

Phil 115, June 27, 2007
The Law of Peoples

Last time we considered Pogge's proposal for extending Rawls's conception of domestic justice. In our last two meetings, we will consider Rawls's own proposal: the "Law of Peoples."

Overview

As you read for today, Rawls doesn't take much of Pogge's advice. He insists on something close to R2: a second original position in which parties represent "peoples," rather than individuals. And the resulting principles of international justice are more or less the traditional law of nations.

Rawls takes a three-stage approach to extending his conception of domestic justice:

The first stage of ideal theory is a social contract among "reasonable liberal peoples," whose societies are (more or less) well-ordered by the two principles.

The second stage of ideal theory extends this social contract to include both liberal and "decent peoples," whose societies (i) protect human rights, (ii) allow their members to have some role in making political decisions, and (iii) adhere to international law.

The third stage, which is of nonideal theory, develops the response of the society of peoples to "outlaw states," which do not respect international law, and "burdened societies," which lack the resources necessary to secure domestic justice.

On the empirical assumption that many of the most pressing problems of foreign policy arise from unjust political institutions, Rawls sets them aside. He conjectures that problems such as (i) unjust war, (ii) immigration, and (iii) weapons of mass destruction will tend to fade as just political institutions are established. (i) Decent peoples do not go to war with one another; they lack a comprehensive doctrine that would motivate them to. (ii) Immigration is caused by persecution of minorities, famines resulting from poor government, and overpopulation arising from the inequality of women. (iii) Weapons of mass destruction are necessary only to deter outlaw states.

What are peoples?

Rawls accepts something like Pogge's R2. The basic units of international justice are groups, not individuals. There are two original positions, one in which the parties represent individuals, another in which the parties represent groups. In another sense, however, Rawls rejects R2. The groups are not states, but "peoples." In the second original position, the parties represent peoples.

Liberal peoples have three features:

- (i) they have a reasonably just constitutional democratic government;
- (ii) they are united by "common sympathies," which are presumably the result of a common language, history, and political culture;

- (iii) and they are “reasonable,” in the sense that they are willing to propose and honor fair terms of cooperation provided others do likewise.

Presumably, decent peoples meet (ii) and (iii), as well as some suitably altered version of (i).

Contrast states:

- First, states retain the traditional powers of sovereignty. They reserve the right to go to war in pursuit of their own aims and are free to deal with their own people as they see fit.
- Second, states are purely “rational,” not “reasonable.” They are not willing to abide by terms of reciprocity (except for strategic reasons).

The fundamental interests of a liberal people include (i) their political independence, (ii) their free culture with its civil liberties, (iii) their security, (iv) protection of their territory, (v) well-being of their citizens, and (vi) their self-respect as a people. The parties representing peoples select principles on the basis of these interests.

Contrast individual citizens: Individual citizens, unlike (liberal?) peoples, have conceptions of the good. Thus, the parties representing citizens select principles so as to maximize their share of primary goods. The parties representing peoples do not.

Contrast states: States’ interests can include such things as power, conversion, empire, prestige, and glory.

The principles of the Law of Peoples:

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 of self-defense but no right to instigate war for reasons other than self-defense.
6. Peoples are to honor 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 unfavorable conditions that prevent their having a just or decent political and social regime.

An important consequence: “Here I follow Kant’s lead in *Perpetual Peace* (1795) in thinking that a world government—by which I mean a unified political regime with the legal powers normally exercised by central governments—would either be a global despotism or else would rule over a fragile empire torn by frequent civil strife as various regions and peoples tried to gain their political freedom and autonomy” (36).

This way of putting it, however, makes it sound as though the parties reject a world government simply because it is unworkable. The parties seem to have a more fundamental reason for rejecting it. A world government would fail to respect the political independence of peoples.

Nevertheless, some framework for cooperative organizations might be affirmed in the original position. These might include an organization for fair trade (WTO?), a cooperative bank (World Bank?), and the Confederation of Peoples (UN?).

Recall that Pogge argued that the parties in R2 would reject the traditional law of nations for three main reasons:

1. Some states may be too poor to secure the equal basic liberties for their citizens. The traditional law of nations does not require more fortunate states to provide aid.
2. In the absence of some mechanism for adjudication and enforcement, the international order is likely to be unstable, threatening just domestic institutions.
3. Just states have no right (let alone duty) to intervene to reform unjust states.

Rawls is not terribly specific about why these principles would be chosen in the original position. It is difficult even to reconstruct arguments on his behalf, because the interests of the parties are not very clearly stated. Again, we're told that the fundamental interests of a liberal people include (i) their political independence as a people, (ii) their free culture with its civil liberties, (iii) their security, (iv) protection of their territory, (v) well-being of their citizens, and (vi) their self-respect as a people. Little is said about what these interests come to and how they are to be weighed against one another. Offhand, (v) would seem to argue for greater international redistribution than Principle 8 allows. So perhaps (v) is overridden by some other interest. But which one? Why does it take priority?

More fundamentally, it is not clear *why* peoples are supposed to have these interests. Rawls claims that the interests of a liberal people are those specified by their conception of justice. Rawls may feel pressed to say this, because he elsewhere denies that liberal societies have any ends of their own, other than justice for their citizens. In keeping with the social contract tradition, society is viewed as having only those aims that individuals, through their social contract, imbue it with. Yet the two principles would seem to say nothing about (i), (iv), and (vi). Where, then, do these interests come from? Perhaps peoples have their interests of their own, over and above those specified in a conception of justice?

Boundaries:

Rawls goes on to say that although a society's boundaries may be arbitrary, a people, through their government, must take responsibility for their territory and their population. They must manage their affairs so that that territory is able to support them in perpetuity. They have to make do with what they have. "[T]hey cannot make up for their irresponsibility in caring for their land and its natural resources by conquest in war or by migrating into another people's territory without their consent" (39). The reason for this assignment of responsibility is that "unless a definite agent is given responsibility for maintaining an asset and bears the responsibility and loss for not doing so, that asset tends to deteriorate." The concern that these boundaries are arbitrary is misplaced. "In the absence of a world-state, there *must* be boundaries of some kind, which when viewed in isolation will seem arbitrary, and depend to some degree on historical circumstances."

This passage is puzzling. Rawls seems to suggest that boundaries are justified by the Law of Peoples on two grounds: (i) given that there is no world-state, there must be some boundaries, and (ii) assigning a people responsibility for a particular territory is necessary to ensure that it does not deteriorate. Yet Rawls says that one of a people's interests is supposed to be the preservation of their territory. Parties in the second original position select principles with this interest in mind. So why aren't boundaries directly justified by this interest?

Furthermore, (i) and (ii) fall short of justifying present national boundaries. All that (i) and (ii) support is that a people have some territory. This would be consistent with assigning territories to peoples in a way that would distribute natural resources more equitably. Presumably, the concern about the *arbitrariness* of present boundaries is a concern about their *fairness*. Later, Rawls suggests that the concern with natural resources is overblown. “[B]ecause... the crucial element in how a country fares is its political culture—its members’ political and civic virtues—and not the level of its resources, the arbitrariness of the distribution of resources causes no difficulty” (117).

In note 48, Rawls observes that the flip side of a people's responsibility to husband their territory is a qualified right to limit immigration. Other *peoples* cannot migrate into their territory to make up for irresponsible management. It is not clear how this applies to the more common case in which *individuals* migrate into a territory because their own governments have mismanaged their territory. That is, it is unclear how the responsibility of a people for their territory is related to the responsibility of individual members of that people. Rawls adds another legitimate ground for restricting immigration: a people's interest in protecting their political culture.

Why peoples?

The most fundamental question about Rawls's extension of his theory to international justice is why he takes peoples, rather than individuals, as the basic units. This choice to treat peoples as basic is consequential. As we will see, the interests of individuals can conflict with the interests of peoples. By taking the interests of peoples as basic, Rawls sometimes allows the interests of individuals to be, in effect, overridden.

There seem to be three kinds of justification for treating peoples as basic. None of them seems fully satisfactory.

1. Realism:

For the foreseeable future, the world will be organized as though peoples were basic agents, so we need principles governing peoples' relations with one another.

Problems:

We need to separate “ought” from “is.” What kind of world it is possible for us to realize is one thing, and what kind of world would be just is another.

2. Indirect individualism:

Among the many interests that individuals have is an interest in being part of a people whose interests are satisfied. Hence, we respect the interests of peoples only in order to respect the interests of individuals.

Problems:

- Why not have the parties represent individuals, with this interest added to their other interests?
- Why not a liberal world-state, with freedom of association? Justice as fairness recognizes that individuals may have an interest in belonging to certain groups and in seeing the interests of those groups satisfied. But it accommodates this interest by granting individuals freedom of association within a liberal society. It does not force everyone to live in a society organized around a single comprehensive doctrine.

3. Nonindividualism:

Individual persons are not the only ultimate units of moral concern. Peoples are also ultimate units of moral concern. Peoples have interests of their own, over and above the interests of individuals, and these interests need to be respected.

Problems:

- Hard to accept, both morally and metaphysically. May seem like a kind of idolatry.
- Seems to conflict with Rawls's denial that groups have any interests over and above those of their individual members. Recall Rawls's criticism of utilitarianism: that it does not take seriously the distinction between persons.

The Law of Peoples sometimes appears to subordinate the interests of individuals to the interests of peoples. This makes it all the more pressing to understand what reasons we might have for taking peoples as basic.

These conflicts come into view when we consider the second and third stages of Rawls's extension of his theory to the international sphere. Here liberal societies have to decide how to deal with "decent nonliberal peoples," "outlaw states," and "burdened societies."

Decent nonliberal peoples

The second stage of ideal theory extends the Society of Peoples to include nonliberal peoples. Rawls asks whether there are kinds of nonliberal peoples that liberal peoples might have reason to tolerate, where "tolerate" means not only "refrain from sanctioning," but also "recognize as equal members of the Society of Peoples." These would be "decent" nonliberal peoples.

Rawls believes there is at least one kind of decent nonliberal people: a decent hierarchical people, who have a decent consultation hierarchy as their basic structure.

A decent consultation hierarchy is not liberal. First, persons are not viewed as free and equal citizens. Instead, they are viewed as essentially belonging to different groups, which occupy different strata of the hierarchy. Second, the political institutions are not those of a constitutional democracy. In Rawls's fictional Muslim decent hierarchical people of "Kazanistan," for example, there is no separation of mosque and state, and only Muslims can hold office.

Nevertheless, a decent consultation hierarchy is decent and hence qualifies for membership in the Society of Peoples. There are two conditions of decency.

The external condition of decency:

Decent hierarchical peoples are nonaggressive and pursue their interests as a people only by peaceful means. This is so even though, unlike liberal peoples, they have, as a people, a comprehensive doctrine, possibly religious.

The internal condition of decency:

A decent hierarchical people is regulated by a “common good idea of justice,”

- (i) which secures human rights for all, include life, liberty, property, and formal equality;
- (ii) whose law imposes genuine moral duties and obligations on all as moral agents capable of cooperation (contrast commands imposed on slaves by force); and
- (iii) whose legal officers reasonably and sincerely believe that the law is guided by such a common good idea of justice.

(i) and (ii) are linked. Persons are viewed as capable of moral learning, cooperation, and the attending rights and duties. This implies that their human rights are respected. Human rights are “necessary conditions of any system of social cooperation” (68).

Decent hierarchical peoples have further internal features, which perhaps are supposed to follow from those already mentioned.

- (iv) There is some degree of religious toleration, although these freedoms are not as extensive or as equal as they are in liberal societies.
- (v) Emigration is permitted.
- (vi) Different groups are consulted in political decisions. Persons as members of associations may express dissent and are entitled to be taken seriously. Their dissent can influence the outcome.

Rawls seems to find this last feature especially significant. The fact that decent consultation hierarchies allow their members to influence political decisions is what qualifies them as “well-ordered” and distinguishes them from “benevolent absolutisms,” which merely forswear aggression and honor human rights.

Rawls claims that decent hierarchical peoples would adopt the same Law of Peoples. This seems plausible. After all, decent hierarchical peoples are assumed to be nonaggressive, to care about their political independence, and to respect human rights. Indeed, the Law of Peoples seems tailored to accommodate decent hierarchical peoples.

The more difficult question, it seems, is not why decent consultation hierarchies would accept the Law of Peoples, but instead why liberal peoples would accept it. Why wouldn't liberal peoples insist on a more demanding Law of Peoples, which required not simply respect for human rights, but also full recognition of freedom and equality of all persons?

Consider Rifka, a Jewish woman living in Kazanistan. Rifka is denied equal religious freedom and equal rights of political participation. She does not have a vote and cannot run for office. If Rifka were living in an otherwise liberal society, we would find this intolerable. We would see

ourselves as having a duty to rectify it. So why should we find it tolerable when it happens in Kazanistan?

It does not seem enough to say that the other members of the society want to live in a Muslim consultation hierarchy, so it is simply Rifka's tough luck to be in the minority. We don't think that *our* equal religious freedoms and rights of democratic participation could be overturned by a majority referendum.

Nor does it seem enough to say that Rifka is free to leave. Her having this freedom in a liberal society would not make it acceptable for her political and religious liberties to be curtailed.

Rawls offers three kinds of argument:

1. Decent hierarchical peoples, because they give all members a role in political decisions, are capable of reforming themselves. Moreover, by recognizing decent hierarchical peoples as equals, we encourage reform. Failing to recognize them is likely to backfire.

2. "Leaving aside the deep question of whether some forms of culture and ways of life are good in themselves (as I believe they are), it is surely, *ceteris paribus*, a *good for individuals* and associations to be attached to their particular culture and to take part in its common public and civic life.... This is no small thing. It argues for preserving significant room for the idea of a people's self-determination" (61, my emphasis).

3. "Self-determination, duly constrained by appropriate conditions, is an important *good for a people*, and... the foreign policy of liberal peoples should recognize that good" (85, my emphasis).

Question: How are these arguments for tolerating decent nonliberal peoples related to the three grounds for treating peoples as basic units—realism, indirect individualism, nonindividualism?

4. Recall that Rawls is not primarily interested in developing a blueprint for international institutions, but instead for articulating the proper foreign policy of a liberal society. In order to be true to our liberal commitments, he seems to think, our foreign policy must satisfy something like the liberal principle of legitimacy: that it could be affirmed by peoples who are not fully reasonable, but nevertheless decent.

Question: Why should we care whether people who are *not fully reasonable* could affirm our foreign policy?

Outlaw states:

How are liberal peoples to respond to outlaw states, which are either aggressive, or fail to respect human rights, or both?

Well-ordered peoples may wage war against outlaw states that threaten them (or are determined to violate human rights, see pp. 93 n. 6), but only in conformity with the following conditions (among others):

- (i) that the war is waged with the aim of peace,
- (ii) that human rights are respected, insofar as this is possible, and
- (iii) that the civilian population is not targeted (except in supreme emergency), since only the outlaw state's leaders and officials are responsible. While the soldiers are also not responsible, they must be targeted as a matter of self-defense.

Condition (ii) deserves further comment. Why aren't individuals responsible for what outlaw states do? The answer is that outlaw states are not well-ordered; they do not allow individuals to influence the outcome of political decisions. The implication is that citizens of democracies and members of decent consultation hierarchies *are* responsible for what their governments do.

Burdened societies:

How are liberal peoples to respond to burdened societies, which are nonaggressive, but “lack the political and cultural traditions, the human capital and know-how, and, often, the material and technological resources needed to be well-ordered” (106)?

Rawls holds that we have a duty to help burdened societies become well-ordered, but nothing beyond that. The Law of Peoples does not include a principle of distributive justice to regulate continuously economic and social inequalities among peoples. Why is this? Why not a more demanding principle of international distributive justice?

1. The duty of assistance is chosen in the second original position, it seems, because the fundamental interest of a people is their *having well-ordered institutions*. This view contrasts with a cosmopolitan view, whose ultimate concern “is the well-being of individuals and not the justice of societies” (119). Rawls elsewhere claims that liberal societies have no ends of their own, other than justice for their citizens.

- But if individuals, rather than peoples, were represented in the second original position, then one would expect that a more demanding principle would be selected.

2. A more demanding principle of international distributive justice would have “unacceptable results.” For example, one society decides to industrialize and increase its rate of saving, whereas the other, “preferring a more pastoral and leisurely society,” does not (117). When the first society becomes wealthier, is it required to transfer some of its wealth to the second?

- First, it is not clear, even in the domestic case, that justice requires people to bear the burdens of their choices.
- Second, we can imagine situations in which one society is worse off than another (but still not “burdened,” in Rawls’s sense), for reasons that are independent of their choices.
- Finally, why should the individual members of a society be disadvantaged because of what their society has chosen?

3. The concerns that motivate a more demanding principle of distributive justice in the domestic context are not present in the international context. Once basic needs are met, economic equality matters for two principal reasons: (i) to support self-respect and (ii) to ensure the fair value of the political liberties. Domestic inequalities are more threatening to self-respect and the fairness of the domestic political process than international inequalities.