallacy of restricted universalism", which "ascribes rights and claims on the basis of certain universal attributes of persons [but] at the same time [also] restricts the grounds for those claims to a person's membership or status within a given society."¹¹¹ Black argues that any theory of distributive justice that relies on universal human attributes, such as the ability to feel pain, the possession of rational faculties or the capacity to possess an effective sense of justice (as does Rawls), is subject to this same fallacy if it then restricts the scope of justice.¹¹² It is this inconsistency in Rawls's theory of international justice that we wish to concentrate on.

So how do liberal revisionists such as Rawls, deal with this

¹¹⁰ Black, op. cit., p. 355.

¹¹¹ IBID., p. 357.

¹¹² IBID.

inconsistency? Black considers four alternatives that seem to be available to them. Firstly, they could abandon one of their premises such as the attributing of a moral personality to persons or the principle of redress, suggests Black, but as these are fundamental to egalitarianism, they cannot easily be dismissed. Indeed, Rawls does not abandon these premises, although we will see that he does restrict them to liberal societies.

Secondly, one could retain the basic premises supporting egalitarianism but simply qualify them by introducing reasons why they should be restricted to national boundaries. This second option, according to Black, is not likely to be successful since one would have to deny the symmetry between citizens and non-citizens in relation to such premises as the moral personality of persons or the principle of redress, and this would most likely involve invoking "assumptions which are unacceptably chauvinistic".¹¹³ But in fact, although we will argue that this option is not successful, Black was wrong to believe that liberal revisionists would not use this option. Rawls as we know, invokes it in "The Law of Peoples" when he argues that the premises supporting distributive equality are parochial ideas.

The third possibility Black looks at, is that liberals restore consistency to their theories of justice by simply abandoning the

¹¹³ IBID., p. 358.

*anti-cosmopolitan premise, thus conceding that the natural consequence of their premise is global distributive justice. This was the position taken by various authors including Charles Beitz. However, Black argues that this position might present a problem for those who object to an unqualified cosmopolitanism on independent grounds, such as the open immigration policies that it may lead to.*¹¹⁴

Finally, the fourth possibility for revisionist liberals, is that they retain their major premisses but offer a justification for limiting the scope of justice to national societies by invoking the principle of reciprocity or existing relations of mutual

¹¹⁴ Whereas, authors advocating cosmopolitanism (i.e., "the ideal that state boundaries have a merely derivative significance") and a global difference principle, such as Charles Beitz, have generally supposed that the international social and economic institutions would maximize the expectations of the least well off by the redistribution of primary goods, in fact, Black suggests that it may also lead to open borders and the "transfer of people from the less affluent to the more affluent nations." (Black, 1991 p.360) This potential outcome of unqualified cosmopolitanism presents many possible concerns. Mass immigration would conflict with the idea of self-determination in that a large influx of foreigners would affect the linguistic, cultural and moral environment of the society, and it would also affect public policies and institutions. Black's concern is that a thoroughgoing cosmopolitanism would inevitably lead to open borders, which would result in an influx of new voters and a loss of the popular consensus based on shared history and values that grounded public policy and allowed one to have control over one's collective environment (self-determination). In this way it would be more "burdensome on established cultural communities than the simple redistribution of wealth and natural resources." (Black, 1991 p. 362) Black argues that the very conditions for the possibility of realizing the good life for these communities would be lost if they no longer had any control over admissions into their borders. (Black, 1991 p. 362)

cooperation. The principle of reciprocity (or cooperative relations) provides an objective basis for privileging society as the appropriate sphere of justice, rather than simply establishing an arbitrary boundary. Black takes this fourth option to be the one most likely to invoked by liberal revisionists, and builds much of his argumentation around it. And indeed, we know that Rawls himself continues to argue along these lines and to maintain that national societies are the cooperative units to which justice should be confined.

In addition to this more traditional line of argumentation however, Rawls has also more recently invoked the second option, which holds that the very premises supporting distributive equality should themselves be restricted to national boundaries. In this vein, Rawls argues that the premises supporting distributive equality are parochial in nature, that they reflect western values, and that on these grounds they should be confined to national societies. We will look in turn at both of these arguments, although we will focus primarily on the latter. We will want to show that in fact, both these arguments for restricting distributive justice to national societies suffer from the fallacy of restricted universalism.

The Fourth Option: do reciprocal relations justify restricting distributive justice to national societies?

Black does not believe that liberal theories of justice have been

successful in appealing to this fourth option. If they are to limit distributive justice to national societies based on the existence of reciprocal relationships, and defend themselves against the charge of arbitrariness, then liberals will have to say a lot more about what reciprocal exchange really is all about, maintains Black. They will have to describe what forms of cooperation lead to relations of justice, and what precisely happens within these associations to make them the privileged domain of obligations of justice--to "make them special".¹¹⁵ Other authors, including Charles Beitz and Onora O'Neill, have made similar observations and argued that this appeal to the special status of society as the ultimate (and ideal) unit of cooperative relations, is no longer warranted given our increasing global interdependence and complex schemes of international cooperative relations and institutions. They observe that if distributive justice is dependant on the existence of cooperative relations, then there is no longer any valid reason to maintain this dichotomy between the domestic and the international realm.

Yet liberal revisionists such as Rawls continue to make the mistake of simply assuming that "the members of a society are somehow empowered to engage in hypothetical auctions or contracts among themselves, with the aim of redistributing the assets and

¹¹⁵ Black, op. cit., p. 363.

resources that happen to lie in their de facto possession."¹¹⁶ Why, asks Black, "should any moral significance attach to the fact that certain resources just happen to be located within a particular society [and why should we on this basis restrict] the scope of justice to existing societies?"¹¹⁷ The answer by some has been that in fact, there is no longer any valid reason for this arbitrary restriction and the only legitimate way to out of this inconsistency is to expand the liberal scope of justice and embrace an increasingly cosmopolitan position.

Black's own answer as well as that of the communitarian school of thought in general however, goes in the opposite direction, advocating that liberal theorists of justice must abandon their commitment to individualism and embrace a communitarian conception of the good. He argues that only such a public community-based conception of the good could justify and legitimate the protection and maintenance of one's public environment, (i.e., one's nation state) as well as privileging our collective public interests. In his opinion, liberal theorists of justice will have to choose between a cosmopolitan and a collectivist position; but, only a collectivist orientation can, given its public conception of the good, provide a legitimate reason for privileging the nation state and the community. For Black, what renders liberal theories of justice

¹¹⁶ IBID., p. 355.

¹¹⁷ IBID.

incoherent is clearly their individualist commitment to mutual disinterest rather than collective pursuits or communitarian (or national) visions of the good.

This assumption of mutual disinterest originates in Rawls's original position and has a number of functions: (1) it acknowledges that the motivational assumption of pure benevolence on the part of different persons is inappropriate and inaccurate; (2) it recognizes that people have different goals and interests and that there is no inherent metaphysical superiority to certain values; and (3) it assumes that people in society converge to establish social institutions which favor "asocial primary goods" or goods that are "an index of personal welfare".¹¹⁸ According to Black, collectivist theories of justice would agree with the first two grounds for mutual disinterest but they would disagree with the third because they believe it unreasonably favors an "asocial" version of the subjective interests of the members of a society. Rawls's 'asocial primary goods' reflect the subjective "pursuits people might have as perfect strangers, or lone individuals, rather than the concerns they possess as the members of a robust and flourishing culture."¹¹⁹

Thus, Black argues for a collectivist orientation to liberal theories of justice rather than a cosmopolitan one, because in

¹¹⁸ IBID., p. 366.

¹¹⁹ IBID., p. 366.

his view only a collectivist and national vision of the good can justify or "entitle [citizens] to show some qualified favor towards their associations."¹²⁰ If a national community holds its public interest as a priority and possesses a strong collectivist conception of its good, rather than a philosophy of asocial goods and individualism, then one can legitimately request and "ensure that some mechanism exists which permits the members of the community to exert some control over the quality of their common environment."¹²¹

Countless authors have criticized John Rawls for 'arbitrarily' limiting the scope of justice to national societies and in the end, Black's assessment that this leads him to commit the fallacy of restrictive universalism is correct. A variety of options have been discussed for the resolution of these inconsistencies; some advocate abandoning the commitment to individualism and embracing a new collectivist conception of the good, whereas others take the opposite position, which is to affirm individualism and abandon the anti-cosmopolitan bias inherent in Rawls's thought.

Despite these criticisms however, Rawls continues to uphold both universalist premises for egalitarian justice (and individualism) and anti-cosmopolitan views. He continues to work from the outdated assumption of self-contained, insular states that

¹²⁰ IBID., p. 369.

¹²¹ IBID., p. 375.

represent for their citizens national schemes of mutual cooperation. In order to support this position, we believe he makes more use of the traditional concept of national sovereignty and justice as mutual advantage than he ever directly acknowledges. We have looked at these aspects of his theory briefly in chapter two but we will analyze them more in depth in chapter four through the work of Charles Beitz, who continues to challenge Rawls's assumptions regarding the special status of domestic society, reciprocal relationships and his restriction of distributive justice.

But in "The Law of Peoples" and to a lesser extent in, "Justice as Fairness", Rawls not only argues that justice should be restricted to national societies because they represent the ideal unit of social cooperation (the fourth solution) but he also argues that the liberal premises supporting distributive equality (and the original position), especially the conception of the person, are parochial ideas particular to liberal societies. He maintains that as distinctly 'political' conceptions, the moral personality of the person and the social role we attribute to justice, are values and ideas which are not universally shared and should not be imposed on societies that have a different conception of the good.

The Second Option: Are the Premises Supporting Distributive Equality Parochial?:

We noted at the beginning of this chapter how the premises (especially the conception of the moral personality of the person) supporting the ideal of distributive justice are held as universal attributes by Rawls in A Theory of Justice. Thus, on the one hand, he bases the grounds for distributive equality within society on universal moral attributes of persons (i.e., our capacity to have a sense of justice and a conception of the good) which all humans share and which are independent of national membership. But on the other hand, he holds that rights to distributive justice should only be applicable to citizens. As such, he makes a strong distinction between members of domestic society and foreigners to that society, and it is precisely "these diverging commitments to universalism and parochialism that constitute a very important lacuna in the revisionist liberal position", according to Black.¹²²

Yet, as we have mentioned, Rawls shifts his position on the universal nature of premises such as the moral personality of persons and even the role of justice as a vehicle for redress. Already in "Justice as Fairness" for example, he goes from describing the application of justice to human beings, to describing it with regard to "citizens", and in "The Law of Peoples" he goes so far as to denounce this conception of the moral personality of the person as "parochial". One could say that Rawls considers these premises which support distributive

¹²² Black, op. cit., p. 355.

justice, too communitarian (because they reflect western values and a liberal conception of the good that is too strong, too narrow) to be applicable to other types of societies.

But does this second option, resolve the inconsistencies in Rawls's theory of justice? Like Black, we do not believe so. We maintain that Rawls cannot get away from his original roots in the universal moral personality of all human beings and in his individualism, and we believe that his theory of justice will continue to be plagued by the "fallacy of restricted universalism" as long as he maintains his anti-cosmopolitan position.

By declaring the premises of egalitarian justice to be parochial, Rawls adds a new dimension to the fallacy of restrictive universalism, namely a cultural and political one. He justifies an anti-cosmopolitan position by declaring that the premises of the moral personality of the person and the social role of justice that underlie the idea of distributive justice are parochial concepts. He protests against ambitions of extending the principles of distributive justice to the international sphere by maintaining that this would constitute an inappropriate imposition of western values, particularly for hierarchical societies. But we hope to show that this position is fundamentally incoherent and that in the end the moral personality of the person (which for Rawls, justifies domestic

justice) has no boundaries, cultural, religious or geographic, and cannot be subject to international political expediency and negotiation. At the end of the day, Rawls must show how these fundamental premises can be rendered non universal, and how societies can legitimately restrict the moral and legal status of persons based on a mysterious collective conception of the good. We will devote the remainder of this chapter, to demonstrating that he cannot successfully show either.

Although in "Justice as Fairness: Political not Metaphysical" (1985), Rawls no longer speaks in terms of the human person, referring only to "citizens", we hope to show that what he invokes as applicable to citizens is by his own definition, universalizable to human beings in general. Rawls states that there are three ways in which "citizens" view themselves as being free: (1) they view each other as having the capacity for a conception of the good; (2) they are considered self-originating sources of valid claims and; (3) they are capable of taking responsibility for their ends. But this conception of the person as free and equal, argues Rawls in "The Law of Peoples", is a fundamentally liberal and therefore parochial conception, and is not to be extended to societies who may possess their own legitimate, albeit, non-liberal conceptions of the person and the good. By focusing on the three points above (but particularly the first two) in the remainder of this chapter, we intend to show that this conception of the person cannot be said to be parochial

and that alternative conceptions, held by hierarchical societies for example, must respect the inherent (and universal) capacity of the human person to have and to change their individual conceptions of the good life.

The Capacity for a Conception of the Good and one's Public Identity:

Rawls's first point was that 'citizens' (in liberal societies) perceive each other as having the moral power to have a conception of the good, and the right to retain their public identity as free persons no matter what their particular conception of the good may be or become over time. In other words, their rights and public identity are a matter of law and their claims are not dependant upon their religious, political or social affiliation. But why does Rawls restrict this to "citizens"? We noted that in A Theory of Justice, he defended a conception of the moral personality of persons that was based on the capacity to have a sense of justice and a conception of the good, and this conception of the good included the ability to revise it and change our minds about what constitutes our individual good life. Moreover, he perceived that these capacities were universally-held attributes of the human person. And this was precisely the reason, why Rawls chose a thin theory of primary goods, for the idea was to establish conditions that would allow each person to carry out and change their own plans of life and conceptions of the good as they saw fit. Rawls

describes the subjective circumstances of justice, i.e., the characteristics of persons seeking to cooperate, in the following way:

Thus while the parties have roughly similar needs and interests, or needs and interests in various ways complementary, so that mutually advantageous cooperation between them is possible, they nevertheless have their own plans of life. These plans, or conceptions of the good, lead them to have different ends and purposes, and to make conflicting claims on the natural and social resources available. Moreover, although the interests advanced by these plans are not assumed to be interests in the self, they are the interests of a self that regards its conception of the good as worthy of recognition and that advances claims in its behalf as deserving satisfaction.¹²³

Further in the same work, Rawls continues reasoning along the same lines:

The argument for the two principles of justice does not assume that the parties have particular ends, but only that they desire certain primary goods. These are things that it is rational to want whatever else one wants. Thus given human nature, wanting them is part of being rational; and while each is presumed to have some conception of the good, nothing is known about his final ends. The preference for primary goods is derived, then, from only the most general assumptions about rationality and the conditions of human life. To act from the principles of justice is to act from categorical imperatives in the sense that they apply to us whatever in particular our aims are.¹²⁴

Thus, all throughout A Theory of Justice, Rawls posits a person's capacity for a conception of the good as universal and the individual desire for primary goods as rational for all persons, precisely because no matter what our particular aims or conceptions of the good are, these sorts of primary goods and

¹²³ Rawls, A Theory of Justice, op. cit., p. 127.

¹²⁴ IBID., p. 253.

this theory of justice does not prejudge or preclude any of them.

What we wish to suggest is that basing the moral personality of persons (as well as our public identity) on our human capacity to have a conception of the good, as Rawls does, necessarily has universalist implications. In "The Law of Peoples" and even in "Justice as Fairness", he claims that other types of societies may under certain conditions, legitimately accord different persons varying degrees of equality and freedom depending on cultural, social or religious precepts which are part of their collective vision of the good. But Rawls himself, it is important to note, does not base his conception of the person on such variant factors; he founds it on the universal and inherent human capacity for a sense of justice and a conception of the good. Unlike hierarchical societies therefore, he cannot claim the nature of his conception of the person (as defined by him), to be a parochial one for by his very specifications he has made it universalist. As such, Rawls must either abandon the criteria on which he founds the moral personality of the person such that they are no longer universally applicable or he must admit that they necessarily extend beyond citizens --to humanity at large.

In "Cosmopolitan Ideals and National Sentiment", Charles Beitz expresses similar views and suggests that there are serious reasons for doubting this idea that the liberal conception of the person is a parochial one. He offers at least two preliminary

reasons for this opinion. First, the very assumption of parochialism is itself questionable since it is not clear, empirically, that there is more agreement among democratic states on this conception of the person than there is elsewhere. Secondly, and more importantly, even if the assumption that the basis of the conception of the person is parochial is true, this does not mean that the conception itself in the way that Rawls describes it, is parochial. In fact according to Beitz, the conception itself is most certainly not parochial, because once Rawls specifies it by defining its moral attributes or powers, it is can immediately be conceived as universal and a global original position can simply follow straightforwardly. He explains this idea in this manner:

Although the basis of the conception of the person may be parochial, the concept itself, as Rawls describes it, is not. Once the conception of the person is specified by defining the moral powers, the argument for conceiving the original position in global terms is straightforward. One might say that we are compelled to take a global view in matters of social justice by features internal to our conception of moral personality, however parochial it may be.¹²⁵

Thus, these two points, but particularly this second one, joins some of our comments on the issue of Rawls's conception of the moral personality of the person. Rawls cannot at once hold that the capacity to have a conception of the good is a universally held and fundamental attribute of the human person which supports their public identity as free and equal individuals, and also say

¹²⁵ Charles Beitz, "Cosmopolitan Ideals and National Sentiment", The Journal of Philosophy, 1983, p. 596.

that this is a parochial conception which could be legitimately restricted by non-liberal societies. The moral power to possess, pursue and revise our conceptions of the good is one of the attributes that Rawls specifies as a distinguishing capacity of the human person, and it is a capacity which necessitates individual freedom and purpose, such that it is not compatible with a public identity or collectivist conception of the good which is restrictive and discriminatory of individual freedom. When Rawls confines his application of this conception of the person to 'citizens' (of liberal societies) rather than humanity in "The Law of Peoples", he is committing what Black has referred to as the "fallacy of restricted universalism."

Moreover, there is another reason why Rawls's appeal to the "parochialism" of these liberal conceptions, is difficult to accept. Rawls considers it important, in "Justice as Fairness", to stress that "citizens in their personal affairs, or in the internal life of associations to which they belong, may regard their final ends and attachments in a way very different from the way the political conception involves."¹²⁶ The convictions and attachments, and moral or religious conceptions of themselves that citizens may have in their internal life constitute what Rawls calls their "nonpublic identity". This nonpublic identity can change over time because it is a function of our capacity to

¹²⁶ John Rawls, "Justice as Fairness: Political not Metaphysical", in Philosophy and Public Affairs, vol 14, no. 3, 1985, p. 243.

revise and pursue our conception of the good, but citizens are free to do so because their public identity as persons is not affected. They continue to have the same rights and duties, and "for questions of political justice continue to be the same persons they were before."¹²⁷

Hence, for Rawls the very capacity to formulate, revise and pursue a conception of the good, necessitates that one's public identity remain one of free persons, with equal rights. We take this to mean that while we may, at one time choose as our personal vision of the good to adopt a nonpublic identity that is restricted by and dependant on cultural, religious or moral convictions, neither we nor the state can legitimately and irrevocably take away our human capacity and right to change our views in the future (based on a collectivist and restrictive conception of the good) by altering our public identity as free and equal persons. And if this is true for liberal societies then, it must also be true for all other societies, no matter what their collectivist vision of the good, because Rawls's premise regarding our inherently human moral capacity to possess and review our conception of the good continues to be universally applicable.

Will Kymlicka's discussion in Liberalism, Community and Culture, on the issue of Rawls's distinction between the priority of the

¹²⁷ IBID., p. 243.

right and the priority of the good, also touches on the importance of this human capacity to have and change our conceptions of the good for Rawls. Kymlicka argues that this distinction between the right and the good really does not have to do with the fair distribution of the good but rather with the definition of the good. He holds that as a non perfectionist, Rawls believes that a person's "essential interests are harmed by attempts to enforce a particular view of the good life on people."¹²⁸ For this reason Rawls proposes a model of distribution of primary goods that is based on what he calls a 'thin theory of the good', which he believes can be used to further many different ways of life. Kymlicka argues, as we do, that Rawls does this because of the capacity that he attributes to the moral personality, namely its capacity for a conception of the good. According to Kymlicka, Rawls "believes that the capacity to examine and revise our plans and projects is important in pursuing our essential interest in leading a good life."¹²⁹

We know that for Rawls, free persons do not have their entire identities dependant on the social institutions and contexts which regulate their lives. Instead, they regard themselves as free to revise, and even change their final ends or their visions

¹²⁸ Will Kymlicka, Liberalism, Community and Culture, (New York: Oxford University Press, 1989), p. 33.

¹²⁹ IBID., p. 33.

of the good and they accord this freedom paramount importance because they realize that they may one day question their priorities, goals or final ends. Thus, what is important for Rawls, what he emphasizes, argues Kymlicka, is that "since our beliefs about value are fallible, the freedom to revise our projects, as well as the freedom to pursue existing projects, is important for leading a life that is in fact good. Therefore, equal liberty and the distribution of primary goods are the most appropriate conditions for promoting our essential interests, giving equal weight to each person's interests."¹³⁰

Like other modern liberals, Rawls's political morality seems to be based on the idea that "our essential interest is in leading a good life and in having those things that a good life contains". But Rawls nuances this, argues Kymlicka, by holding that "our 'highest-order interest' is in our capacity to form and revise our rational plans of life."¹³¹ Furthermore, continues Kymlicka, such changes to one's life must come from the inside, not from external pressure, if they are to be worthwhile at all. As such, there are two necessary preconditions to satisfy this human interest in leading a good life: first we must be able to lead our life from the inside, i.e., in accordance with our own beliefs and values; and secondly we must be free to question, revise and even change our conceptions of the good life, without

¹³⁰ IBID., p. 34-35.

¹³¹ IBID., p. 11.

the danger of being penalized. For Kymlicka, this is what lies behind the traditional liberal concerns for civil and political liberties as well as education. "Individuals must therefore have the resources and liberties needed to live their lives in accordance with their beliefs about value, without being imprisoned or penalized for unorthodox religious or sexual practices etc," concludes Kymlicka.¹³²

So while personal and collectivist conceptions of the good are changeable, our individual capacity to have such conceptions and to modify them as our views change is not---and it is this human capacity that is sovereign and must be protected by our public identity as free and equal persons. From this perspective, we believe it is inconsistent to restrict the protections and the rights invested in this public conception of the person (as free and equal) to liberal societies and their citizens, for the human capacity to have, pursue and revise our conceptions of the good is a universal-held moral power for Rawls.

Hierarchical Regimes, Political Legitimacy and the Conception of the Person:

In fact, we would argue that despite the minimal guaranties that Rawls attempts to ascribe to hierarchical societies for example, this individual freedom to choose and change one's conceptions of the good life are not guaranteed by these regimes, for they

¹³² IBID., p. 13.

ultimately can, according to Rawls, limit the freedom and equal status ascribed to persons if it is in accordance with that society's conception of the good. As soon as the state is permitted to legitimately discriminate between persons and accord them varying degrees of freedom and 'equality', a person's public identity is affected, as well as their capacity to carry out and revise their values and conceptions of the good.

For these reasons, we do not accept Rawls's position that this liberal conception of the person is parochial and neither do we accept his justification for the legitimacy of hierarchical regimes as simply reflecting a 'different' (and equally justifiable) political conception of the person and the collective good. If hierarchical regimes adopt a public conception of the good that fundamentally alters the public identity of persons such that they are no longer necessarily free and equal, then such a regime cannot, in our view, be said to be legitimate for it undermines the very moral personality of persons and their capacity to revise, change and pursue other visions of the good.

From this perspective, Rawls's explanation that hierarchical regimes have a duty to listen to the concerns of their citizens through a consultation hierarchy sounds like a very poor attempt at rendering to these regimes a semblance of legitimacy. The only way, in our opinion, that religious or hierarchical type regimes

can perhaps legitimately advocate a restrictive (in the sense that not all persons are free and equal) collectivist conception of the good, is if it does not affect the public identity of persons, and if it is promoted and carried out exclusively as part of the nonpublic identity of persons and the society itself. In this way the society can continue promoting its particular religious, moral or cultural conceptions of the good, (if indeed they have sufficient popular support) while respecting the human capacity and the right of each person to change their minds about what ends they wish to pursue in their life.

Of course there are many problems with this position, one being that one's nonpublic identity can sometimes be so powerful so as to effectively render our public identity as free persons irrelevant in practice. One can argue that the historical, socio-cultural and even religious roots of domination of women by men for example, are so deep that they profoundly invade the female psyche, resulting in the phenomenon of 'false consciousness'; a phenomenon which may effectively render the existence of a public identity as free persons irrelevant ---at least for a certain amount of time.

Nonetheless, what we wished to show was that given Rawls's own useful distinctions between the public and nonpublic identities, and his premise that the moral personality of persons is founded on the two key universal human capacities for justice and a

conception of the good rather than changeable cultural or social factors, it is incoherent for him to allege parochialism. Furthermore, his defense that hierarchical type regimes are both legitimate and proper representatives of their population because they care about the good of that society and are well-ordered in their own conception of justice, leads one to be equally sceptical. It is interesting to note that these hierarchical regimes are treated equally in the international original position and yet they do not accept that all persons in their society are free and equal; on what basis does Rawls give more rights to states than to persons? Should not the rights of states be derivative of the rights of persons after all? The domestic conditions that Rawls imposes on hierarchical societies are not sufficient in our view, to ensure that the regime is legitimate because if persons' public identities are not guaranteed to be free and equal, how can Rawls ever ascertain that the members of these societies do in fact accept to live with these basic inequalities? He cannot.

Typically for example, women in such societies are less free and possess less individual rights than men, yet Rawls's minimalist domestic requirements for the legitimacy of hierarchical regimes, (such as the respect of certain basic human rights and the requirement that discrimination between persons be part and parcel of the society's conception of the good) are all satisfied. Is a regime legitimate under such circumstances? Who

has decided that this collective vision of the good accurately reflects the society? If the role of women in such societies for example, is to assume a silent function in the 'private' realm (i.e., the family), such that they do not have the equal opportunity (or right) to partake in public consultations and politics, can one claim that their diminished public identity is legitimate? After all, for all of its sexist, discriminatory and oppressive practices, this society could nonetheless satisfy all of Rawls's domestic requirements and maintain a relatively high degree of internal stability--but are these the proper tests of legitimacy?.

Rawls seems to be saying that for the purposes of international justice, as long as domestic stability is maintained, human rights violations do not affect basic rights and persons are permitted to emigrate--then this type of discrimination and oppression can be excused under a society's right to a collective expression of the good. But the fact that rulers and the male dominated elite of hierarchical societies manage to secure sufficient domestic stability, does not in any way demonstrate that persons freely partake in or are legitimately held to a vision of the good that entails denying them equal status and rights and freedoms. As in the case of women, it may simply mean that there are other factors such as their lack of economic and political power, as well as their familial obligations as primary care givers, which come into play and force them to accept

domination (and therefore allow for the maintenance of social 'stability') rather than rebel. Rawls's account of the basis of legitimacy of hierarchical regimes is unsatisfactory and his account of the moral personality of persons too universalizable, to allow him to get out of the contradictions in his theory of international justice so conveniently by appealing to parochialism.

Furthermore, if hierarchical regimes really do have a sufficient degree of popular support and legitimacy as Rawls argues they do, there would be no better way of showing this than through an all inclusive original position, for then the population (including women) from an initial position of free and equal persons, still have the opportunity to adopt a "nonpublic identity" that satisfies their society's values, religious precepts or conception of the good. Rawls maintains that the premises supporting the ideal of distributive justice are not shared by some societies and that this makes global distributive justice untenable.

But, in fact, this all amounts to sheer speculation on the part of Rawls, since he never does confirm it by allowing for a truly all inclusive original position. If he did, then whether other individuals objected to being placed in a global original position, rejected the conception of the moral personality of the person, or a global principle of distributive justice, the

decision would have been theirs--and not simply the subject of conjecture and dubious alternative accounts of political legitimacy based on mysterious "collective" conceptions of the good (that simply accord persons the rights and moral status they see fit).

Persons as Self-Originating Sources of Valid Claims: Is this a Parochial Idea?:

We will recall that in "Justice as Fairness", Rawls stipulates a second way in which 'citizens' view themselves as free, namely that they "regard themselves as self-originating sources of valid claims", in the sense that their claims are legitimate and independent of the rights and duties derived from a particular conception of justice.¹³³ But, this idea too, claims Rawls, is parochial since there are other political conceptions in which members are not seen as self-originating sources of valid claims--they are simply derived from their social duties or from their roles as prescribed by religious or aristocratic values. He offers the extreme example of slaves, who are not publically recognized as persons or as self-originating sources of claims, to demonstrate that in such a political conception of the person, any law prohibiting the maltreatment of slaves would not be founded on the claims of slaves themselves which would not be recognized but rather on the claims of the owners or society in general. In many ways, this example illustrates all too well what

¹³³ IBID., p. 244.

Rawls is suggesting about political conceptions that do not accept the person as the ultimate and valid originator of claims! Yet, in the face of this obvious example, Rawls continues to hold that the moral personality of persons which makes them valid originators of their own claims is merely one particular conception of the person amongst others, it is a parochial conception. He says:

Thus, the contrast with a political conception which allows slavery makes clear why conceiving of citizens as free persons in virtue of their moral powers and their having a conception of the good, goes with a particular political conception of the person. This conception of persons fits into a political conception of justice founded on the idea of society as a system of cooperation between its members conceived as free and equal.¹³⁴

As Black pointed out at the beginning of this chapter, this is a case of restricted universalism once again. Rawls cannot on the one hand say that the moral personality of the person is based on universally held capacities of the human person and then say that this only applies to liberal societies because it is a parochial conception of the person: by his very own definition he makes the moral character of persons dependant on universal human capacities not cultural, religious or social attributes.

Moreover, and perhaps more importantly, if the principle that persons are self-originating sources of valid claims is not universal, but merely one political conception amongst other

¹³⁴ Rawls, "Justice as Fairness: Political not Metaphysical", op. cit., p 245.

equally legitimate ones, then why does Rawls set a domestic standard for hierarchical societies to follow (which requires that certain 'basic' rights be observed), and why are the family of well-ordered societies concerned at all about monitoring and improving human rights situations globally as part of ideal theory? In fact, why are human rights important at all, from this perspective? If the political conception of the person as having an inherent moral personality that allows her to be a self-originating source of valid claims is simply a parochial one, then the entire tradition of human rights is optional and parochial also. And in fact, Rawls comes dangerously close to saying as much, when he speaks about slavery above, when he relativizes and dilutes human rights, and when he argues for the legitimacy of hierarchical regimes. Yet why does he incorporate respect for human rights as an international aim to be aspired to in his ideal theory of a law of peoples, if he does not consider them universal and hence stemming from the inherent moral personality of all persons? This is another tension in his theory, which Black alludes to but which is more problematic and more obvious than ever in Rawls's more recent position on international justice.

One could speculate, from the way Rawls goes about constructing his law of peoples (see chapter two) and from his approach to human rights at the international level, that in fact, human rights merely represent for him a barometer with which to measure

the stability of societies and a standard for political institutions which ensures a certain measure of international stability as well. The respect of basic human rights are therefore to everyone's advantage since it promotes the conditions for a stable, cooperative international family within which all can expect to benefit. Thus, if we are correct in this analysis, at the international level, human rights are not based on the traditional premise of the inherent human dignity and equality of all human beings (which is another way of saying that persons in and of themselves--by their very nature-- are self-originating sources of valid claims) for Rawls; their importance does not stem from the moral personality of the person as such, but simply from the fact that Rawls associates the respect of basic human rights with stable regimes and a stable international environment. We will recall from chapter one that in "The Law of Peoples", Rawls specifically declares wanting to offer an amoral conception of human rights for the international realm; one that does not depend on a "particular comprehensive moral doctrine of philosophical conception of human nature."¹³⁵ This rationale seems to be behind the following statement we also referred to in chapter one,

*Basic human rights express a minimum standard of well-ordered political institutions for all peoples who belong, as members in good standing, to a just political society of peoples.*¹³⁶

¹³⁵ Rawls, "The Law of Peoples", op. cit., p. 68.

¹³⁶ IBID.

To the extent that Rawls seems to regard stable, peaceful international relations as mutually advantageous, human rights matter because they are mutually advantageous in this context. Human rights as mutual advantage, a seductive utilitarian-like idea, but very dangerous in our opinion, and fundamentally incompatible, (as Black also points out in chapter two) with both the philosophical traditions of human rights and Rawls's own account of the moral personality of the person at the domestic level! This is the fallacy of restricted universalism once again.

Finally, the last respect in which Rawls in "Justice as Fairness", considers citizens to be free, is the sense that they are considered capable of taking responsibility for their ends. This means that once just institutions are established and each citizen possesses their fair share of primary goods, they are then capable of adjusting their claims and ambitions with respect to these.¹³⁷ This is a fairly straightforward idea that we will not further elaborate on here, for we believe it fair to take for granted that this capacity also is universal and the arguments above would simply apply to it.

Rawls has increasingly taken the position that the premises supporting distributive equality are parochial in nature. He maintains that hierarchical societies in particular, who do not

¹³⁷ Rawls, "Justice as Fairness: Political not Metaphysical", op. cit., p. 245.

hold the liberal conception of the person as inherently free and equal, and who supposedly do not recognize any domestic principles of distributive justice, would most certainly in his opinion, reject a global distributive justice principle. We have argued however, that this appeal to the said 'parochial' nature of these liberal premises, especially the liberal conception of the person, does not free him from the fallacy of restrictive universalism, which Black accuses him of. Rawls's own specification of the moral powers of the person, (i.e., our capacity for a sense of justice and a conception of the good) as the foundation for our moral personality as free and equal, means that his conception of the person has universal, not parochial implications. The importance he attributes to one's freedom to change our vision of the good, his thin theory of the good which specifically allows for a variety of ends, as well as his useful distinction between our public and private identities, are all powerful reasons why these liberal premises should be considered universal rather than parochial. And if, as we believe is the case, Rawls cannot consistently argue that these premises are parochial conceptions, he is not only subject to the Black's fallacy of restrictive universalism, but his anti-cosmopolitan bias which restricts the scope of justice to national societies must also fall.

In the next chapter we will discuss, amongst other topics, the evolution of Charles Beitz's thought particularly with respect to

his conception of the nature of justice, and the changing role and importance of the moral personality of the person for his theory of global distributive justice. Not only does Beitz not believe that the liberal conception of the person as elaborated by Rawls is parochial, but he comes to accept it as the very foundation of his cosmopolitan theory of distributive equality. At the same time, he also abandons the requirements of reciprocity and cooperative relations, and even questions the traditional concept of sovereignty --all ideas which, as we noted in chapter two, characterize the conception of justice as mutual advantage--a conception important to Rawls's law of peoples. In these fundamental ways, Beitz's theory of international justice finally departs from its Rawlsian origins and the inconsistencies which have marked it for so long.

CHAPTER 4

**CHARLES BEITZ: HIS EVOLVING THEORY OF INTERNATIONAL JUSTICE
AND DEPARTURE FROM RAWLS**

Much of Charles Beitz's work is devoted to questioning the distributive obligations that may be deemed to exist in the realm of international relations and developing principles that could adequately and tangibly deal with such issues. To the specific question of whether wealthier countries have an obligation to contribute to less developed countries or even to radically restructure the world economic system, Beitz has a fundamentally different position than that adopted by John Rawls. Beitz believes that citizens of affluent countries do indeed have an obligation, based on principles of justice, to reform their institutions such that they could more equitably share their wealth with poorer nation states.

Ironically, Beitz's theory of global distributive justice had its original roots in Rawlsian foundations for domestic justice and even shared some significant Rawlsian assumptions of international relations. Yet, over the years Beitz has departed in fundamental ways from Rawls's vision of international ethics. His work may be marked by clear attempts to both reconcile and extend Rawlsian contractarianism to his own vision of the reality of international relations, but we believe that having to come to terms with the inconsistencies and tensions inherent in Rawls's theory of justice, produced a significant shift in Beitz's own

position--such that a reconciliation between these two positions seems more tenuous than ever. In our opinion in fact, they are irreconcilable. As Rawls's reveals his tendency toward a conception of international justice as mutual advantage, Beitz seems increasingly to move towards the idea of justice as impartiality.

While in his earlier work, such as in Political Theory and International Relations, Beitz was ready to embrace Rawlsian domestic principles of distributive justice and extend them to the international domain, the conflict between justice as mutual advantage and justice as impartiality in Rawls's work, eventually brings Beitz to new conclusions. In this earlier work, Rawls's restrictive (even parochial) contractarian foundations did not seem to pose an unsurmountable problem for the idea of global distributive justice for Beitz. He attempted to reconcile these notions by focusing on the increasing similarities between national societies and the interdependent nature of contemporary international relations. But Rawls himself, as we noted in chapters one and two, explicitly rejects Beitz's project of extending his principles of domestic justice to the international world, and the entire idea of global distributive justice. He also continues to base his theory on the traditional model of self-contained and self-sufficient sovereign societies, refusing to acknowledge the reality (pointed out by Beitz) of our increasing global interdependence. In his article, "Sovereignty

and *Morality in International Affairs*" (1991), Beitz challenges the assumptions underlying this traditional model and concept of sovereignty, and we will take a brief look at what conclusions he draws from his analysis, at a later point in this chapter. For now, however, we would like to work through some of the evolutionary aspects of Beitz's work on distributive justice, with the view to showing how in fact, much of this evolution in his thought reflects the working-out of important tensions which he inherited from Rawls.

Already in his earlier work, in *Political Theory and International Relations*, Beitz is aware that contractarian theories (especially those closest to the classical contractarian position) do not generally lend themselves to issues of global distributive justice. Contractarianism usually rests on relations between people in a "national community united by common acceptance of a conception of justice", thus making the idea of redistributive obligations owed to foreigners a doubtful one.¹³⁸ The most that is provided in current international relations is a sense of obligation towards those in need which is primarily based on charity. But, obligations of justice, argues Beitz, require more than charity and may entail large-scale institutional reforms. He believes that a strong case can be made

¹³⁸. Charles Beitz, Marshall Cohen, Thomas Scanlon & John Simmons (eds), *International Ethics*, (Princeton University Press, Princeton, N.J., 1985) Please see "Justice and international relations" by Charles Beitz, p. 283.

on contractarian terms that persons have distributive obligations based on justice regardless of their citizenship.

His argument was that international relations have in fact come to resemble domestic society in ways which justify, global application of principles of social justice and render it inappropriate to continue limiting, as Rawls does, principles of distributive justice to the nation-state. In his article, "Justice and International Relations" Beitz argues that Rawls's parochial theory of international justice can only hold if we continue to assume that nation states are self-sufficient and completely self-contained. He explores what the consequences of refuting this assumption might mean for Rawls's theory. He also analyzes the relation of ideal theory of international justice to the reality of politics in the non-ideal world. The minimalist conclusion he arrives at is that Rawls's discussion of international relations is incomplete in at least one fundamental way, it fails to address the problem of unequal natural resources between nation states.

But Beitz also believes that Rawls's failure to factor in or recognize the complex and interdependent nature of our international relations is a critical error. In his opinion, the globalization of the difference principle is inevitable given the profound interdependence that characterizes contemporary international, and any theory of international justice that does

not take this new reality into account and provide appropriate redress for the inequalities engendered by these international cooperative schemes and institutions is deeply inadequate. To this extent, even in his early work, Beitz provided an important critique as well as an interesting (globalized) reinterpretation of Rawls's theory of justice.

We saw in chapter one, that for Rawls, justice seems to be about addressing the deep inequalities within society which affect a person's initial chances and opportunities in life, and which cannot be justified by the notion of merit. He is committed to the view that justice concerns,

the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantage from social cooperation.[...] [A theory of justice] must identify principles by which the basic structure of society can be appraised.¹³⁹

Thus, according to Rawls, the issue of distributive justice can only be legitimately addressed and applied within the boundaries of a self-contained national community; domestic principles of distributive justice being completely inappropriate, in his opinion, for the law of nations. In fact, the 'law of nations' or international justice (both in a Theory of Justice as in his more recent work) is primarily elaborated by Rawls, with the motivation to appease the threat of international conflict and war and to regulate peace by adopting principles that can guide state behaviour and relations. As such, he restricts the

¹³⁹ Rawls, A Theory of Justice, op. cit., p. 7.

principles of a law of peoples to the already familiar international principles of advantageous inter-state cooperation, national defense and non-intervention. As we noted in the previous chapters, Rawls's constructive methodology as well as the assumptions he works with, are designed to exclude issues of distributive justice from the international agenda.

Natural Resources:

Beitz's first and most basic critique of Rawls's theory of international justice in a Theory of Justice, concerns his failure to consider the issue of the uneven and arbitrary distribution of natural resources between nation states. He considered it a fundamental omission which flawed Rawls's theory in very significant ways. He argued that the arbitrariness of a state's natural resources cannot be dismissed by comparing it to a person's natural capacities or talents for example. While natural resources are available "out there" to the one that lays claim to or appropriates them first, talents are already by their nature the possession of a specific person. Unlike personal talents, natural resources are arbitrary because no one has a "natural prima facie claim" to them simply because they may lie under one's feet. Thus, even if we were to assume, as Rawls does, that nation-states are generally self-sufficient (i.e., even if there is no degree of interdependence) argued Beitz, the issue of natural resources would continue to be pertinent as well as problematic, because their distribution is still arbitrary.

Of course, in reality as well as in non-ideal theory, the distribution of natural resources is particularly problematic because of the circumstances of scarcity--the fact that states are not self-sufficient. As such, the appropriation of scarce resources by some, must be justified against both the competing claims of others and those of future generations, argues Beitz.¹⁴⁰ Unlike Rawls, Beitz envisaged that the parties under a global veil of ignorance, would naturally require a resource redistribution principle that functioned at the level of international society.¹⁴¹

The resource redistribution principle "would recognize the fundamental character of these claims viewed from the perspective of the parties' interests in securing fair conditions for the development of their respective schemes."¹⁴² It would in other words, ensure that poor nations be placed on a more equal footing and given the possibility of economic conditions sufficient to support just social institutions.

In his more recent work, Beitz investigates this idea of national

¹⁴⁰. Beitz, "Justice and International Relations", op. cit., p. 292.

¹⁴¹ For a more thorough discussion on this question of natural resource distribution and a critique of Beitz's position, please see Thomas Pogge, Realizing Rawls, Cornell University Press, New York, 1989, p. 250-252.

¹⁴². Beitz, "Justice and International Relations", op. cit., p. 292-293.

ownership of natural resources further by analyzing how it is linked to the concept of 'external' sovereignty.¹⁴³ As previously noted in chapter one, Beitz makes the point that in international law as well as international political theory, the concept of sovereignty is not simply used in the sense of a state's right to exclusive control over its own population; it is also used to support the idea that a state's exclusive domestic jurisdiction entitles it to the resources and the wealth within its territory. As such, maintains Beitz, the concept of sovereignty is used to support a "kind of collective property right for the citizens of that state" and the state is thereby justified in excluding foreigners from sharing in its wealth or its resources.¹⁴⁴

We believe that Rawls accepts implicitly both aspects of the concept of sovereignty and uses it to support an inherently conservative theory of international justice. He may mention by the byway, that there may exist legitimate cases of arbitrary distribution of natural resources, but he offers no solutions to deal with it, and more importantly, as we noted in chapter one,

¹⁴³. Charles Beitz, "Sovereignty and Morality in International Affairs", in David Held, Political Theory Today, Polity Press, Cambridge, 1991, p. 236-254. In this article, Beitz makes a clear distinction between internal and "external" sovereignty. Put briefly, internal sovereignty refers to "the constitution of political and legal authority within the state [whereas, external sovereignty refers] to the state in relation to other agents in the international environment." p. 236.

¹⁴⁴ IBID., p. 243.

he vigorously defends the idea of the territorial integrity of states; arguing that often it is not the lack of natural resources but mismanagement and corrupt governments that create poverty. Everything in Rawls's theory of international relations and justice, from his working assumption of self-contained states to his methodology and his outright rejection of global distributive justice, indicates that in fact, he fully endorses the concept of national sovereignty as a type of collective property right for citizens.

Beitz regards this view of world and the concept of sovereignty (especially external sovereignty) as an expression of the (normative ideal of a) 'morality of states'. He argues that this 'morality of states' is very similar to 19th century liberalism in its combination of a belief in individual liberty and an indifference to the distributive results of their economic interactions. What this amounts to in practice, according to Beitz, is that "sovereignty effectively sanctions the existing international distribution of wealth as well as that of power [or perhaps, it can be said that] it sanctions the existing distribution of wealth because it sanctions the distribution of power."¹⁴⁵

In chapter two, we saw how Rawls's constructive methodology, which functions primarily on the basis of justice as mutual

¹⁴⁵ IBID., p. 243.

advantage, works to include only the more "well-ordered" and prosperous nation states in the so called "international" original position. The result was that while democratic states (and secondarily, hierarchical societies) established principles for cooperation and peace between them, so called 'outlaw' and impoverished nations were excluded altogether from participating in the original position, and from the international family (alliance) of well-ordered societies. Had Rawls constructed his theory from a truly global original position (without the preselection of states) and uniform veil of ignorance, we believe the parties would have had to confront the issue international inequalities in wealth and resources. But Rawls's methodology, together with his general acceptance of the concept of sovereignty, results in an endorsement of the status quo and the sanctioning of the existing distribution of wealth.

Global Interdependency:

Beyond the issue of natural resources, Beitz has provided another argument for refuting Rawls's assumption that nation states are self-contained. He has argued that our contemporary international relations, rather than being composed of isolated societies, are fundamentally characterized by our growing global interdependence. This critical change in the nature of international affairs is due to such factors as, the gradual removal of restrictions in international trade and investment, and the rise of an international division of labour (which

manufacture products cheaply), for example. But most importantly for developing nations, global interdependence is linked to a world economy that has created its own powerful financial and monetary institutions responsible for such things as, setting exchange rates, regulating the money supply, influencing the flow of capital resources and even enforcing rules and priorities for national (through the imposition of for example, structural adjustment programmes "SAPS" by the IMF or World Bank) and international economic conduct.

The reality of this global interdependence, argues Beitz, is that it produces benefits and burdens differently on different subjects. In fact, one of the most marked consequences of this system of interdependence is that it imposes very significant burdens on economically weak countries, while increasing the level of well-being through trade and investment for others. According to Beitz, an adequate theory of global distributive justice must indicate therefore, what a fair distribution of these benefits and burdens should be.¹⁴⁶ In this context national boundaries are no longer, as Rawls had assumed they were, the limits of social cooperation; our concept of reciprocity and cooperative schemes must be extended to include the international order and its institutional mechanisms.

¹⁴⁶ Beitz, Political Theory and International Relations, op. cit., p. 152.

Beitz holds that this assumption of self-contained national communities, which is no longer empirically based, leads to a situation where the adverse and unfair consequences of our interdependent relations go unaddressed and un-redressed. He puts it in the following way,

In an interdependent world, confining principles of social justice to national societies has the effect of taxing poor nations so that others may benefit from living in 'just regimes'. [...]

[Thus] principles of domestic 'justice' will be genuine principles of justice if they are consistent with principles of justice for the entire global scheme of social cooperation.¹⁴⁷

He believes therefore, that Rawls's restriction of the scope of justice to the national community is morally objectionable. It is this parochial understanding of justice that promotes our continued participation in an international order (i.e., a system of international economic and political relations with poorer countries) which contributes to increasing the wealth of the already 'nearly just' regimes by increasingly taxing poorer nations. As a solution, he proposes that Rawls's two principles of justice could be appropriately adjusted to apply globally. In a world where the level of global economic and political interdependence shows the existence of a global scheme of social cooperation, national boundaries no longer have any fundamental moral significance and they no longer limit social cooperation. As such, national boundaries should no longer limit social

¹⁴⁷. Beitz, "Justice and International Relations", op. cit., p. 297- 298.

obligations either, argues Beitz. He puts it in this manner;

...the conclusion that principles of distributive justice apply globally follows from the premise that international economic interdependence constitutes a scheme of social cooperation like those to which requirements of distributive justice have often been thought to apply.¹⁴⁸

There is no reason either, to think that Rawls's principles could not apply to a global original position, simply because it is larger in scope, points out Beitz. He suggests that, if in fact it is true that we have not yet reached the material or production capacity to meet everyone's basic needs, then we should follow Rawls's own reasoning and take "the general conception of social justice, which does not differentiate the basic liberties from other primary goods, as the relevant standard for assessing global economic institutions."¹⁴⁹

Beitz notes that Rawls himself, argued that in conditions of low or average levels of well-being, "rational people might opt for a principle allowing rapid growth at the expense of some personal liberties, provided that the benefits of growth and the sacrifices of liberty are fairly shared and that the basis of self-respect relevant to such background conditions are not

¹⁴⁸ Beitz, Political Theory and International Relations, op. cit., p. 154.

¹⁴⁹ Beitz, "Justice and International Relations". op. cit., p. 299.

undermined."¹⁵⁰ In this sense, continues Beitz, the least advantaged might be better served, if we follow a general conception of social justice rather than the lexical priority of liberty. The point he wishes to make however, is that given our interdependent world, restricting the scope of justice to national societies is no longer a viable option--justice must be given a global interpretation. And a global interpretation of Rawls's principles of distributive justice, continues Beitz, means that principles of justice for national societies can no longer be taken for granted or viewed as ultimate.

He argues that even if it were advanced that global and domestic principles of justice should be satisfied in lexical order, this would still not mean that the requirements of the principles for national societies would be absolute. In fact, he believes that in a lexical order, national policies which maximize the welfare of those least advantaged in the society "cannot be justified if other policies would be more optimal from the point of view of the lessor advantaged elsewhere [...] until every society had at least, attained a level of well being sufficient to sustain the general conception [of justice]."¹⁵¹ These are some implications of a global interpretation of Rawlsian principles of justice for Beitz.

¹⁵⁰ IBID., p. 299.

¹⁵¹ IBID., p. 300.

The Irrelevance of Reciprocity and International Schemes of Cooperation:

Thus, Beitz rejects Rawls's parochial restrictions on distributive justice by arguing that it is inconsistent to limit distributive principles of justice to national society, when the international community at large is marked by interdependence and the existence of cooperative relationships (relationships of reciprocity) and schemes. If distributive justice is appropriate for domestic society because it represents a cooperative scheme and relationships of reciprocity, then it is also appropriate for the international realm; for international relations have come to resemble domestic society in this crucial way.

This argument, which Beitz advanced as his primary reason for advocating global distributive justice, served to both explore the greater cosmopolitan implications of Rawls's original position but also to inform us on the inaccurate, outdated assumptions of Rawls's traditionalist model of international relations. Yet, this position which tied the application of principles of distributive justice to the existence of cooperative relations, unfortunately but predictably also carried with it some important inconsistencies present in Rawls's theory of justice.

Like Rawls, Beitz's theory held as a central premise that principles of justice must compensate for or redress the

disadvantages that people suffer due to morally arbitrary factors--an idea crucial to justice as impartiality. For this reason, he advocated an egalitarian redistribution of natural resources and principles of global distributive justice in general. However, at the same time, Beitz also partially accepted Rawls's conception of justice as mutual advantage, by taking for granted the idea that justice is to essentially apply to those participating in existing cooperative relationships or schemes--by accepting the idea that justice is about regulating such cooperative relationships. It is true that Beitz's never required the same degree of 'mutual advantage' or benefit from international justice, but he did restrict the scope of distributive justice to those with whom we have existing cooperative relationships, and to this extent he did partake in the general philosophy of justice as mutual advantage. Thus, while Beitz enlarged the scope of justice (to include others cooperating nation states) the underlying rationale for the applicability of justice to the international sphere seems to have been the same as that of Rawls' for national societies---namely the idea that obligations of justice are owed only to those with whom we have relations of reciprocity or cooperation.

But perhaps even this description of Beitz's position is not quite accurate, for while he does initially seem to require the existence of an international cooperative scheme for the principles of global distributive justice to become applicable,

he does not demand (as Rawls does) that justice be productive and yield mutual gain. He observes the existence of an international cooperative scheme, notes its systemic unfairness, and proceeds to apply the principles of distributive justice. As such, although he cannot at this point be categorized as an unequivocal impartialist, his theory does not suffer from the same level of tension as that of Rawls.

Moreover, he does offer some indication that he is willing to go further than this. Beitz questions whether "there is a threshold of interdependence above which distributive requirements such as a global difference principle are valid, but below which significantly weaker principles hold."¹⁵² And his response is somewhat surprising. He argues that if we were to apply this reasoning to domestic society, in which certain regions were more closely knit than others it would seem implausible to us (in a society such as the United States) to accord members of these close knit regions special claims on the portion of their wealth.

He knows that some may claim that there is a difference between these two cases: that while international cooperative schemes are a "voluntary, free market bargaining that has only a marginal affect on the welfare of the members of each society",¹⁵³

¹⁵² IBID., p. 303.

¹⁵³. IBID., p. 303.

national schemes set a binding system of economic and political institutions which define the starting positions and economic rights and duties. Yet, according to Beitz, the reality is quite the contrary. Our contemporary world economy is a complex web of transactions and institutions which not only tend to be less regulated than national ones but have come to exert important direct and indirect influences on the lives of people all over the world.

This leads Beitz to the conclusion that perhaps, the degree of our social and economic interaction in a cooperative scheme may not be an appropriate way of measuring what our distributive obligations should be. He suggests that in fact, "the existence of a powerful, nonvoluntary institutional structure and its pervasive effects on the welfare of the cooperators" may be a better index for the strength of our distributive obligations (despite regional variations in the strength of the cooperation).¹⁵⁴ Already we see that Beitz is adopting, albeit still in rudimentary form, a much stronger impartiality-based reasoning about international justice.

In "Cosmopolitan Ideals and National Sentiment", however, Beitz takes an even more significant step towards resolving any tensions or ambiguity in his position on justice --and rejecting his Rawlsian foundations. He argues that Rawls works on the

¹⁵⁴ IBID., p. 304.

assumption that national societies are self-sufficient schemes of cooperation, and on this basis restricts participation in the original position to their citizens first, so that they can agree on the principles of distributive justice. Only once this is done, does he extend the original position to other states, but then as we saw in "The Law of Peoples", this is only for the purpose of choosing regulative principles of economic and political cooperation, diplomacy, and establishing a strong defensive alliance. Beitz concludes that the result of this strict contractarian moral theory is:

[...] is a strong form of the priority thesis: since the scope of the difference principle is limited to national societies, the responsibilities of governments to outsiders derive only from the laws of nations (such as the nonintervention principle) and the natural duties (such as that of mutual aid).¹⁵⁵

The real breakthrough in "Cosmopolitan Ideals and National Sentiment", however is that Beitz acknowledges that rejecting Rawls's strong "priority thesis" (i.e., the thesis that compatriots take priority) by demonstrating that international structures of trade and investment etc., constitute a scheme of social cooperation similar to that of national societies, actually "misses the point".¹⁵⁶ The reason that his old argument now misses the point for Beitz, is that the criterion for membership in a global original position is not the existence

¹⁵⁵ Beitz, "Cosmopolitan Ideals and National Sentiment", op. cit., p. 594-595.

¹⁵⁶ IBID., p. 595.

or even intensity of international cooperation, it is the very moral personality of persons (i.e., which is determined only by their capacity for a sense of justice and a conception of the good). Beitz expresses this new position in the following terms:

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 the present, they belong to a common cooperative scheme, the argument for construing the original position globally need not depend on any claim about the existence or intensity of international social cooperation.¹⁵⁷

Beitz no longer posits the motivation or the conditions for justice in the existence of cooperative schemes. He holds instead, that even if international cooperation did not exist today or it was deemed insufficiently mutual or intense, limiting the scope of justice to national societies would still really only amount to arbitrarily favoring the status quo.¹⁵⁸ Even a state's participation in cooperative schemes can be viewed as a historically arbitrary factor. Thus, Beitz adopts a more committedly impartial view of justice than ever before, where compensating persons for morally arbitrary factors, (such as the existence of reciprocal relationships between states) overrides rather than depends on reciprocity or mutually advantageous associations (and cooperation).

¹⁵⁷ IBID., p. 595.

¹⁵⁸ IBID., p. 595.

Unlike most liberal revisionists, Beitz never adopted an anti-cosmopolitan position, and he never shared Rawls's strong tendency towards justice as mutual advantage. But his initial argument for extending the difference principle to the international context because of our increasing interdependence failed to bring the premise of the moral personality of persons to its natural consequence, while still requiring the existence of reciprocal relations.

In his more recent work, he departs from Rawls more than ever by concluding that, in reality, even reciprocal ties may be morally irrelevant, not because they do not count but because relations of reciprocity are often a product of morally arbitrary factors.

He also departs from Rawls in that he does not believe, as Rawls does, that the liberal conception of the person and the social role of justice which support the idea of distributive equality are parochial concepts. We noted in chapter three, that this assertion that the premises of distributive justice are parochial plays an important part in Rawls's refusal to generalize domestic principles of distributive justice to the international sphere. Beitz rejects this idea altogether however, and decides on the contrary, that it is this very conception of the moral personality of the person that is the real criteria for membership in a global original position, and not reciprocal relationships or other morally arbitrary factors. He believes

that "there are serious reasons for doubting that [Rawls's view about the parochial nature of the conception of the person is correct]." ¹⁵⁹ We have already looked at two preliminary reasons that he offers for this opinion in chapter three.

But perhaps the fundamental point to be retained here is that Beitz finally clearly situates the real subject or "raison d'etre" for justice in the moral personality of the human person itself and in human need--not in the arbitrary patterns of political association, cooperation or international relations of mutual advantage. And if we accept the conception of the person that centers on her moral powers, argues Beitz, then we must be ready to conceive of a global original position and its distributive implications.

Particularism versus Impartiality: Objections to Global Distributive Justice:

Beitz has always been acutely aware that there are strong objections to a global theory of distributive justice, some based on a strict anti-cosmopolitan bias and others on the idea that one's obligations to national societies should take priority over obligations to or needs of foreigners. Even in his earlier work, such as in "Justice and International Relations" Beitz already addresses this issue.

¹⁵⁹ IBID., p. 596.

He comments that one general objection, traditionally held by wealthy nations, is that "conditions of social cooperation at the national level justify distributive claims capable of overriding the requirements of a global difference principle"¹⁶⁰ since they have contributed through their technology and economic organization to their well being. This argument can take three different forms, explains Beitz. The first would argue that even in a interdependent world we still primarily identify with our national societies (i.e., we hold nationalistic sentiments of loyalty towards them) and as such, we will be most likely to contribute to our collective national welfare than to the global welfare.

Beitz does not believe that this constitutes an absolute objection to a global theory of social justice and suggests that this argumentation can be accommodated by the difference principle which requires that different rates of reward may be needed in order to attract contributions; its only requirement is that "distributive inequalities which arise in such a system be to the greatest benefit of the world's least advantaged group."¹⁶¹ He explains that if the incentives demanded by this objection raise the economic expectations of the least advantaged and do not harm them, then the objection is not really

¹⁶⁰. Beitz, "Justice and International Relations" op. cit., p. 300.

¹⁶¹ IBID.

inconsistent at all with the difference principle.

In order for this objection to hold in the face of Beitz's solution, it would have to assert that in fact wealthy nations are entitled to more than their share under the difference principle even if this is not to the greatest benefit of the world's worst-off group. Such an argument would probably maintain that wealthy nations deserve or are entitled to unequal distribution because of the value created by their labour.

But in Beitz's view, the idea that wealthy nations somehow deserve more or owe more to their fellow citizens because of their particularly profitable contributions, assumes that the initial distribution of resources was just and that we are entitled to relative wealth because we have acted in accordance with our current rules of justice in both acquiring and transforming the materials into valuable final products. What this line of argumentation does not properly take account, argues Beitz is the arbitrary nature of our starting points in world society; even with the same talents and the same skills, it would be extremely difficult if not impossible, to attain the same level of well being if one was born into a developing society.¹⁶² Thus, according to Beitz, this idea that we are justified in privileging our nation states with a bigger share, because of our contributions to our national well-being, does not work because of the morally arbitrary starting points of nation

¹⁶² IBID., p. 302.

states and a current world order which already privileges rich nations.

Another slightly different argument against global distributive justice, is to the effect that wealthy nations should be able to keep more than their share under the difference principle, as long as they provide some compensation for the benefits of social cooperation to less fortunate national communities and use the extra amount to increase the well being of those least advantaged in their own domestic society.

As Beitz accurately notes, this reasoning suggests that a primary and special type of obligation is due to those least well-off in our own society and that this primary obligation overrides our obligation to those least well off elsewhere. It is a view which sees domestic and global obligations as conflicting. It suggests that due to the existence of greater social cooperation within our national societies, we feel "stronger intranational principles of justice".¹⁶³ James Sterba for example, in his article, "The poor against the rich: the case for action welfare rights", criticizes Beitz for his cosmopolitan idea of justice that "makes too many demands and overlooks the genuine social bonds which tie people together in communities and the distinct social arrangements which they evolve".¹⁶⁴ Authors such as

¹⁶³ IBID., p. 302.

¹⁶⁴ James Sterba, "The Poor against the rich", p. 214.

David Miller, Michael Sandel, Samuel Black, and the communitarian school of thought in general, as well as Rawls himself, make similar arguments for the priority thesis by arguing that because of a society's common social institutions and conceptions of justice and the good, it should be entitled to have its interests take priority, and to exercise effective control over its environment.

Beitz however, challenges this argument that we naturally have special obligations to ones own society because of stronger psychological ties or nationalistic sentiments. Not only does the moral importance of these psychological ties have to be demonstrated to be more important than our international global difference principle, but it remains dubious, for Beitz, whether such ties even actually exist in our large modern nation states. In the next section of this chapter (where we address the concept of sovereignty) we will see that while remaining faithful to his cosmopolitan position, Beitz takes the above argument further into consideration and decides that one cannot simply dismiss sectional values (national values) as a case of national egoism.

The connected argument that the international community does not yet possess a sense of community comparable to that of the domestic society has also been used to stress the limits of Beitz's analogy between domestic society and international relations. But does the lack of effective global political

institutions and sense of community render it impossible to implement global principles of justice which people can actually live by, asks Beitz ? He does not believe so.

In his opinion, this argument points to a misunderstanding of the relation between ideal theory and the real world. Ideal theory "prescribes standards that serve as goals of political change in the non-ideal world", so that one must strive to achieve a just society and only unalterable and unavoidable impediments can limit this.¹⁶⁵ Realizing the ideal of distributive justice at the international level may be more challenging than at the domestic level, but it is nonetheless achievable. As such, we must endeavour to set up fair non-coercive international institutions, for only then can the weaker obligations of charity be substituted with obligations of justice. These are some of Beitz's thoughts on the priority versus the cosmopolitan theses in his earlier work. But he continues to struggle with this question in his later work also.

In later articles such as in, "Cosmopolitan Ideals and National Sentiment" and in "Sovereignty and Morality in International Affairs", Beitz maintains his cosmopolitan views but he continues to be preoccupied with the problem of "explain[ing] the continuing influence of the national ideal on our thinking, even

¹⁶⁵ Beitz, Political Theory and International Relations, op. cit., p. 156.

after the force of cosmopolitan considerations has been appreciated."¹⁶⁶ The national ideal, continues to be invoked by many as the common sense morality, and so Beitz asks, what in fact is the meaning of the national ideal.

He now believes that this ideal cannot simply be dismissed as a "national egoism" that takes no consideration of ordinary morality, such as charity. It is more accurate to describe it as the idea which says that although one may take account of the interests of foreigners, we should take account of their interests differently than we would of our own compatriots; "compatriots take priority" in other words.¹⁶⁷ So the national ideal is a principle that "sanctions unequal treatment", or a "priority thesis", continues Beitz. How can such a principle be morally warranted? He comments that,

This question will seem especially pressing where, as here, the basis on which the principle discriminates is a characteristic that is possessed nonvoluntarily and where the effect of following the principle would be to reinforce existing inequalities. For it might be that discrimination on the basis of citizenship is like discrimination on the basis of race or sex: priority for compatriots, like priority for whites and priority for males, could be nothing more than a reflection of relations of social power that have nothing, morally speaking, to be said for them. If this is not the case, we should be able to say why.¹⁶⁸

Beitz believes that one of the more common and important

¹⁶⁶ Beitz, "Cosmopolitan Ideals and National Sentiment", op. cit., p. 592.

¹⁶⁷ IBID., p. 593.

¹⁶⁸ IBID.; p. 593.

foundations for the priority thesis has been Rawls's strict contractarian moral theory, whereby he restricts distributive justice to national societies based on the assumption that they are ideal and self-contained schemes or units of cooperation.

Another argument which supports the priority thesis however, is one which draws on Thomas Nagel's analogy between the individual's right to lead his own life without having to think of promoting the best overall results for everyone, and the state's right to legitimately favor their own citizens instead of taking a stand on external issues and problems. In Beitz's opinion, this analogy and argumentation is faulty. The idea of characterizing states as possessing a national agency or as being capable of expressing their distinct identities through their projects or commitments in an analogous manner to personal agency is "unrealistically romantic". Moreover, argues Beitz, there is no clear reason to begin with, why one should "regard the national point of view as having the kind of significance for morality that attaches naturally to the personal point of view."¹⁸⁹

But there exists yet another more difficult argument to refute in favor of the priority thesis, according to Beitz. It is the argument which holds that the commitment to compatriots derives from those same considerations which motivate one's acceptance of

¹⁸⁹ IBID., p. 598.

priority of the interests of the self. He explains that "[i]f individuals have a right to resist some of the sacrifices that impersonal morality demands in order to pursue their own commitments, then their governments may not require such sacrifices of them. [And] accordingly [therefore] there is an upper bound to the cost that a state can be morally required to bear in connection with the pursuit of cosmopolitan goals (or any other goals). This upper bound defines the degree of priority that a government may accord to the interests of compatriots."¹⁷⁰ Although Beitz admits that this is perhaps the best account of the moral content of the priority thesis, it is one which has significant limits.

The first limit is that despite an individual's right to favor their own interests and projects, this right is not unlimited for even in the national context the opportunity to do great good for others is not abandoned simply because it may require a minimal personal sacrifice for one person. The second limit derives from the fact that group and individual sacrifice are different and although individual sacrifice may be excessive in comparison to others who have sacrificed less, group or national sacrifice that would be imposed on the whole population evenly hurts individuals less because the sacrifices are not excessive on any particular individual. Beitz says, that understood in this way, "a state may demand more of its people than its people, as individuals, must

¹⁷⁰ IBID.

demand of themselves when cosmopolitan goals require sacrifices of them."¹⁷¹

While Beitz's comments above are helpful, there is another way of responding to this last argument for the priority thesis, which in our opinion, is perhaps more direct. It seems to us that this idea that governments cannot morally require individuals to make some of the sacrifices that 'impersonal morality' would require for the sake of cosmopolitan goals, works on the assumption that personal sacrifices made for the well-being of the nation are 'close' to us and a more "personal morality", whereas sacrifices for the sake of foreigners are based on a distant "impersonal morality" that is less compelling. But what we have seen in the western world, and particularly North America, in the last decade is that the increasing sacrifices required of individuals by the modern welfare state for the greater good (of the state) are seen more and more as an unconvincing 'impersonal morality' also. Thus it is doubtful that this argument works, because it seems that if the demands for sacrifices are perceived as being too high, even the priority for compatriots (for distributional purposes) can lose popular support and become simply the priority for the self, for the individual.

What we believe this to show is that, if the idea of individual sacrifice for the sake of the collective good of society is to

¹⁷¹ IBID., p. 599.

continue receiving popular support, it cannot be based on a conception of justice as mutual advantage (which functions on the basis of the priority of the self), because at some point some members may find that it is no longer advantageous for them to continue contributing to this national cooperative scheme. So even at the national level, distributive justice must be based on a shared conception of justice as impartiality. But this places us in a difficult situation because justice as impartiality does not endorse a *prima facie* priority thesis for national societies. In other words, only a conception of justice as impartiality can properly support individual sacrifice at the national level, but this conception of justice also supports sacrifice for the sake of the international community at large.

Seen from this impartial perspective, one could say that in the same way that national concerns and the (greater) needs of our compatriots require some individual sacrifices, global concerns and the needs of the impoverished of the world also require individual sacrifices (even if it is done through the intermediary of the state); national concerns or needs no longer necessarily take priority. Thus, in our opinion, it is the concept of national sovereignty that is behind the priority thesis (of the national community) and not simply the principle of the priority of the interests of the self.

SOVEREIGNTY AND IMPARTIALITY:

Beitz takes up the topic of the relationship between sovereignty and impartiality in another more recent article, namely, "Sovereignty and Morality in International Morality". Here, Beitz notes that the power of the concept of sovereignty is that when the state asserts its sovereignty, it "professes to do so, on behalf of the community it governs". And as such, he continues, these assertions are "especially problematic [because] they are supposed to be persuasive even against (at least some) courses of action that seem to be justified, all things considered, when looked at from a more detached or impersonal point of view."¹⁷² One such example, would be the case of humanitarian interventions for the purpose of putting an end to a pattern of human rights violations.

Beitz point out that for authors such as Sidgwick for example, this case of humanitarian intervention would demonstrate a "general conflict between the cosmopolitan and the national ideals of political organization, [such that], according to the national ideal, foreign policy should 'promote the interests of a determinate group of human beings, bound together by the tie of a common nationality'; according to the cosmopolitan ideal, it should strive impartially to promote the interests of

¹⁷² Beitz, "Sovereignty and Morality in International Affairs", op. cit., p. 244.

everyone."¹⁷³ But the case of a humanitarian intervention to defend human rights is especially problematic, comments Beitz. On the one hand, human rights are supposed to apply to everyone and in this sense are cosmopolitan, but on the other hand, domestic jurisdiction means that it is in that state's government that the national ideal and the interests of its citizens is supposed to rest.

Indeed, we saw in chapter two that Rawls himself shares in this ambivalence. On the one hand he concedes that there may be cases where intervention is warranted, especially in the situation of grave domestic violations of human rights (by outlaw regimes). On the other hand however, his unquestioning acceptance of the idea of domestic jurisdiction, means that Rawls effectively excludes the oppressed populations of 'outlaw' regimes from the international original position, thus victimizing them further, even though he acknowledges that the population may be ruled illegitimately by corrupt and despotic rulers. A similar argument can be made regarding Rawls's treatment of distributive justice whereby he bases this concept on the universal moral personality of the person, but then restricts it to citizens of national communities by promoting it as a distinctly liberal national ideal.

Yet another example of this conflict, offered by Beitz, is that

¹⁷³ IBID., p. 245.

of national immigration policies where as a matter of impartial justice an open door policy would be warranted, but concerns about the quality of the country's domestic life incline it to use sovereignty in order to restrict access to its wealth and resources. The question that is of course pressing for Beitz then, is how do we deal with the apparent incompatibility between sectional values and "the requirements that arise when we take a globally impartial view, that is to say, when we seek to view the world in abstraction from what appear to be morally irrelevant differences between people."¹⁷⁴ What do we do when faced with the "dilemma of sovereignty and morality"?

Beitz considers four possible responses to the above dilemma. One could take the view of political realism which does not believe that moral principles have a place in international affairs, and so national interest would always predominate. One could also take the view on the opposite extreme, which argues that cosmopolitan ideals come first and should always win over sectional values. The third possibility is that we deny that this theoretical conflict would ever become a practical problem, since under the prevailing conditions, they are not perceived as colliding. The fourth and final response could be to simply deny that morality (if correctly understood) requires one to take a cosmopolitan view at all--because what morality really does require is that "the moral point of view [...] coincide with the

¹⁷⁴ IBID., p. 246.

[...] point of view of national community."¹⁷⁵ This is the view which as we have already mentioned is held by some communitarians.

To Beitz, the first response must be considered indefensible today because it simply dismisses all morality. The second also presents a problem, because it seems to assume that sectional values and the concept of sovereignty merely reflect an amorality. In Beitz's opinion this is an incorrect description of the priority thesis, which does not hold that there are no moral obligations toward others but rather simply that citizens take priority vis a vis non-citizens. Moreover, sectional values such as sovereignty serve important regulative functions at times, such as the sacrificing of even more parochial interests for the sake of the country, the engendering of loyalty among citizens, and the perfectionist ideals of striving for national forms of social and communal ideals. So the second alternative is inadequate in Beitz's opinion, both because it does not take account of the fact that sectional loyalties or values are not necessarily self-interested, and because it provides no explanation of the influence sectional values seem to command, even criticisms of it from an impartial perspective make sense to us.

The third alternative, which is commonly held (and a strategy

¹⁷⁵ IBID., p. 247.

which Rawls himself partially subscribes to), is that there is no incompatibility between sovereignty and cosmopolitanism because the principle of respect for the sovereignty of states continues to be the best way of guaranteeing the existing entitlements to states and the individuals within them. So for example, the principle of non-intervention is seen as being the best way of ensuring that anyone have any rights, even though it prohibits humanitarian intervention. This school of thought would argue that humanitarian interventions have more often than not, been unsuccessful in the past anyhow. A similar rationale is applied to the case of open borders, argues Beitz. Sidgwick for example, would argue that mass immigration would disturb the internal cohesion of society and create a brain drain for the developing world, thus destroying goods that all peoples value. He would conclude from this that open borders would not "really be in the interests of humanity at large".¹⁷⁶

In Beitz's opinion however, there are many cases where the value of sovereignty and sectional values would not outweigh the values one could promote or protect by infringing on the former. As such, he believes that the concept of sovereignty could be a different and much less inflexible one than what some authors require it to be today. Humanitarian interventions are not all susceptible to produce international instability and increased immigration does not necessarily entail overall decrease in

¹⁷⁶ IBID.; p. 249.

national cohesion and well-being. So while Beitz does not wish to claim that there will never be cases in which impartial reason will compel us to respect sovereignty, he does believe that there will be cases where the interests of sovereignty and those of impartial morality will definitely come into conflict. In such cases, he argues we can no longer simply accept that sovereignty wins out. Instead, he proposes that,

We must insist [...] that these claims [stemming from the priority thesis] be justifiable from a point of view in which the interests of everyone who would be affected by acting on them, including those outside the state's borders, are represented equally.¹⁷⁷

Unfortunately, despite some passing concern expressed for the fate of the populations of impoverished and 'outlaw' societies, Rawls's general tendency at the international level has been to assume the priority of the interests of sovereignty over and above considerations of impartial morality and human necessity.

Finally, the fourth alternative, which denies any relationship between morality and impartiality and instead situates morality exclusively in the context of the community or national goals, is also problematic according to Beitz. This position, which is shared by some communitarians, holds that impersonal morality which is committed to individualism and assumes human beings to exist independently of all connections (contexts and relations), cannot yield a moral point of view.

¹⁷⁷ IBID., p. 249.

Beitz does not take this position to reflect simply national egoism or mindless acceptance of the values in one's community. However, he believes that if this leads to a situation of conflict where from the point of view of the community a situation commands no action while from an impartial point of view it clearly does-- and in the face of this conflict, the particularists reject the impartialist position on the grounds that it is not a moral reason at all, then Beitz believes that this particularist position is "deeply wrong". Particularists argue that morality is a social institution. So as "against the conception of the moral subject 'as an abstract individual', the conception allegedly at work in impartialist views, particularism reflects a conception of moral subjects as 'deeply embedded in social relationships'.¹⁷⁰

But why should one believe that this conception of ethical agency, which simply claims that relationships and commitments shape our values, "is necessarily connected to a particularist understanding of the moral point of view", asks Beitz. To him there is no inconsistency because issues of moral learning and motivation are different things than the nature of morality--they may be related but there is no necessary incompatibility. In fact, he argues along the same lines as Will Kymlicka, who makes the point that "we can and do makes sense of questions not just about the meaning of the roles and attachments we find ourselves

¹⁷⁰ IBID.; p. 252.

in, but also about their value."¹⁷⁹ The point is that particularists cannot avoid the conflict between impartial and sectional values by simply declaring that there is no moral content or value to an impartial view of justice.

Thus the tension between sovereignty and impartiality remains. And once again, Beitz departs from Rawls in his understanding of how this concept serves to undermine obligations of global distributive justice, while continuing to promote national interests first and foremost. Although, he recognizes that states may sometimes have legitimate sectional values, Beitz does not believe we should simply bow to these as common sense morality. Unlike Rawls, he believes that justice as impartiality in international affairs is both necessary and possible; not only has our increasing global interdependence rendered it urgent but the universal moral personality of the person demands it. Thus, while we should remain attentive to the fact that states may have some legitimate sectional values or claims, Beitz believes that impartiality requires that "these claims be justifiable from a point of view in which the interests of everyone who would be affected by acting on them, including those outside the state's borders, are represented equally."¹⁸⁰

Throughout this paper, we have discussed the critical role the

¹⁷⁹ IBID., p. 253.

¹⁸⁰ IBID., p. 249.

traditional concept of sovereignty plays in Rawls's theory of international justice and particularly in restricting distributive justice to national societies. We have also argued that his conservative theory of a law of peoples is primarily based on a conception of justice as mutual advantage and that in effect, he relegates impartiality (and the premises supporting the original position) to the domestic realm by denouncing such values as parochial. Thus, it is no wonder that with such differences between them, Rawls and Beitz came to have such divergent, and even irreconcilable positions on the issue of international justice, and particularly regarding our distributive obligations. From their very beginnings, in fact, there were clues that these two political philosophers had dramatically different conceptions of the very nature of justice.

For Rawls, the traditional concept of sovereignty was consistent with a theory of international justice that essentially sanctioned the existing distribution of wealth and of power. For Beitz on the other hand, it was an obstacle to getting to the real business of justice, namely the redressing of morally arbitrary inequalities which, whether stemming from national or international causes, ultimately fail to respect human beings as equal moral persons. It is for this reason, that in his opinion,

Perhaps it would be better if the idea of external sovereignty, like its cousin in the political theory of the state, were allowed to pass gracefully from the lexicon of political thought. It is plain enough how

*much we have to learn about issues as the permissibility of humanitarian intervention and the distributive responsibilities of wealthy states. But we may do better by trying to grasp these issues in their own terms rather than by exploring them under the rubric of an abstract normative conception that invests complex practical questions with the simplicity that is extremely deceptive.*¹⁰¹

¹⁰¹ IBID.; p. 254.

CONCLUSION

It is both because of Rawls's enormous influence in contemporary political theory and because his conservative theory of the law of peoples seems to be generally representative of the dominant contemporary theory and practice of international relations today, that an analysis of his theory of international justice, particularly in its implications for the issue of global distributive obligations presents itself as a an exciting project. If the idea that compatriots and national societies take priority is still perceived as being part of common sense morality, as we believe it is, then it is important that Rawls's recent account of international justice be examined--for it represents one of the most prominent theories advocating the privileged status of national societies.

We have argued throughout this paper, that Rawls's law of peoples is an endorsement of the status quo in international relations because it effectively sanctions the existing distribution of power and wealth. It does so in a variety of ways, but his uncritical acceptance of the concept of sovereignty, his biased methodology, inaccurate model of international relations as a collection of self-contained societies, and his reduction of international human rights and the moral conception of the person to parochial ideas (that are subject to the higher dictates of

culture and collective conceptions of the good)---all play a part in making Rawls's theory a fundamentally conservative, perhaps even regressive one.

We saw through the insightful analysis of Brian Barry in chapter two that Rawls's theory of justice holds important tensions between two irreconcilable conceptions of justice, i.e., justice as mutual advantage and justice as impartiality. This was already true of his domestic theory of justice but it becomes even more blatant in his law of peoples, where the two conceptions become completely irreconcilable and he must decide between them. We argue in chapter two that for all practical purposes, Rawls did make a choice in a "The Law of Peoples" and that this choice was to take a decisive leap in the direction of international justice as mutual advantage.

In "The Law of Peoples", we saw that he continues to work within his old model of international relations as one made up of self-contained national communities; a model which is protected and supported by the traditional concept of national sovereignty. Beitz's extensive criticisms throughout the years, regarding the empirical falsehood of this assumption and its adverse consequences on poorer nations thus seem to have held no significant bearing in Rawls's opinion, for his theory of a law of peoples continues to assume the reality of our global interdependence to be quite irrelevant to justice. Certainly,

most would agree that if our current international order, institutions and practices do engender deep inequalities between nations and peoples, then it is a major flaw in Rawls's theory of international justice that it does not (and cannot because of its assumptions) take account of this reality and propose a system of redress for these 'injustices'. We believe that the reason why Rawls does not take such factors into account in his theory of international justice has much to do with the fact that he bases it primarily on a conception of justice as mutual advantage, rather than impartiality.

Rawls's constructivist methodology with its built-in bias in favor of democratic societies in particular, and relatively privileged stable societies in general, leads to a law of peoples which has as its primary function the regulation of an international cooperative scheme for mutual advantage. Thus, unstable and poor nations states are excluded from participation, while non-liberal but 'well-ordered' hierarchical societies are "accommodated" into this cooperative scheme by democratic societies because they offer the possibility of contributing to the mutual advantage of all the participating members. The mutual advantage to be obtained by this international agreement for cooperation (this "family of well-ordered" states) seems to be for Rawls, the securing of a strong defensive alliance, political and economic cooperation, and international principles of conduct (such as the principle of non-intervention, and equality of

states) likely to secure peaceful relations between them.

We argued in chapter two that by beginning the construction of his international original position with the family of democratic societies, allowing them to make the rules of inclusion and exclusion, as well as set the agenda of "appropriate" issues and principles to be negotiated in the original position, Rawls effectively established the conditions of justice as mutual advantage. Moreover, this preselection of states who are permitted to participate in the international original position amounts, in our view, to a clear sanctioning of the existing distribution of power--even a consolidation of power.

However, as we have already mentioned, it also amounts to a sanctioning of the distribution of wealth, in three ways. Firstly, by having partially lifted the veil of ignorance off democratic societies and allowing them to know that they benefit from favorable conditions which make democracy possible, Rawls enables them to know that they are doing well under the current rules and conditions; thus making new principles of distributive justice seem either uninteresting or potentially disadvantageous to them (or at the very least a potentially risky proposition which does not seem likely to be to their advantage).

Secondly, Rawls does not allow for the possibility that hierarchical societies might wish to address the subject of

distributive justice once they are included in the original position, for he assumes that the principles of the law of peoples already agreed upon by democratic societies (which do not include distributive justice) are either simply extended or implicitly accepted by hierarchical societies. He also presumes that hierarchical societies will reject the very idea of distributive equality, viewing it as embodying parochial conceptions of the good and of justice, which they do not share. As we noted previously however, this is pure conjecture on Rawls's part, for he never does construct a new inclusive original position and new principles of a law of peoples reflecting the participation of hierarchical societies--he merely extends the old principles to them.

Thirdly, in Rawls's biased methodology, those societies most likely to have requested principles of international distributive justice, namely the outcast regimes, are conveniently excluded from any participation in the original position by rules originally established by the most privileged of nations -- democratic societies. This procedure of preselection thus places control over the agenda of international issues, including global distributive justice, in the hands of the most powerful and rich countries,-- who because they are doing well under the current international order and institutions, will predictably sanction the existing distribution of wealth by excluding the topic of global distributive equality from consideration in the original

position. As Barry convincingly argues in chapter two, Rawls's doctrine of the circumstance of justice and his requirement that justice be mutually advantageous, means that the principles of a law of peoples will inevitably reflect the largely unequal relations of power that exist in the international sphere.

But Rawls's position that the liberal premises supporting the concept of the distributive equality (and the original position) are essentially parochial, is also key to his argument against extending principles of distributive justice to the international domain. He holds that the political conception of the person as free and equal (i.e., the moral personality of the person) and the idea of distributive equality itself are particular to liberal societies. As such, it would be inappropriate and an imposition of western values to begin constructing the law of peoples from an all-inclusive global original position. Doing so would mean that we would be (assuming) treating all persons as free and equal, and hence, according to liberal conceptions, which would make the "basis of the law of peoples too narrow" argues Rawls.

The very principles of global distributive justice would be objectionable for similar reasons of liberal ethnocentricity or parochialism, according to Rawls, because not all societies share the ideals of distributive equality. Hierarchical societies for example, would certainly not accept such global principles,

maintains Rawls, since they do not recognize the principles of distributive equality or the liberal conception of the person domestically. Yet, as we have already noted above, Rawls is merely speculating on this point since he never does work out the results of the original position once hierarchical societies have been permitted to join in. And he certainly does not provide much evidence that the populations of 'outlaw' and disadvantaged societies regard these principles as parochial or contrary to their own values or conception of the good. The argument against an all inclusive original position is not persuasive in our view.

In chapter three we devoted much of our discussion, precisely to Rawls's claim that the premises supporting distributive equality such as, the liberal conception of the moral personality of the person, are simply parochial and therefore, not applicable to other societies. We held that this position is neither convincing on its own terms nor consistent with Rawls's own premises. As Samuel Black argued, Rawls's commitment to individualism on the one hand and his anti-cosmopolitan views on the other, leads to an important inconsistency in his theory of justice ---and ultimately to the "fallacy of restricted universalism". Whether one wishes to call this inconsistency the "fallacy of restricted universalism" or the parochialism of the conception of the moral personality of the person, the degree to which Rawls insists on it and the implications of this position, are perhaps the most shocking aspects of his theory of international justice. The

result is a radically different foundation or justification for human rights, political legitimacy, and even perhaps international obligations. The root and motivation for action at the international level is not the moral principle of the inherent dignity and equality of all human beings or the person as a self-originating source of valid claims; these ideas are parochial and politically loaded for Rawls who prefers at the international level to try to remain amoral or "neutral".

The result of this position is that he divests human rights of its most important component; the idea that people matter as ends onto themselves, that they are irreducible to any other consideration. The idea that the moral equality of persons is simply a parochial concept, not only allows him to dilute and relativize human rights, and the concept of political legitimacy, but it also permits Rawls to continue restricting the scope of distributive justice to national societies. This is so for two reasons: first, because of reasons of 'cultural sensitivity' towards nation states and their peoples who presumably do not share in such western ideas; and secondly, because Rawls seems to be saying that questions of moral obligation or obligations of 'justice' are defined by one's national community rather than universal criteria, making it morally acceptable therefore to restrict distributive obligations to our own citizens who share in the same liberal conception of justice and the good. Thus, ironically, while communitarians such as Micheal Sandel and

Samuel Black hold that Rawls's theory of justice is too individualistic to allow for a collectivist conception of the good, Rawls himself increasingly maintains that the premises supporting his liberal theory of justice are too parochial--too much a reflection of liberal societies' particular conception of the good--to be extended to other types of societies.

In chapter three we discussed various reasons why we believe this idea to be incorrect. Black, Barry, Beitz and Will Kymlicka have all also offered arguments for rejecting Rawls's position that the liberal conception of the person is a parochial one. Perhaps, one of the strongest arguments however, lies in Beitz's observation that even if we were to believe that the basis of this conception of the person is indeed parochial, the conception itself in the way Rawls describes it is not. By rooting the moral personality of the person in our capacity for a sense of justice and a conception of the good which we can pursue, revise and change--attributes which are universally held--Rawls is working with a conception that is to be conceived of as universal and its application to a global original position follows in a straightforward manner. The fact that other societies may offer a different conception of the person, one which has its foundations in other attributes, criteria or beliefs does not therefore, mean that Rawls can dismiss his conception as parochial when it becomes convenient to do so, i.e., at the international level. He specifies the powers or attributes of the moral personality of

the person, those attributes by which they are deemed free and equal beings (i.e., the capacity for a sense of justice and a conception of the good) and these are indisputably universal attributes which are not only held by citizens of liberal societies. Put simply, Rawls's own definition of the moral personality of the person cannot by its very nature be confined to the national boundaries of liberal societies, and neither can the distributive obligations that Rawls extracts from it. Thus, we share Black's conclusion that Rawls's theory of justice is plagued by the fallacy of restrictive universalism.

We also argued that Rawls's emphasis on the human capacity for having, pursuing and revising their own individual conception of the good, makes it inconsistent for him to defend the political legitimacy of societies who's collective conception of the good make people less free to do so (by not guaranteeing through their public identity persons' equal rights and liberties). We are unconvinced by his argument for the political legitimacy of hierarchical regimes, and even more unsatisfied by the adapted criteria and feeble guarantees of his alternative account of political legitimacy for non-democratic societies in general.

We hold this position because not only does Rawls place a high importance on our capacity to pursue and revise our own conceptions of the good (and hold it to be a universally-held attribute of our moral personality), but he provides various ways

in which all kinds of conceptions of the good can be accommodated. We are not persuaded that these ideas do not have a place at the international level or that they cannot accommodate other legitimate societies. According to Will Kymlicka for example, Rawls's 'thin theory of the good' is based on the idea that because our capacity to form and revise our conception of the good (or plans of life) is one of our highest order interests, and for this reason it is designed to offer us the conditions that make it possible for us to pursue many different ways of life; the conditions being equal liberty and distribution of primary goods. He argues that this 'thin theory of the good' has to do primarily with the distribution of the good rather than with the identification of a particular conception of the good. This is an argument which also holds against the communitarian critique, such as the one advanced by Black for example, who argues that a thin theory of the good (which is based on individualism) is incompatible with a more community-based or collectivist conception of the good.

Rawls's own distinction between one's public and nonpublic identities also provides a way of possibly reconciling the liberal conception of the moral personality of the person (as free and equal) with alternatively-based conceptions of the person, such as those relying on religious, cultural or social precepts. There are many serious problems with this idea, some of which we discussed briefly in chapter three, but we believe that

the minimal guarantee of a regime's legitimacy must be that it respects the public identity of persons as free and equal (in their rights and liberties) no matter what a person may choose as their nonpublic identity (and the good life) at any one time, or what the collective (state) conception of the good may be.

If Rawls is to restrict his conception of the person to liberal societies and treat it as parochial, he must then redefine the attributes which make us worthy of a moral personality and distributive obligations. These must be attributes or powers which only citizens of one's national (liberal) society possess, and not universally-held capacities of all human persons; capacities which perhaps even define our common humanity, because they have no boundaries. We do not believe Rawls will wish to do this and if he does, one can imagine that he would then be writing about an entirely different foundation and conception of 'justice'. Until then, Rawls cannot invoke the parochial nature of the premises of distributive equality without falling into the trap of restricted universalism.

Rawls's conception of international justice as mutual advantage, is incompatible, in our opinion, with the liberal ideals of the moral personality of the person and the principle of redress for morally arbitrary inequalities; premises which support distributive equality and set the conditions for impartiality. This inconsistency was apparent in his domestic theory of

justice, but it is all the more apparent at the international level. Kymlicka was correct to say that when we consider our obligations to other societies (or generations or even to the infirm) we are forced to choose between the two conceptions of justice because the arbitrary inequalities are no longer between people involved in fruitful cooperation.¹⁸² In "The Law of Peoples" Rawls being forced to choose, leans decisively on the side of justice as mutual advantage and thus relegates these liberal premises, associated with the impartial point of view, to the status of parochial values and concepts to be applied exclusively within liberal national communities.

Brian Barry as we saw in chapter two, clearly rejects a theory of justice as mutual advantage and believes that justice can have a different role in human society, besides simply as a vehicle to pursue one's self-interest or mutual advantage from cooperative schemes. As Kymlicka puts it, justice as mutual advantage is not only not acceptable to Barry but it "doesn't even count as a theory of justice" for him. He explains that,

The rational pursuit of individual advantage may lead people to endorse some basic principles of social cooperation, and these mutually advantageous conventions may occupy some of the place of traditional morality [...] But we cannot generate justice in this way--'as a rational constraint from the non-moral premises of rational choice'- for the resulting system of rights and duties lacks some of the basic attributes of a moral system. ¹⁸³

¹⁸² Kymlicka, "Two Theories of Justice", op. cit., p. 105.

¹⁸³ IBID., p. 100.

Because this view of justice does not attribute inherent moral status and importance to people as valid sources of claims in and of themselves, those who fall outside the sphere within which mutual advantage is possible, fall outside the sphere of justice and rights. Indeed not only does this pose a problem for those who are strangers to our society, i.e., for international justice, but indeed it is even a problem, argues Barry, for Rawls's most privileged domain of justice, domestic society. The result, is that the weak, the disabled, those who belong to future generations and those having the misfortune of being born into impoverished nations, present serious problems to Rawls's theory of justice-- and most in fact, fall outside its sphere altogether. Barry believes that this is the consequence of Rawls's requirement that justice be to everyone's (the participants) mutual advantage and his doctrine of the circumstances of justice, which allows unequal power relations to be translated into unequal bargaining power.

Kymlicka agrees and makes the observation that "one should notice, moreover, that those who fall outside the web of justice are those who, in our everyday morality, have the most urgent claims of justice."¹⁰⁴ Justice as mutual advantage effectively places the weak or those unable to defend themselves, outside the sphere of justice or moral consideration. As Kymlicka notes, mutual advantage may "provide a useful analysis of rational self-

¹⁰⁴ IBID., p. 101.

interest or realpolitik but why we should regard it as a method of moral justification remains utterly mysterious."¹⁰⁵

Justice as impartiality on the other hand, argues Barry, seeks to achieve an agreement that specifically abstracts from such differentials in bargaining power. One of the best known devices for achieving this is of course, Rawls's veil of ignorance (and original position). Yet, Barry does not believe that Rawls's interpretation of impartiality as being achieved by self-interested agreement behind a veil of ignorance, is a method that is compatible with the fundamental character of justice as impartiality. Rawls's impartial contractor fails to properly represent impartiality for Barry because "Rawls's concept of a veil of ignorance attempts to render vivid the idea that other people matter in and of themselves, not simply as a component of our own good [...] it does so by imposing a perspective from which the good of others is simply a component of our own (actual or possible good). The idea that people are ends in themselves gets obscured [therefore]..."¹⁰⁶

Reaching an agreement on principles of justice that is motivated by self-interest alone, under conditions of uncertainty (i.e., veil of ignorance), simply does not translate into justice as impartiality properly understood for Barry. He fully agrees that

¹⁰⁵ IBID., p. 101.

¹⁰⁶ IBID., p. 102.

an original position functioning within a veil of ignorance is a necessary condition or device to reaching an agreement on moral principles of justice. It allows us "to abstract from the inequalities of power inherent in real-life conditions and postulate a favorable environment for deliberation about principles, one marked by freedom and equality."¹⁰⁷ However, where he departs from Rawls, is in the need for the idea of the 'circumstances of justice' and the reasoning or motivation that moves the agents to agree on their principles of justice.

Impartiality requires one to exclude morally arbitrary inequalities from factoring in the agreement, and at first sight Rawls seems committed to this, but his requirement that justice be to everyone's mutual advantage and consequently be based on a self-interested bargaining game, ultimately undermines the impartiality he seems to advocate by imposing the veil of ignorance. Indeed, we believe this point was illustrated more clearly than ever before, in his recent methodology and theory of international justice.

The attempt to hold onto and incorporate these fundamentally incompatible elements of mutual advantage and impartiality in his theory of justice creates deep and irreconcilable tensions in Rawls's work. Understanding his work in this context however, allows one to grasp these inconsistencies in his domestic theory

¹⁰⁷ Barry, Theories of Justice, op. cit., p. 343.

of justice; and this allows one to understand that his theory of international justice in "The Law of Peoples" is not coming out of nowhere but is simply built on the latent tendencies in his work on justice towards a conception of justice as mutual advantage. Still, realizing how committed Rawls seems to be to the idea of international justice as mutual advantage, will most certainly undermine the hope of many that his theory of justice could ever serve as a model for liberating humanity from the shackles of morally arbitrary inequalities (whatever they may be), and the individual stories of injustice and deprivation that they cause.

Interestingly enough, the evolution of Charles Beitz's thought with regard to international justice, demonstrates an increasing departure from his original Rawlsian foundations, towards a more impartiality-based conception of justice. Far from agreeing with Rawls on his restricted universalism and the idea that the conception of the morality personality of the person is parochial, he affirms it in "Cosmopolitan Ideals and National Sentiment" as the very foundation for our international distributive obligations--as the raison d'être so to speak, of global distributive justice. He refutes his earlier argument that distributive obligations are tied to the existence of international cooperative schemes or the principle of reciprocity (which he now regards as morally arbitrary themselves). Thus, he moves away from the idea that justice is supposed to regulate

cooperative schemes (which is part of the idea of justice as mutual advantage), and closer to the idea that justice is about eliminating or compensating for morally arbitrary factors--in other words, justice as impartiality.

In his article, "Recent International Thought", he explains,

The subject of international distributive justice is complex, but the philosophical idea that motivates concern about it is simple. The most fundamental requirement of any system of political morality, whether domestic or international, is that institutions should respect the equal moral standing or, one might say, the equal moral worth of everyone whom they affect.¹⁰⁰

Like Black, Beitz holds that the principles and the premises that Rawls relies on in his domestic theory of justice, are universal in their implications and support a cosmopolitan view of justice, and distributive obligations. Rawls's strong commitment to individualism and his conception of the moral personality of the person for example, implies that the principle of equal respect applies first and foremost to persons, rather than to nation states, argues Beitz. What follows from this logic, is that the principle of equal respect must be cosmopolitan--it must be able to travel across state boundaries.

Equal respect, argues Beitz, "place[s] a high value on the satisfaction of the most urgent needs, such as those for food, clothing, and shelter: these are, roughly, goods of the character

¹⁰⁰ Charles Beitz, "Recent International Thought", International Journal, vol. XLII, no. 2, 1988, p. 191.

of those Rawls refers to as 'primary social goods' or that are required for the development of [...] 'basic capacities'."¹⁸⁹ And this means that the rights of states are simply derivative; they only have rights and duties in virtue of the moral properties of the persons who constitute them. State boundaries cannot, when looked upon from this point of view, have any fundamental importance, and they certainly cannot be "regarded ipso facto as delimiting spheres of exclusive moral rights to natural resources and alienable productive assets."¹⁹⁰

In this connection, we can recall Robert Goodin's argument against the mutual benefit logic and his defense of global distributive obligations based on the idea that the state's responsibility to protect and provide for its citizens is "merely an administrative device for discharging our general duties [to humanity at large] more efficiently."¹⁹¹ Understood in this way, national sovereignty and domestic jurisdiction does not mean, as Rawls takes it to mean, that we can privilege our own citizens, regardless of and at the expense of the interests of foreigners. As Goodin, has put it "our derivative special responsibilities cannot bar the way to our discharging the more

¹⁸⁹ IBID., p. 192.

¹⁹⁰ IBID., p. 192.

¹⁹¹ Goodin, "What is so Special About Our Fellow Countrymen?", op.cit., p. 685.

general duties from which they are derived."¹⁹² As such, in Goodin's model, not only are nations justified in taking on international responsibilities and burdens that do not benefit their citizens, as a discharging of their general and moral duty toward the person (who is the "residual responsibility" of all),¹⁹³ but states must also be given sufficient resources to allow for their effective discharging of their specific responsibilities (to their own citizens).

The consequences of Goodin's model and understanding of national sovereignty could not be more different than the results of Rawls's own theory of international justice, who's mutual benefit logic "effectively sanctions the existing international distribution of wealth as well as that of power".¹⁹⁴ On the other hand, Goodin's model has many affinities with Beitz's conception of international justice and the critical role that both the concept of sovereignty and the moral personality of the person play in his argument for global distributive justice.

What Brian Barry, Robert Goodin and Charles Beitz have in common in fact, is that unlike Rawls, they understand that the mutual benefit logic is inconsistent with the premise that the equal

¹⁹² IBID., p. 686.

¹⁹³ IBID., p. 684.

¹⁹⁴ Beitz, "Sovereignty and Morality in International Affairs", op. cit., p. 243

moral worth and equal respect for the person is the irreducible foundation and motivation for justice. The evolution of Beitz's political thought thus led him to gradually embrace a new conception of justice that would do justice to the universal moral personality of all persons, and let go of inconsistencies and concepts (such as external sovereignty) that represented morally arbitrary factors and impediments to international justice. One could say that Beitz kept the best of Rawls, namely, his liberal conception of the person and his elaboration of the conditions for and value of impartiality (at the domestic level). But he finally parted ways with him when it became apparent that not only were the inconsistencies in Rawls's theory of justice a reflection of irreconcilable conceptions of justice, but that Rawls's allegiance to 'citizens' conflicted with his own allegiance to humanity at large.

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