

THE LAW OF PEOPLES AND GLOBAL JUSTICE: BEYOND THE LIBERAL NATIONALISM OF JOHN RAWLS

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Abstract: The paper deals with the relation of a theory of international justice, specifically John Rawls's philosophy of the law of peoples, and a theory of global justice. In the first part, the paper outlines Rawls's main theses on the international conception of the law of peoples. The second part concerns a problem found in segments of Rawls's theory, specifically his concept of a social contract—contractualism. This problem inadequately approaches the relationship between the individual and the community. The third part deals with the inconsistent points in Rawls's theory contained in part two, i.e. his principles of justice selected with the aid of social contract. In the fourth part, the paper concentrates on the consequences of these limitations for a socially distributive dimension of justice or as an approach for dealing with disproportionate global inequalities. The last part formulates the causes of the limitations of Rawls's theory of international justice and points out the need for a global justice which is socially and inter-culturally considerate.

Keywords: International justice; global justice; Rawls; recognition.

Global justice is a response to the issue of globalisation. The concept of global justice is essential at times when individuals as well as whole societies find themselves increasingly under pressure from trans-national and global influences primarily of an economic nature. We live in a very stratified global order in which the “asymmetric interdependence between the developed and newly industrialised and underdeveloped countries,” brings irreconcilable conflicts and demands (Habermas 1998, 87). This unfortunate situation could be resolved by identifying and developing an appropriate institutionalised global concept that would enable global justice to take place. The increasingly conflicting global interconnectedness of societies and individuals requires not only international relations but also a cosmopolitan or global order. I will deal with the concept of global or cosmopolitan justice aided by a critical analysis of the concept of international justice.

My thoughts will take the following direction. In five parts, I will explain, on the one hand, the insufficiency of the theory of international justice and, on the other hand, the need for a theory of global justice. While elsewhere I explicate a transition between these two stages of justice by means of the concept of extra-territorial recognition (Hrubec 2007), here I will focus on the main differences between the two theories. Initially I will outline the main theses of Rawls's conception of international relations. My aim in this process is not to provide a detailed explanation of this theory but rather to focus on its supporting pillars, which will serve the purpose of my comparison with the theory of global justice.

In the second part, I will be concerned with a problem which is contained in part of Rawls's theory, specifically his concept of a social contract—contractualism. This problem inadequately approaches the relationship between the individual and the community. In the third part, I will point out the inconsistent points in Rawls's theory contained in part two, i.e. his principles of justice selected with the aid of social contract. In the fourth part, I will concentrate on the consequences of these limitations for a socially distributive dimension of justice or for the approach of dealing with disproportionate global inequalities. In the last instance, in the fifth part, I will attempt to formulate the causes of the limitations of Rawls's theory of international justice and point out the need to make the transition from international justice, which follows from Rawls's liberal nationalism, to a global justice which is socially and inter-culturally considerate.

The Basic Theses of International Justice

Rawls initially formulated his concept of international justice in his first book *A Theory of Justice* (Rawls 1971, 377-379). The book focuses on the concept of justice within the framework of a national state, and it provides a view of international justice in the outline. Nevertheless, it is the foundation for a more defined formulation, which is later developed by Rawls in his study "The Law of Peoples" and subsequently in his book with the same title, *The Law of Peoples* (Rawls 1993a, 41-82), in which Rawls develops his concept of international justice. From the point of view of my reconstructive summary of Rawls's famous concept of international relations, it is possible to say that the aim of Rawls's *The Law of Peoples* is to propose fundamental guidelines for an international policy for a liberal democratic society. It is also a proposal with a more universal purpose, which is the aim to create a worldwide community of liberal and decent peoples (*ibid.*, 128). The Law of Peoples, in its concept of international justice, serves as a "particular political conception of right and justice that applies to the principles and norms of international law and practice" (*ibid.*, 3). At the same time Rawls articulates two principles and mutually interconnected themes that exist in the background of his theory of international relations (*ibid.*, 126). The first is the premise that the most serious problems and disasters in the history of humankind were caused by the political aspect of injustice. Mass murders, genocide, poverty, religious persecutions or unjust wars were caused by this kind of injustice in particular. The second premise is the idea that the most problematic and disastrous events could be eliminated, providing that the political dimension of injustice is eliminated by the implementation of fair basic institutions and by following just measures of justice. Rawls adds that if these institutions are not just they should at least be decent in order to achieve the required state of affairs.

The reason Rawls does not talk about a plurality of nations but about a plurality of peoples is because he intends to distinguish between state formations with their own rational and not necessarily reasonable¹ interests, demonstrated in their sovereignty, and peoples included in the Law of Peoples that set boundaries on the internal sovereignty or political

¹ The explication of the primary meaning of the difference between the terms "reasonable" and "rational" is presented for example in Rawls 1983.

autonomy of a state. On the one hand, higher requirements are placed on peoples as oppose to states because strict conformity to human rights is required, a conformity that has been increasing since the end of World War II. On the other hand, human rights are conceived in a more limited and tolerant sense which attempts to rid them of layers of ethnocentrism, whilst respecting the differences of well-ordered nations that do not possess a liberal democratic regime.² This should offer the possibility of a peaceful co-existence for well-ordered societies i.e. liberal democratic societies and societies ordered in hierarchies which do not present liberal democratic models of order but which do follow the fundamental human rights and allow citizen participation in governing via a consultation hierarchy based on shared values (Rawls 1993a, §8-9). Rawls argues that “In the Society of Peoples, the parallel to reasonable pluralism is the diversity among reasonable peoples with their different cultures and traditions of thought, both religious and nonreligious” (*ibid.*, 11). The additional element of the co-existence of well-ordered societies is the relationship of these societies gathered under the Law of Peoples to societies which are not well-ordered and which are the source of international instability.

To summarise, leaving all the problems of his theory aside now, Rawls is concerned with international justice, which in his ideal scenario is achieved by establishing the harmonious co-existence of peoples in the Society of Peoples under the Law of Peoples. This Law is designed so as to implement the political dimension of justice with the aid of two pillars: firstly selected basic human rights and secondly a version of tolerance and inter-cultural recognition of particular differences of well-ordered societies. The non-ideal case has an added relationship to societies which are not well-ordered. These perspectives can be defined as a political theory of international justice which is based on following basic human rights.

An Individual and a Nation

The explanation given so far is already sufficient to point out certain inconsistencies in Rawls’s theory of international relations. First of all, I would like to draw attention to the problem which appears in Rawls’s formulation of *original position* where the individual parties of a social contract decide on the principles of international justice. For the time being, I will leave aside the question as to whether it is at all sustainable to define the principles of justice via a contractual model of an original position and whether it would be better to articulate the principles of justice with the aid of another model which is not based on social contract. Despite the fact that the model of a social contract does not present a solution for most theories, I believe that it is possible to assess the problem discussed within this model independently.

The problem occurs in the specification of the subjects of justice. In Rawls’s theory of justice, which is formulated within the framework of a national state, individuals represent themselves in an original position; however, in his theory of international justice, the agents are representatives of peoples or even of entire states whose task is to represent solely

² Rawls does not insist on some articles of the Universal Declaration of Human Rights, for instance article 21, which is concerned with democratic government. Compare with the opposing view, for example in Archibugi and Held 1995. Also compare with Taylor 1996.

national or state interests. As Rawls argues in *A Theory of Justice*: “the contracting parties, in this case the representatives of states, are allowed only enough knowledge to make a rational choice to protect their interests...” (Rawls 1971, 378).

This shift from individuals who represent their own viewpoints as standpoints of moral individuals, to representatives who represent *peoples' interests* significantly transforms Rawls's theory. The optimum scenario in this theory is a rationally designated defence of individual rights or a liberal nationalism which promotes national interests in the name of the members of these nations against the interests of other nations. It is a case of principles which “govern public policies towards other nations” (*ibid.*). This description shows Rawls's theory normatively as a theory of international relations where the centre of attention is national relations.

The reasons for this standpoint are not in Rawls's universal theory of justice. For Rawls, it is not a case of an excessively communally-minded liberal theory. Although it is necessary to perceive his standpoint as considerate to a communitarian principle, for Rawls the defence of community on the national level is led by other motives. The underlying principle of Rawls's theory of trans-national relations is the petrification of the practical politics of international relations (Rawls 1993a, 112), which displays an increasingly weakened orientation towards national sovereignty.

In light of the argument presented so far, the difference between Rawls's theory of international justice and the theory of cosmopolitan justice will now become more apparent. The basic distinction between these two kinds of theory, according to Rawls, who refers to the cosmopolitan theories of Brian Barry, Charles Beitz, Thomas Pogge and David Richards, is that whereas cosmopolitan justice is concerned with individuals, international justice is concerned with entire societies or nations (Rawls 1993a, chaps. 11.1 and 16.3; Barry 1989; Beitz 1979; Pogge 1990; Richards 1982). Nevertheless, the standpoints of the aforementioned theorists of cosmopolitanism are considerably more complex and cannot be understood on the basis of Rawls's theory alone.

Firstly, it is necessary to at least distinguish between libertarian theories and theories of cosmopolitanism. Egalitarian libertarian theories of justice, for example the theories of Hillel Steiner (1994) or Henry Shue (1980),³ are actually, as Rawls claims, concerned with individuals and the human rights which are assigned to human beings on the basis of their common characteristics. In this, they differ from Rawls's point of view, where these rights ensure “a necessary, though not sufficient, standard for the decency of domestic political and social institutions”, which is required from nations as members of a worldwide just society of peoples (Rawls 1993a, 65, 80). If, in Rawls's theory, the rights of individuals are only one of the conditions required for the acceptance of a nation amongst other nations within the framework of the Society of Peoples, the individuals play only an instrumental role here.

Cosmopolitan theory, on the other hand, is not necessarily a libertarian theory. It may be concerned not only with entire peoples such as in Rawls's theory but *also* with individuals as world citizens. This does not necessarily mean that the issue of justice must be approached by cosmopolitan theorists directly in relation to individuals. The cosmopolitan theory of

³ As I focus on Rawls's theory I leave aside right wing libertarian theories, which are not so relevant to the polemics concerning Rawls's theory.

justice can include an approach via institutions of various levels.⁴ An illuminating approach is offered by the model of community levels which includes a local, a national, a regional (or macro-regional), and a global level.⁵ At the same time, it is important to note that cosmopolitanism does not have to result in a global government.⁶ Its implementation is equally possible with the aid of states or peoples and other institutions apart from a world government (Kant 2007).

The principal thought behind the argument so far can be summarised with the following proposition. A cosmopolitan theory can stand between international theories which, like Rawls's theory, depend on the relationship between national communities and ignore individuals on the one hand, and libertarian theories that are primarily focused on an individual and ignore anything other than global institutions, on the other.

It is apparent from the table presented below that the outcomes of the theories mentioned are: a) individuals, b) individuals and communities, c) communities. With respect to this specification, libertarian theory is inclined to a social and political atomism as it tends towards an isolated perception of the individual. International theory, on the other hand, veers towards nationalism by preferring a nation over an individual and towards an instrumental concept of individual rights. This is due to the fact that within the international and trans-national frameworks, it places national interests at the centre of its attention. On the other hand, balanced cosmopolitan theory has the potential to recognize individuals as well as understand them in terms of grounding them within culturally varied communities which can also be distinguished.

<i>a theory</i>	<i>Libertarian</i>	<i>Cosmopolitan</i>	<i>International</i>
a subject	Individual	community and individual	community
a potential	Atomism	inter-cultural cosmopolitanism	nationalism

The distinction, featured in this table, clearly does not exhaust the explanation of complex theories that focus on issues beyond the boundaries of peoples or nations.⁷ Its advantage is that it stems from the polemics between international theory and the cosmopolitan

⁴ Charles Beitz articulates the difference between institutionalised and moral versions of cosmopolitanism, which question this non-mediation. Whilst institutional cosmopolitan justice, for example as presented by Pogge and Beitz, is concerned with various kinds of super-national institutions including global institutions, moral cosmopolitanism is concerned in particular with the moral foundation on which these institutions can be justified —“each being has a global status as a last unit of moral interest.” Beitz 1999, 287; see also Pogge 2001.

⁵ In contrast to the authors mentioned in the previous footnote, Charles Jones (Jones 1999), who considers his theory as morally cosmopolitan, does not accept institutional cosmopolitanism but his neo-Hegelian concept of community offers an adequate grounding.

⁶ Amongst the various types of cosmopolitanism there also exists a so-called legal cosmopolitanism which strives for global governance. This type of government defines a unified legal order of the world republic in which all citizens possess the same rights and duties. Compare Nielsen 1987.

⁷ A more complex system of distinction is presented for example by Michael Walzer (Walzer 1999).

theory which Rawls himself considers a main alternative to his own theory and which he misinterprets as a libertarian theory.

The Principles of Justice

So far I have been concerned with defining the subjects (individuals and nations) of international and cosmopolitan justice. Now I would like to focus on the principles which are supposed to regulate the international/trans-national relations between these subjects. For Rawls, this means the principles which would be chosen in the international original position. In his *A Theory of Justice* Rawls states that the selection of the principles of justice would not be problematic: "I can give only an indication of the principles that would be acknowledged. But, in any case, there would be no surprises, since the principles chosen would, I think, be familiar ones" (Rawls 1971, 378). Rawls here refers to the book on the law of nations by J. L. Brierly, and merely adds that "this work contains all that we need here" (*ibid.*; Brierly 1963, chaps. IV-V). The question remains as to whether peoples would and should decide to accept some familiar and well known principles. It is highly questionable whether the peoples of the third world are particularly happy with contemporary international relations to the extent that they would actually prefer to preserve the status quo.

In Rawls's writings, we can identify several conceptions of the principles of justice and in this way introduce a discussion on these principles between the proponents of the international and cosmopolitan kinds of justice. There are essentially three concepts: firstly, Rawls's formulation of principles of international justice (A) in its initial form in *A Theory of Justice* and (B) in its already developed form in *The Law of Peoples*; secondly Rawls's formulation of more demanding principles which are valid amongst individuals at the national level; and thirdly Rawls's implicit formulation of international/trans-national principles which is rooted in his concept of principles amongst individuals at the national level, i.e. the reformulation of Rawls's principles by other authors who propose an extrapolation of internationally/trans-nationally valid principles from Rawls's principles that regulate relationships between individuals within the national framework because they believe that Rawls's own extrapolation of principles is not adequate.⁸

I A. Principles of International Justice in A Theory of Justice

In his book *A Theory of Justice*, Rawls designates four basic principles of justice which regulate relationships between nations (Rawls 1971, 378):

1. The principle of *equality*: independent peoples who are organised within states have certain equal basic rights which are analogous to equal citizenship rights within a constitutional system.
2. The principle of *self-determination*: the right of peoples to organise their own affairs without any interference from foreign powers.
3. The right to *self-defence*: the right to protect oneself from attacks including the right to form alliances of defence in order to safeguard this right.

⁸ I have italicised the key words of the individual principles in order to guide the reader.

4. The principle of *abiding by treaties*: following treaty obligations providing they are compatible with other principles which adjust relations among states.

I B. Principles of International Justice in the The Law of Peoples

In the *The Law of Peoples*, Rawls develops his principles of justice between peoples further:

1. Peoples are *free* and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe *treaties* and undertakings.
3. Peoples are *equal* and are parties to the agreements that bind them.
4. Peoples are to observe a duty of *non-intervention*.
5. Peoples have the right to *self-defence* but no right to instigate war for reasons other than self-defence.
6. Peoples are to honour *human rights*.
7. Peoples are to observe certain specified restrictions *in the conduct of war*.
8. Peoples have a duty to *assist* other peoples living under unfavourable conditions that prevent their having a just or decent political and social regime (Rawls 1993a, 37).

II. Principles which regulate relations between individuals within the national framework in A Theory of Justice

Before I express my view on the principles of international justice, I would like to draw attention to Rawls's two principles of justice from *A Theory of Justice* which apply to the individual at the national level and which are used by the proponents of global justice to present challenging trans-national principles as Rawls did himself.

1. The principle of freedom: "each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others."
2. The principle of difference: "social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to *everyone's advantage*"; with a focus on the most disadvantaged citizens in Rawls's later versions of the principle of difference (Rawls 1971, 60).⁹

In comparing the two presented conceptions of international principles IA and IB it is possible to say that in its first five principles, conception IB contains four of the principles found in conception IA, slightly re-defined. If I compare Rawls's principles of international justice with Rawls's principles concerned with the individual within the framework of peoples (II), it appears that principles 1 and 2 of conception IA and principle 1 and part of principle 2 of conception IB specifies, more or less, equal rights and liberty to peoples that are analogous to the first principle contained in conception II, i.e. the *principle of liberty* at the level of peoples.

⁹ The second principle also contains a point (b) which is not usually questioned within the framework of the discussion on justice beyond nations/peoples: "attached to positions and offices open to all." For the development of Rawls's formulation of principles of justice, compare with Rawls 1983.

The remaining principles or parts of principles 1-4 found in conception IA and principles 1-5 in conception IB are concerned with the classical principles of international law which do not form a direct parallel with principles at a domestic level. We may add that principle 7 constitutes an addition to principle 5.

The main contribution of conception IB on international law is principles 6 and 8. The focal point of conception IB is respecting human rights (principle 6) and helping peoples to the extent that they are able to establish a decent political and social order (principle 8). In view of Rawls's reduction of human rights (Rawls 1993a, 78-81), the core of the dispute between proponents of international and cosmopolitan kinds of justice resides in principle 8, which plays a less significant role in principle 2 of concept II at the international level, i.e. the *principle of difference* from the domestic level. I would like to show how this principle of the distributive dimension of justice (which sets boundaries on socio-economic inequalities or differences) is interpreted from the perspectives of international and cosmopolitan justice.

Distributive Justice

In *The Law of Peoples*, Rawls defines the consequences of international and cosmopolitan theories in relation to the distributive dimension of justice. He develops principle 8, which is concerned with giving support to other peoples by means of a *duty of assistance* i.e. the *principle of assistance* (Rawls 1993a, 105-120).¹⁰ Rawls asserts that distributive equality in the international context can essentially be considered in terms of an adequate and an inadequate form, i.e. as good in itself or as good required under certain conditions. According to Rawls's international *principle of assistance*, "inequalities are not always unjust, and... when they are, it is only because of their unjust effects on the basic structure of the Society of Peoples, and on relations among peoples and among their members" (*ibid.*, 113). As soon as the demands relating to the political dimension of justice (analogous to the domestic conditions) within the Society of Peoples are fulfilled (i.e. the eradication of the basic suffering of the poor, the stigmatising attitude towards them and obstacles to the fairness of political procedures within the basic structure of society), there is no need for the further elimination of inequalities between peoples, Rawls asserts.

Some theorists of cosmopolitanism, for example Thomas Pogge with his global egalitarian principle, proposed a system which sets boundaries on the increasing inequalities which are not dealt with by Rawls's principle of assistance, whilst showing that this proposal to eliminate inequalities follows from Rawls's own thoughts on justice at the domestic level (Pogge 1994; Rawls 1993b, 115). In relation to this, Charles Beitz analyses two principles: the principle of the redistribution of resources and the global distributive principle. The first principle concerns the hypothetical premise of an autocratic society which is completely dependent on its own resources and labour, and independent from trade with other societies. The principle of the redistribution of resources ensures the transfer of resources from wealthy societies to poor societies for the purpose of establishing political and economical institutions

¹⁰ Compare with the note on mutual assistance between peoples on p. 38 and note 47 on the same page. Also compare with Rawls's view on human rights on p. 65 and note 1 on the same page and with his complete thoughts on human rights in §10 pp. 78-81.

which will ensure the satisfaction of the basic needs of the poor in accordance with human rights.

The global distributive principle, which is similar to Pogge's global egalitarian principle, follows the principle of the redistribution of resources but discards the idea of autocratic society and presumes the exchange of goods and services between individual societies. The resources are continuously provided for poor societies and it is analogous to the procedure by which the socially orientated *principle of difference* from Rawls's *A Theory of Justice* makes provisions for the most disadvantaged citizens at the domestic level.

In order to assess the distributive principles, it is necessary to distinguish between the two types of cosmopolitan justice: continuous and discontinuous justice. Continuous justice tightly binds global justice with national justice which need not be further defined after the designation of global justice. An example is the theory proposed by Phillipe van Parijs which is part of the global requirement that all persons have a basic income (Van Parijs 1995), or Rawls's theory of justice with the global principle of justice added, i.e. the theory Pogge and Beitz explain, as I have shown. However, they do not subscribe to this type of justice. Instead they follow the second type of cosmopolitan justice i.e. discontinuous justice. Rawls overlooks the latter, which contrasts with the first type that is open to the possibility that national justice can be ordered according to a code other than the global one.

What then is the difference between international and cosmopolitan kinds of justice with respect to the distributive dimension of justice? Rawls's model of international justice requires only a political dimension of justice between peoples and does not in any way call into question the possibility that the inhabitants of societies might remain in very unequal circumstances, for example, in relation to the distributive dimension of justice. On the other hand, cosmopolitan justice in its discontinuous version, like Rawls's theory, *does not* require a simplified identification of national justice with global justice as is the case in the continuous version of cosmopolitan justice. Instead, via Beitz's global distributive principle or Pogge's global egalitarian principle, and in contrast to Rawls's theory, cosmopolitan justice requires institutional distributive interventions in the name of world citizens even after a satisfactory relationship in the international political dimension of justice has been achieved. The concept of discontinuous cosmopolitan justice differs from Rawls's international justice in its consideration of the frequently substantial economic inequalities between members of various peoples. The socio-economic dimension of justice in this case is not mechanically subordinated to the political dimension of justice and both types complement each other.

Rawls objects to the viewpoint that the global distribution principle must have a target and a point of limit or a cutoff point. Rawls's principle or "duty of assistance has both: it seeks to raise the world's poor until they are both free and equal citizens of a reasonable liberal society or members of a decent hierarchical society. That is its target. It also has by design a cutoff point, since for each burdened society the principle ceases to apply once the target is reached" (Rawls 1993a, 119). This could be a model for an egalitarian principle with a target, which is lacking in Beitz's and Pogge's principles. If they did designate the target, according to Rawls, his principles and those of Beitz and Pogge would to a large extent be in agreement. However, this is a fallacy because Beitz and Pogge do not deny the need for a target and for the point of limit but they differ in the question of where and how the target would be specified. One of the main differences between Rawls's international

justice and Beitz's and Pogge's cosmopolitan justice is the fact that neither Beitz and Pogge are satisfied with Rawls's *political* dimension of justice and they think that, even after it has been achieved, it is necessary to assert *redistributive* interventions which limit the significant economic and social problems of the members of various peoples.¹¹

Moreover whilst Rawls, as I have already mentioned, formulates his approach with the aim of defining a foreign policy of a liberally democratic order and for creating a Society of Peoples, Beitz and Pogge think that redistribution is necessary before the achievement of a political dimension of justice with respect to the economic and social problems themselves and not only instrumentally with respect to foreign relations (compare with the aforementioned references to pages 3 and 128 in Rawls 1993a). A related question addresses the position of Rawls's principle of assistance in the list of principles. The chronological arrangement of principles adopted by Rawls at the domestic level, i.e. the first principle has priority, the second one is secondary and so on, is not favoured by most proponents of the distributive dimension of cosmopolitan justice. Rawls himself does not entirely adhere to this arrangement of principles at the domestic level. In accordance with the liberal emphasis on freedom, he asserts that the principle of liberty has priority over the distributive principle of difference without any imposition on the liberty principle but on the next page he makes a concession to this in the footnote (Rawls 1993b, 7).¹² He admits that a principle which guarantees the fulfilment of rights to basic security and livelihood for each human being must have priority over the liberty principle. This redefinition transforms Rawls's theory entirely because part of the social security which the principle of difference strives for is guaranteed by Rawls via a kind of zero principle. If this adjustment was valid at the international/trans-national level as well, it would change the discussion so far between the proponents of cosmopolitan and international kinds of justice. Rawls does not make such a concession at the international/trans-national level even though he instrumentally demands the fulfilment of similar requirements.

From International to Global Justice

In the final part of my paper, I will attempt to shed more light on the main causes of the limitations in Rawls's concept of international justice, causes which I have so far only outlined in the analysis of individual parts of his theory. The first cause which prevents Rawls from developing a more adequate conception of the principles of justice, in particular the redistribution principle, is the underestimation of the negative impacts of the present economic globalisation. This shows the limitations of the international conception of social distributive justice which stems from Rawls's liberal theory. The second cause is apparent

¹¹ India is a good example of how it is possible to implement many good political institutions and at the same time ignore many redistributive problems, which the political institutions are not able to deal with. If we take seriously the opinion that India is the largest liberal democracy, we would have to conclude that liberal democratic order is not able to eliminate widespread poverty, the side effect of which is to undermine liberal democratic institutions.

¹² Rawls does make similar formulations in *The Law of Peoples* but there is insufficient grounding in his entire argument to allow for their essential evaluation or to at least eliminate the inconsistency of the order of principles (Rawls 1993a, 64-65, 80).

in a more general form of the first cause. The overall underestimation of a critical approach to the reality leads Rawls to an inadequate conception of basic normative elements of his theory such as the relationship between the individual and the community at the domestic level and the transposition of this relationship onto the international/trans-national level. As I will attempt to demonstrate, the limitations contained within this concept of the relationship between the individual and the community do not allow Rawls to transfer from *local* community over to *national* community and finally to *cosmopolitan* community. The limitations of his theory fix it in a paradox of a national inter-space, which on the one hand already disregards the individual at the international level and on the other hand is not able to transfer to the intercultural plurality of a cosmopolitan community.

To begin with, we will consider the first cause. As I have already stated, Rawls believes that the obstacles which are limiting to the economic and social prosperity of individual peoples lie in political injustice and not in distributive injustice. This is an unsustainable dichotomy, which relies on a rather more internationally isolated (autocratic) society in the situation of global integration where individual societies are significantly interlinked by global financial and labour currents.¹³ The influence of social, economic, political and cultural events through various not only political but mainly economic interventions from abroad can fundamentally and quickly worsen national circumstances, for example living standards, even in the context of political justice at the domestic level. This deterioration in the situation could be a serious threat to such a society. Moreover, these increasing trans-national interventions are already being co-organised by significant international and trans-national institutions which help, for example, world banking and international exchange transactions. They do not operate according to Rawls's code of international justice but on the basis of the unequal economic influence of the individual members of these institutions. Rawls's code of justice is a result of its liberal origin fixed on political justice. This is the reason for A. Brook's critique in which he raises the understandable basic "materialistic" question. He simply asks who is the profit-maker and who is the profit-loser in the political order. This does not mean that he is a reductionist economic determinist. It is important to avoid all reductionisms including political reductionism. That is why I think that cosmopolitan justice is more convincing than Rawls's far too one-sided idea of securing international justice through political justice which underestimates the current global economical pressures. Cosmopolitan justice, in its discontinuous version, could as a first step solve at least the gravest problems of the present system of global capitalism through its distributive justice. This version of cosmopolitan justice allows for the realisation of an appropriate relationship between the principle of liberty and the redistributive principle of difference.

In order to identify the second cause of the limitations of the theory of international justice, it is necessary to analyze Rawls's explanation as to why cosmopolitan justice including its redistributive part could not be implemented (Rawls 1993a, 112nn). Rawls asserts that there would be no consensus for this type of justice. This is an argument which seems to contradict another of Rawls's arguments which states that individual parties in the

¹³ Compare for example with the annual UN reports: *World Economic and Social Survey*; *World Economic Situation and Prospects*; *Human Development Report*. Specific evidence on globalisation is given also by the IMF and the World Bank.

original international situation behind a veil of ignorance (not knowing their future economic and other kinds of security) make their selections according to the choices in the original situation and in that social framework. So, the parties in the international context should be inclined to decide on a global distributive principle in the same way as they did before in the domestic context regarding the distributive principle of difference.

It may be ethnocentric to try to mechanically transfer arguments from the domestic level of Western countries to the global level; however, when considering the principle of difference as distinct from Rawls's theory and its Western domestic arrangements, I think that it is convincing to say that the global distributive principle would be advantageous to less developed countries of the third world to the extent that there is a high probability that they would be willing to accept it.

Discussions on Rawls's argument that there would be no consensus on the implementation of a global distributive principle lead us to problems which are present not only in Rawls's theory of international justice but also in his theory of domestic justice. Already at the domestic level of his theory, we face the motivation problems of individuals as discussed when implementing the principle of difference within the framework of dealing with relationships between the individual and the community. In general, it can be argued that social institutions should ensure sufficiently strong norms of reciprocity at the domestic level in order to ensure a fair sharing of the results of social co-operation whilst this co-operation should be regulated by rules which are accepted by everyone.

The problem with most liberal theories, including Rawls's theory, is that they lack motivation incentives which would lead citizens to promote the values of a liberal society (compare Taylor 2003, 195-212; Taylor 1978, 133-154). It should be acknowledged that liberalism on the one hand offers citizens the basic framework of a just society whilst ensuring basic universal rights and freedoms and on the other hand it requires a certain amount of political responsibility and solidarity from the citizens. This requirement can be achieved only if members of the community have a sufficiently developed sense of obligation to other people. The mutual tie of obligation and with it also the motivation of the subject to respect certain normative rules does not arise from a sole insistence on promoting some neutral rule but it develops within individuals from relationships based on mutual recognition within the community. It is not only the ability but also the motivated willingness of citizens to accept responsibility for the values of the community and the society and to actively promote them, which enables citizens to identify with the demands of political institutions. The responsibility and participation of citizens can be expected only in cases where the political institutions represent the actual citizens and in this process create an environment in which the citizens can identify with the political community.

To a certain degree, Rawls accepts this argument. If he further developed his argument and explained that his standpoint follows not only from Kant but also from Hegel,¹⁴ he

¹⁴ Rawls's standpoint is an egalitarian liberalism of freedom, which on the one hand follows on and significantly evaluates Kant's, Hegel's and Mill's teachings but according to my opinion not to a sufficient extent. This concerns in particular Hegel's conception of well-ordered societies which connects the lives of individuals with their community (Rawls 1993a, 72-73, 127; Rawls 2000, 329-372; Hegel 1991, §308).

would have opened up a space in his theory for a better evaluation of a neo-Hegelian and a more community-based concept of society which is bound by the mutual recognition of individuals and which offers people motivation towards solidarity (Rawls 1993a, 72-73; Hegel 1991, §308). This does not mean that Rawls should have slipped to a *substantialist* concept of community which defines the content of practices within the community. Nevertheless a better specification with the aid of a *formal* conception of community would benefit his theory. Axel Honneth follows Hegel in this respect and discusses the relationship of mutual recognition between individuals within the community as a *basic good* through which people can find self-fulfilment (Honneth 2000, 28; Honneth 1992; Taylor 1985; Taylor 1995). From this perspective and with reference to distributive justice, Rawls is correct to talk about a *good* which is to be distributed but he does underestimate the *basic good* which is a precondition of this other good and which consists of relationships based on the mutual recognition between people within the framework of a community. However, in terms of the issue of cosmopolitanism, Honneth has neither used nor developed this argument in his conception of international relations so far (Honneth 2009).

The insufficient inclusion of individuals in these relationships in Rawls's orientated theory means that individuals are not sufficiently willing to identify with the community even at a domestic level. Their atomisation is then understandably reproduced in forms of communities of even larger numbers at regional and global levels. If there was a better environment for grounding individuals within the community, they would be able to integrate better in relationships within the domestic community and to express their solidarity. This framework could then be transgressed and they would be able to identify inter-culturally in solidarity with regional or macro-regional communities as well as with the cosmopolitan community. Specific forms of communities can then even form across different territories.

On the one hand, the absence of grounding in relationships of mutual recognition leads the largely isolated and alienated individuals to supplementary ties of tribalism or nationalism. Due to the fact that Rawls's concept of international justice follows on from sources of liberal nationalism, it finds itself in a paradoxical position from the point of liberalism because it limits a liberal defence of individual rights. As I have shown in the table above and in the related discussion, Rawls's conception of international justice does not fully acknowledge the individual aspect of human beings and it relies on the relationship between collective units of peoples. On the other hand, it relies on insufficiently socially bound individuals. This situation does not allow individuals to step beyond national integration and transfer to the development of relationships based on mutual recognition at the wider levels of a community such as the regional and global levels. The paradox of international theory which has its origin in liberal nationalism is, therefore, found in the tension between an excessively strong individualism within the domestic framework and nationalism within the international framework.

Cosmopolitan theories of justice have the potential to deal with this paradox in their intercultural form that does not lose sight either of individuals on the one hand or of larger forms of communities than the national community on the other. But if cosmopolitan theory was not, in relation to the Hegelian approach mentioned above, grounded in relationships based on the mutual recognition of subjects within the community, it would suffer from the same problems we mentioned in regard to Rawls's international theory.

This is particularly apparent to neo-Hegelian proponents of cosmopolitan justice who are reviving the cosmopolitan potential of Hegel's theory which is present in Hegel's critique of cosmopolitanism that is not communally grounded (compare Fine 2003; Fine 2007; Jones 1999).

Although Rawls does partly include a Hegelian concept of community in his international theory, this influence is not projected onto other parts of his theory, not to mention the possibility that he might use it to redefine the main characteristics of his theory. Despite these limitations, Rawls maintains in a tolerant and inter-cultural way that Hegel's concept of community can be a beneficial element not only for the model of Western societies but also as a model for societies which are not democratic and liberal but which possess a legitimate status as decent societies and observe basic human rights.¹⁵ As I have already argued, Rawls's conception of international justice is constituted as a concept of a Society of Peoples which can have either a liberal democratic government or a decent government which enables the realisation of well-ordered hierarchical societies. As Rawls places higher demands on liberal governments than on hierarchic governments, the concept of a society of decent hierarchic peoples actually presents a minimal universal concept of community in his theory. This concept of community is compatible with Hegel's concept of community but it has to be incorporated into the theory in order to include a people within the inter-cultural society of peoples. Despite the fact that Hegel's concept of community is interpreted from a different perspective in Rawls's theory of international justice, it plays a significant inter-cultural role in it because it is conceived as a connecting element between various types of societies within the framework of international justice. This role is important especially for the neo-Hegelian theories that develop the idea of cosmopolitan justice.

Conclusion

It is possible to summarise the main thoughts on the unsustainable theory of international justice and the need for a global justice in two parts. Firstly, the political dimension of justice emphasised by Rawls and many other liberal theorists must be balanced by a distributive dimension of justice which is the focus of authors who realise the significance of social justice. Secondly, the addition of a distributive dimension to the political dimension would be insufficient if it were not supported by an aspect of justice which is focused more on relationships of mutual recognition between individuals within a community. These two thoughts point to the need to move away from a theory of international justice, based on Rawls's liberal nationalism, to a theory of cosmopolitan justice which does not ignore current substantial inequalities in the global distribution between individuals and between communities and which enables their intercultural co-existence.

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¹⁵ See an intercultural approach in the case of a dialogue between Islam and the West in Hrubec (2009).

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