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A Poggean passport for fairness? Why Rawls' Theory of Justice did not become global

Shmuel Nili*

Department of Political Science, University of Notre Dame, South Bend, IN, USA

Abstract

Thomas Pogge has been challenging liberal thinking on global politics, often through critical engagement with John Rawls' work. Pogge presents both normative and empirical arguments against Rawls: normatively, Rawls' domestic Theory of Justice (TJ) and global Law of Peoples (LP) are incompatible ideal theories; empirically, LP is too removed from the actual world to guide the foreign policy of liberal societies. My main purpose here is to contest the first, ideal theory criticism in order to direct more attention to the second, non-ideal objection. I argue against Pogge that TJ and LP can be read as coherent, once one employs a Rousseauian rather than Pogge's economic Kantian reading of TJ. The first two sections present Pogge's view of TJ and contrast it with a Rousseauian alternative that is less cosmopolitan and economic and much more focused on the democratic and sovereign context of justice as fairness. The third section seeks to refute Pogge's incoherence arguments, which encompass the identity of the parties to the international original position, their motivations and their decisions. Instead of a conclusion, the last section emphasizes LP's non-ideal problems, and suggests that insofar as LP is the most robust liberal ideal theory of global politics, its empirical failure indicates the need to shift global justice theorizing even more to the non-ideal realm.

Keywords: *Rawls; Pogge; global justice; ideal theory; non-ideal theory; cosmopolitanism; statism; Rousseau; Kant; democracy*

INTRODUCTION

John Rawls changed the way liberals think about a just society. Thomas Pogge, one of Rawls' most prominent students, is challenging how liberals think about a just world. Much of this challenge comes from Pogge's critical engagement with his teacher. Pogge's work, itself a rich and still developing corpus, reveals two broad lines of argument against Rawls. The first is normative: Rawls' domestic Theory of Justice (TJ) and global Law of Peoples (LP) present incompatible ideal theories.¹ The

*Correspondence to: Shmuel Nili, Department of Political Science, University of Notre Dame, South Bend, IN, USA. Email: snili@nd.edu

second criticism is empirical: LP is too removed from the actual world to fulfill its explicit purpose—to guide the foreign policy of liberal societies. I believe the second, empirical criticism, is justified and important. But we will be better placed to engage it if we see why the first, normative accusation is misguided. Accordingly, my main purpose here is to argue that Rawls' domestic and global theories can be read as coherent.

Most scholars who have tried to defend the unity of Rawls' work have done so by emphasizing the connection between LP and Political Liberalism (PL), also following Rawls himself.² But this cannot be a convincing response to Pogge, who generally sees the later Rawls as a problematic 'dilution' of justice as fairness, bending TJ's arguments so as to ensure that the conclusions would be 'as bland, traditional, and mainstream American as possible.'³ I therefore make a conscious effort to show against Pogge that LP coheres specifically with TJ.

Pogge makes five main claims regarding the incoherence between Rawls' domestic and global theories: (1) an international original position (OP) ought to represent either persons alone, or at least persons alongside peoples, in contrast to only peoples as is the case in LP; (2) its parties should choose a public criterion of justice as in TJ, rather than directly select a scheme of rules; (3) like the domestic economy, the global economy should be regulated by an egalitarian principle such as the difference principle, rather than the modest duty of assistance that Rawls postulates; (4) just as TJ assumed a domestic 'closed society,' so should Rawls' global theory assume the entire world as a closed society—there is no reason to discount *a-priori* global modes of governance; and (5) the duty Rawls holds in LP to afford equal respect to certain non-liberal regimes distorts the idea of liberal toleration.⁴

These accusations follow directly from what I call here Pogge's Kantian economic reading of TJ, introduced in the first section. This reading understands TJ as relevant to all social systems in which the question of bargaining power distribution arises, and accordingly identifies a global 'basic structure' to which justice as fairness should be applied. The second section presents an alternative Rousseauian reading of TJ that is less cosmopolitan and much more focused on the sovereign democratic rather than economic setting as giving rise to Rawls' two principles of justice.

Following a brief summary of LP's main ideas, the third, central part of the paper applies the Rousseauian interpretation to each one of Pogge's five incoherence arguments in turn: under the Rousseauian view, (1) Rawls' choice of peoples rather than individuals as parties for the international OP is not an abandonment of TJ's normative individualism; (2) his avoidance of a global criterion of justice in favor of rules of conduct coheres with TJ's notion of public affirmation of rights and liberties by sovereign institutions; (3) there is no incoherence in rejecting a global difference principle since this principle can be read already in TJ as arising from a sovereign democratic setting; (4) the context of sovereignty explains why Rawls does not treat the world as a 'closed system' as is the case in TJ; and (5) the respect accorded by liberal democracies to 'decent hierarchies' can be justified through their public affirmation of their members' fundamental rights. The main problem with the idea of

equal respect toward decent hierarchies, as with LP in general, is not normative but empirical.

Before moving to the discussion itself, a few clarifications are in order. First, I am not arguing that the Rousseauian and Kantian interpretations of TJ are necessarily incompatible: Rawls himself, after all, presented a Kantian interpretation of justice as fairness, saw Kant as ‘the best interpreter of Rousseau,’⁵ and explicitly attempted to combine elements from both in his work. Accordingly, the claim here is that TJ *can* rather than *ought to* be read differently than how it is read by Pogge, and that the differences are important when one wishes to discuss Rawls at the global level. Second, I am not defending Rawls’ coherence as a step toward making him convincing. I believe LP fails. But, as I note in the conclusion, insofar as LP is the most systematic liberal ideal theory of global politics, it matters *why* it fails. If the reason has to do with the actual world rather than with ideal theory, this might help to shift the global justice debate even more toward a manifestly non-ideal reality—one so far from a ‘realistic utopia’⁶ that we cannot even begin to imagine how such a utopia should look. Yet, thirdly, I nonetheless present Rawls’ ideal theory in what I take to be its strongest possible form. This entails, like other interpreters, filling in certain points where Rawls’ argument is not entirely developed, or even, in some (rare) cases, presenting a justification that replaces what Rawls himself says with what I believe he should have said. In this I follow Pogge himself, asserting that ‘my deepest allegiance here is not to Rawls but to his foremost ideas. These ideas have a life and power independent of Rawls, which is testimony, surely, to the greatness of both.’⁷

POGGE’S ECONOMIC KANTIANISM

Under Pogge’s interpretation, TJ’s most ‘radical’ ideas—and hence the most challenging and important ones—are the focus on the basic structure as the site of justice and the concern for the least advantaged. These, Pogge asserts, are the two elements that make Rawls a ‘radical thinker.’⁸ I pursue each of them in turn.

TJ’s identification of the basic structure as the main interest of political philosophy is celebrated by Pogge as an extremely important methodological achievement. It allows us to see that the problem of social justice is qualitatively different from that of individual morality—that politics cannot be reduced to aggregate ethics. Pogge explicitly sees the path to this achievement as a Kantian one: TJ takes a ‘Kantian step beyond Kant,’⁹ avoiding, among other things, two problems that Kant’s categorical imperative encounters. First, the categorical imperative is apolitical, addressing individual, not collective decision making: ‘It is not unfair,’ Pogge claims, ‘to attribute to Kant the rather naïve hope that if only everyone could be brought to make individual practical decisions in terms of the categorical imperative, the problem of social justice would take care of itself.’¹⁰ Second, related, the ‘rigorism’ of the categorical imperative—the demand ‘to act right here and now as if the world

conformed to my ideal of the realm of ends’—is extremely austere in that it completely ignores the agent’s happiness.

Rawls’ procedural Kantianism, embodied in the OP, handles both of these problems: Rawls is much more political than Kant, directly addressing the question of society’s basic structure rather than hoping the question would simply vanish through individual moral conduct. This represents ‘a radicalization of Kant’s own demand for unity [of reason], now not only concerning *my* but *our* moral fixed points.’¹¹ Through this radicalization, Rawls addresses Kant’s austerity problem, since the collective procedure has to account for personal happiness: behind the veil of ignorance, as Pogge sees it,

I, as moral agent, must take others into account—not only as persons affected by my actions, but also as agents; and if as agents, then not just as fictitious others in general . . . but as real, concrete morally competent others with whom I can discuss my legislative deliberations . . . once we have taken this step of acknowledging each other as equal partners in a collective enterprise of moral deliberation, the austerity problem disappears: as [a] *collective* moral agent, we must take our happiness into account, because otherwise *we would simply be out of work*.¹²

For Pogge, the main implication of this concern for happiness is concern for economic resources. This focus can be evinced, for example, in Pogge’s sharp criticism of what he saw, already in the 1980s, as Rawls’ dilution of TJ’s egalitarianism. According to Pogge, Rawls’ post-TJ essays have been damaging his own theory by letting the lexical priority of the basic liberties ‘undermine his priority concern for the least advantaged.’¹³ Yet without the difference principle, the basic liberties would be of limited value at best: neither recognizing basic liberties publicly nor protecting them would suffice to achieve ‘worthwhile freedom,’ in the lack of the *means* necessary to exercise these liberties.¹⁴ Therefore, in order to maintain the distinctiveness and appeal of justice as fairness, we have to follow the exact opposite direction of Rawls’ post-TJ work, which often displays a ‘stunning lack of interest in basic social and economic needs.’¹⁵

At the immediate level, these accusations demonstrate Pogge’s economic emphasis. At a deeper level, they also indicate the multiple ways in which the OP is significant for his Kantian interpretation. Pogge can be said to subscribe to the widespread conviction that Rawlsian egalitarianism crucially depends on the game theory calculations conducted behind the OP’s veil of ignorance. Attributing this position to Pogge seems reasonable given his effort (for example when seeking to correct the flaws he perceives in Rawls’ lexical priority) to modify Rawls’ argument only in a very circumscribed way: even when reconstructing Rawls to say what he thinks Rawls *should* have said, Pogge explicitly wishes to work with maximin and avoid even a ‘radical redescription of the original position,’ let alone its complete abandonment.¹⁶ Pogge therefore seems committed to the idea that the OP itself, as the theoretical construct underlying maximin, is a necessary condition for any theory to remain true to TJ’s spirit. In this sense, one can say that Pogge not only views the difference principle as the core of justice as fairness: the OP is also indispensable for the derivation of this principle.

Now, the centrality of both the OP and the difference principle has been emphasized by many other interpreters of TJ aside from Pogge.¹⁷ What has famously distinguished Pogge's reading is its connection between them and a strong—often Kantian—cosmopolitanism. The basis of this cosmopolitan interpretation is found in Pogge's view of the *setting* of justice as fairness—that is, the conditions necessary for the two principles of justice to be applied. Pogge believes that the two principles are 'applicable to *all* essentially self-contained social systems existing under the circumstances of justice.'¹⁸ These are predominantly (though not only) economic conditions, since the circumstances of justice are quintessentially economic—they obtain, in Rawls' words, 'whenever persons put forward conflicting claims to the division of social advantages under conditions of moderate scarcity.'¹⁹ There is, therefore, no essential difference between the domestic and the global contexts, insofar as in both there is a clear need to ensure 'a fair distribution of bargaining power among the participants' through the 'special mechanisms' of the OP.²⁰ 'Any comprehensive social system,' Pogge declares, 'has a basic structure and thus falls within the purview of Rawls' conception of justice.'²¹ It follows that justice as fairness is applicable, surely as an ideal theory, not only to any domestic society in the world, but also to the world itself as a whole.

The cosmopolitan implications of Pogge's reading of TJ are therefore clear: insofar as political institutions are not currently organized to implement egalitarian concerns at the international level, they need to be reformed toward global modes of governance, in accordance with the (essentially economic) rationality of justice captured in the OP. Indeed, in this important sense, Pogge's interpretation of TJ sees the *economic as determining the political*. However, a qualification is in order. Even if Pogge's strongest emphases are economic, he certainly does *not* think that individuals' economic interests in TJ's well-ordered society are the only interests they have in mind, neither does he argue that the members of the well-ordered society have purely instrumental Hobbessian interests. Pogge, in fact, had defended Rawls' picture of the person as a social being with much more than economic calculative needs.²²

Nonetheless, the recognition that TJ's agent has social features does not by itself explicate the full range of this agent's social needs that ought to be provided by society, or give us a clear priority of these needs. This poses the question—what are the most essential primary goods that society's basic structure must secure for its members? Rawls is explicit that self-respect is 'perhaps the most important primary good.'²³ And 'the basis for self-respect in a just society,' he exclaims, is *not* 'one's income share but the publicly affirmed distribution of fundamental rights and liberties.'²⁴ While I grant that Pogge's reading of TJ is a plausible one, I also believe that it is equally plausible to conceive the focus of justice as fairness, and specifically of the basic structure, as found not in the difference principle directly, but rather in this notion of public affirmation by sovereign institutions, and the psychological impact it has over society's members. I now turn to elaborate this alternative.

A ROUSSEAUIAN READING OF JUSTICE AS FAIRNESS

The idea of public affirmation is fundamental to TJ's well-ordered society, defined as one 'in which everyone accepts and knows that the others accept the same principles of justice, and the basic social institutions satisfy and are known to satisfy these principles.'²⁵ It can be argued that it is because of the need for public affirmation that Rawls attaches much importance to the process through which a well-ordered society inculcates in its members a sense of justice, allowing them to acquire a 'morality of principles.' This psychological process, which Rawls discussed already in the 1960s, leads members of the well-ordered society to treat the principles of justice as a part of their good.²⁶ The congruence between the right and the good is a necessary condition for society to be inherently stable, rather than dependent on calculations of shifting interests that generate a fragile 'mere modus vivendi.' It is therefore crucial that citizens have an understanding of the morality of principles. A citizen who has such an understanding

has also developed a attachment to many *particular* individuals and communities ... having become affiliated with others ... he is concerned to win acceptance for his conduct and aims ... his motive for complying [with the principles of justice] springs largely from his ties of friendship and fellow feelings for others, and his concern for the approbation of the wider society.²⁷

One can notice a deep connection between the morality of principles and Rawls' reading of Rousseau. One of Rousseau's most important psychological insights, Rawls thought, was the degree to which one's sense of self-worth requires equal recognition by others, enshrined in society's political institutions. Much of Rousseau's project, as Rawls sees it, revolves around our deep need

to secure for ourselves equal standing along with others and a position among our associates in which we are accepted as having needs and aspirations which must be taken into account on the same basis as those of everyone else ... Needing and asking for this acceptance from others involves giving the same to them in return ... we are ready to grant the very same standing to others, and to recognize the rightful limits that their needs and rightful claims impose on us, provided—and this is essential—our equal status is accepted and made secure in social arrangements.²⁸

If one's psychological condition depends on equal respect that is accorded by others and is officially recognized in political institutions, then it is clear that these institutions significantly shape their members' psychology. Rawls' passing remark, that his two principles of justice 'could be understood as an effort to spell out the content of the general will,'²⁹ can thus be read in conjunction with Rousseau's emphasis on how the ideal society governed by the general will shall morally transform its members. 'Anyone who dares to institute a people,' Rousseau famously stresses in *The Social Contract*, 'must feel capable of, so to speak, changing human nature, of transforming each individual who by himself is a prefect but solitary whole, into part of a larger whole from which that individual would as it were receive his life

and his being ... substituting a limited and moral existence for independent and physical existence.³⁰

Certainly, such moral transformation also has economic implications. But for Rousseau as well as for Rawls (or even for the young Marx when quoting this passage) these implications are not primary.³¹ At this point, we can start moving toward the discussion of LP, by noting that there are two ways to account for this domestic shaping process in a global context, leading to two very different conclusions. One approach is cosmopolitan, holding, as Thomas Nagel puts it, that 'the demands of justice derive from an equal concern or a duty of fairness that we owe in principle to all our fellow human beings, and the institutions to which standards of justice can be applied are instruments for the fulfillment of that duty.'³² In accordance with this equal concern, a cosmopolitan reading of TJ can suggest that the same liberal formation of the same liberal citizens take place everywhere.³³ And from the idea that all the world's nations can be expected to hold a certain liberal form of government, it is easy to arrive at a cosmopolitan formulation of global governing institutions regulated by the two principles of justice. Kant's reputation as the quintessential cosmopolitan indeed owes much to his vision of global perpetual peace, often identified by scholars of international relations with a desire to liberalize the world.³⁴ Pogge's Kantianism certainly exhibits such cosmopolitan ambitiousness.³⁵

But there is also a second approach to the global meaning of the domestic shaping process. This is what Nagel terms the 'political' approach, which holds that 'sovereign states are not merely instruments for realizing the preinstitutional value of justice among human beings. Instead, their existence is precisely what gives the value of justice its application, by putting the fellow citizens of a sovereign state into a relation that they do not have with the rest of humanity.'³⁶ The political approach can be read to mean, among other things, that insofar as citizens have some voice in how their society is shaped, then it is fully legitimate that their national institutions do not necessarily conform to a single cosmopolitan standard of justice. Through the deliberations of the body politic, national institutions give each people, as Rousseau put it, 'individuality of its own.'³⁷

This particular identity applies to liberal democracies as well, both in economic and in broader political terms. Following the particularistic path in the economic context leads one to interpret the egalitarianism of justice as fairness as limited to modern democratic societies. Though it is clearly plausible to read TJ as offering, in the OP, a model of economic rationality of justice that can apply to any basic structure, it is also equally plausible to read TJ's argument for the two principles as arising through rather than from the OP. Under this view, what Rawls is arguing *from* is the idea of public affirmation of rights and liberties by sovereign institutions: the 'fundamental concept of Rawls's deep theory,' as Ronald Dworkin put it, is 'the right to equal concern and respect' accorded to citizens by their liberal government.³⁸ The starting point, in other words, is our desire to render coherent the moral intuitions that belong to the *particular* tradition of liberal-democratic thought. The OP is simply one useful heuristic device for showing how this democratic coherence can be achieved.³⁹ Here, it is therefore the political which is seen as conditioning the

economic—it is the democratic setting that generates the OP and with it the difference principle. This reading obviously narrows the applicability of Rawlsian egalitarianism. It makes a tremendous difference whether one understands TJ as economic or democratic, that is, as aiming to show the economic rationality of justice or rather achieve, in Tony Laden's words, a 'publicly justifiable basis for social unity in a democratic society.'⁴⁰ If one follows the latter interpretation, it is clear that TJ's extension of our considered judgments does not have to be cosmopolitan. This extension is directed inward, to 'provide guidance where guidance is needed'⁴¹ for democratic citizens, not—or at the very least not necessarily—for the world at large.

This democratic particularistic reading, however, does not make justice as fairness a relativist theory. One can hold that one's society is (or ought to be) more just than others even when not seeking to reform those others. Here, too, the Rousseauian viewpoint seems helpful. Rousseau was explicit that certain societies are morally inferior, but did not necessarily seek to change them; a virtuous state's conduct, Rousseau insisted, should be focused on ensuring that it is true to its own values—on 'redeeming' itself rather than redeeming others.⁴²

Though Kant has expressed his admiration for Rousseau on several occasions and incorporated much of Rousseau's notions of equal respect and autonomy into his moral theory, it can be argued that in terms of international relations there is a deep disparity between their positions. As a result, while in TJ Rawls was able to build off both Kant and Rousseau as the 'high point of the contract tradition,'⁴³ regarding global politics something much more resembling a choice between the two was necessary. I suggest that LP is a much more Rousseauian rather than Kantian work, adhering to a political rather than cosmopolitan conception, and that, in contrast to Pogge's claim, this choice can be read as coherent with TJ. In order to see why, we need first to survey LP's main ideas.

THE LAW OF PEOPLES (LP)

Just as in TJ, so in LP we as citizens of liberal democracies are supposed to 'accommodate our firmest convictions'⁴⁴ and find guidance where it is needed through the OP. Yet here the parties are peoples rather than individuals. Only two types of peoples, liberal and 'decent hierarchal' ones, participate in the international OP, as only they comprise together the legitimate family of nations. Liberal peoples have 'three basic features': institutionally, they enjoy a 'reasonably just democratic constitutional government'; culturally, their citizens are united by 'shared sympathies'; and politically, they have a 'moral nature'—'a firm attachment to a political (moral) conception of right and justice.'⁴⁵

Rawls is explicit that a decent hierarchal society is morally inferior since it is not 'as just as a liberal one': it 'does not treat its own members reasonably or justly as free and equal citizens, since it lacks the liberal idea of citizenship.'⁴⁶ However, it is a non-aggressive society, engaging in war for self-defense only, it is committed to giving a meaningful voice to its subjects in the political process through consultation, and it

has a 'common good idea of justice that assigns human rights to all its members.'⁴⁷ These rights include:

the right to life (to the means of subsistence and security); to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality as expressed by the rules of natural justice (that is, similar cases be treated similarly).⁴⁸

Decent hierarchal societies are therefore distinguished from 'outlaw states' that do wage aggressive wars, from 'benevolent absolutisms' that do not have any form of consultation, and from 'burdened societies,' who suffer from 'unfavorable conditions' preventing them from guaranteeing their citizens' subsistence. Though the hierarchies are not as just as liberal societies, they are nonetheless 'well-ordered' in their own way, and are therefore worthy of equal respect in the name of liberal toleration. This equal respect also means that the rules of the international order are to be decided by two separate OPs: one for liberal societies and another for decent societies. The international veil of ignorance lets deliberators in both cases know whether they are representing a liberal or a decent hierarchal society, yet it hides from them their society's size in population or territory, economic strength and the like. Rawls believes that the two OPs, 'proceeding in a way analogous to the procedure in *A Theory of Justice*,' will generate the same result, representing 'certain familiar principles of equality among peoples.' These principles include the following eight rules:

(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 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 their conduct of war. (8) Peoples have a duty to assist other people living under unfavorable conditions that prevent their having a just or decent political and social regime.⁴⁹

How do these principles unfold from Pogge's perspective? Pogge has been relentless in his criticism of LP in every essay in which he mentions the work.⁵⁰ Assuming that we want to construct an ideal theory of global politics on the basis of justice as fairness,⁵¹ Pogge thinks we must proceed in a very different manner than that which Rawls takes in LP. I now turn to look at each of his five objections in turn and suggest possible Rawlsian responses.

INDIVIDUALS OR PEOPLES AS PARTIES?

Pogge, like many other critics, argues that had Rawls been loyal to TJ he would have suggested a "law of persons" rather than a law of peoples.⁵² Justice as fairness, after all, treats individuals as the ultimate units of moral concern. From this perspective of normative individualism, the fact that peoples rather than individuals deliberate in the international OP represents 'an undefended and dramatic asymmetry: While the

interests of individual human beings are the only ones that count within Rawls's domestic theory, such interests of individuals do not count at all within his international theory.⁵³ Against this statement I suggest, first, that individual interests do count in LP, even if individuals are not represented as parties, and, second, that they count in a way that is commensurate with Rawls' picture of the person in TJ. Let us start with individual interests. Rawls claims that both types of well-ordered peoples care for their individual members: liberal societies are committed to 'the well-being of their citizens,' and decent hierarchical societies care for 'the human rights and the good of the people they represent.'⁵⁴ Pogge responds by asking rhetorically: 'If both types of domestic regime manifest a concern for the interests of individuals, then why doesn't the international original position incorporate a concern for at least the jointly recognized individual interests?'⁵⁵

But the international OP does incorporate such a concern. Both decent hierarchies and liberal societies recognize their members' interest in a well-ordered society, which by definition means a commitment to the basic human rights listed above. When one society cannot or does not protect these rights, Rawls is adamant throughout that other societies have a duty to step in. Pogge's contention, then, cannot be that Rawls ignores individual interests altogether. Rather, Pogge must argue that there are *some* individual interests that Rawls unjustifiably discounts when discussing what a decent hierarchy owes its members. These missing interests are, unsurprisingly, economic: if the deliberators 'gave even just a little weight . . . to the interest of individuals in the absolute and relative socio-economic position they have an opportunity to attain . . . then they would have reason to prefer global economic rules that tend to moderate rather than aggravate international economic inequality.'⁵⁶

This criticism is best addressed in stages. We can put aside the charge regarding absolute economic standing: in both decent and liberal societies as postulated by Rawls, the members indeed have an interest in their absolute economic position, and this interest is secured, both as members of societies who are not 'burdened' and as individuals who have means of subsistence. This leaves us with claims regarding relative economic inequality, which can be narrowed further: we are discussing here the issue of LP's fidelity to the value of normative individualism, and so the discussion of egalitarian demands by societies as collective agents vis-à-vis one another is best reserved for a later stage. So what remains to be shown in terms of normative individualism is that LP's picture of the person does not contradict TJ's. Pogge offers an 'obvious alternative' to Rawls' stipulation of the international OP, under which each delegate assumes that 'her people would, other things equal, prefer to have a higher rather than a lower average standard of living.'⁵⁷ But even though this alternative mirrors Rawls' characterization of the parties to the domestic OP for a liberal society as motivated by a desire for more primary goods rather than less, the domestic OP (as Pogge himself had emphasized against Sandel) does not say what people are—its principles are 'not conjectured as a psychological law or probability.'⁵⁸ Rawls' theory of human psychology is presented not in the discussion of the OP, but in part 3 of TJ, without which, as he explicitly warns already at the outset, 'the Theory of Justice will be misunderstood.'⁵⁹ It is here that Rawls insists that

wealth is not the basis of our self-respect, and that our moral psychology is deeply and crucially shaped by our political institutions, in what is arguably a very Rousseauian fashion.⁶⁰

This leads to the second point. The Rousseauian spirit is manifest in LP: Rawls not only explicitly invokes Rousseau's desire to see 'men as they are and the laws as they might be' as the basis of his 'realistic utopia' of global politics; there is also a strong Rousseauian emphasis on individual ability to influence political decisions as a morally significant factor. This emphasis is apparent in Rawls' demand that 'decent' societies have consultation mechanisms, without which they will be merely benevolent absolutisms that have no place in 'the society of peoples.' The fact that members of decent hierarchies have a meaningful voice with regard to how their society is shaped can be said to maintain a crucial element of the public affirmation of their self-respect, which remains the most fundamental primary good, even if it is not secured in a fully just, democratic manner. In fact, the importance of the domestic deliberation process might also be the reason why Rawls does not want the international OP to decide on a public criterion of justice. That is the topic of the next section.

A PUBLIC CRITERION OF JUSTICE OR A SCHEME OF RULES?

Rawls' refusal to let the parties to the international OP choose a public criterion of justice represents for Pogge the 'most important asymmetry' in comparison to TJ. Rawls' domestic theory is three-tiered and institutional: here the parties agree on a public criterion of social justice (the two principles and two priority rules), and this criterion, in turn, selects a basic structure designed to handle specific empirical circumstances. In the international case, however, the intermediate step vanishes, and the theory is 'two-tiered and interactional': the peoples directly choose the eight rules to regulate their conduct toward one another, with no public conception of justice. Pogge criticizes this disparity for several reasons, the deepest of which has to do with Rawls' fundamental perspective on the international sphere:

By conceiving his international theory interactionally, as seeking rules of good conduct, Rawls sidelines what he correctly identifies, within the domestic context, as the most important moral topic: the design of the institutional order, which crucially shapes the character of the relevant actors as well as the options and incentives they face.⁶¹

The normative weight of sovereignty, I suggest, explains this sharp Rawlsian distinction between the domestic and the global. If one pursues the Rousseauian reading of justice as fairness, then it can make perfect sense from TJ's perspective to insist that membership in any political community has distinct ethical meaning, even if the economic ties on which Pogge's account relies are clearly global rather than domestic. It is not clear that the political should be seen as subservient to the economic. We might be participants in a global economic system, but we are also citizens with a distinct political capacity. Belonging to a specific well-ordered society

gives one a scope of choice as its shaping member, even if one simply finds oneself in that society due to circumstances over which one had no control at all. Specifically with regard to democracies, Nagel makes this case convincingly when he speaks of *multi-layered morality*, emphasizing the ‘dual role each member plays both as one of the society’s subjects and as one of those in whose name its authority is exercised.’⁶² Only as sovereign citizens can our society hold us

responsible for obeying its laws and conforming to its norms, thereby supporting [its] institutions . . . we are, even though the responsibility has been simply handed to us, responsible for them, and we therefore have standing to ask why we should accept them. This request for justification has moral weight even if we have in practice no choice but to live under the existing regime. The reason is that its requirements claim our active cooperation, and this cannot be legitimately done without justification—otherwise it is pure coercion.⁶³

Admittedly, Rawls did not explicitly offer such a ‘dual role’ in TJ, but given the assumption of the closed society that dominates it, he would have had little need to do so. At the very least, the idea that collective decision making places compatriots in a position that is differentiated from others who are not part of this process is coherent with TJ.⁶⁴ As stressed above, Rawls’ emphasis on the need for such a process in a decent consultation hierarchy is not accidental. This process is pivotal for a public conception of justice that makes a domestic society a well-ordered one, because it ensures that political institutions account for the ‘fundamental interests’⁶⁵ of all members.

Furthermore, Rawls can be read as holding that the psychological impact of this domestic process is sufficient, in the sense that no additional process is necessary to account for members’ needs. Once public recognition is accorded through the institutions of a well-ordered society—even if not in a completely just, democratic way in the case of ‘decent hierarchies’—there is no duty to regulate any broader framework through a further criterion of justice. At least at the level of ideal theory, Rawls believes we can understand the range of individual psychological needs completely apart from the international sphere: already in TJ, after all, he is capable of imagining the reciprocal influence of society and individuals as a self-sustaining system independent of global contexts (whether or not this image is empirically tenable is, of course, an important question, but a separate one).⁶⁶ In this sense, TJ’s ‘closed’ society is ‘self-sustaining’ not only economically, but also, to a significant degree, psychologically.⁶⁷

Therefore, one can say that Rawls’ refusal to let the parties agree on principles of justice for global basic structure in the same way they agreed regarding a domestic structure is not accidental. It puts weight on what the individual needs to identify with. ‘Among individuals with disparate aims and purposes,’ TJ states regarding the well-ordered society, ‘a shared conception of justice establishes the bonds of civic friendship.’⁶⁸ Once this friendship exists, it is not clear that a further broader conception of justice is necessary. Rawls is therefore not committed to transferring a public criterion of justice to the international level: it is not incoherent with TJ to select global rules of conduct, rather than design a global institutional order. In the

same vein, refusing to extend the domestic difference principle to the international level is not necessarily incoherent with TJ, as I now turn to argue.

DUTY OF ASSISTANCE OR DIFFERENCE PRINCIPLE?

Pogge's essential complaint with regard to the difference principle is that of another asymmetry: just as in the domestic context Rawls rejects the results of uninhibited laissez-faire, so he must do the same in the global context, instead of merely preventing the world's deprived 'from falling below some minimum' through a modest duty of assistance.⁶⁹ Pogge delivers his criticism against a lack of a global difference principle while recognizing the missing 'global' sense of justice and the resulting problem of stability: the parties to the international OP, he admits, might avoid even egalitarian arrangements that are much less ambitious than a global difference principle, believing that even these narrower arrangements

would simply not work: The moral motives (sense of justice) that a just world order would engender in peoples and their governments would not be strong enough to ensure compliance. There would always be some wealthy peoples refusing to pay their fair share, and this in turn would undermine others' willingness to participate.⁷⁰

As a result, Pogge accepts the claim that sanctions would be necessary to enforce even a minimal egalitarian scheme.⁷¹ How does the reliance on sanctions relate to TJ's quest for stability? A critical answer would be that the two simply do not fit. As Pogge himself emphasizes elsewhere, 'there are no limits on how weak or strong a group may become through shifts in the distribution of power as reflected in and compounded by shifts in the terms of the *modus vivendi*. And this absence of limits indicates the reason for insisting on a sense of justice.'⁷² So there seems to be a rather immediate Rawlsian reason, on the basis of TJ, for objecting to global egalitarian arrangements, given the inability to secure stability for the right reasons. Aware of this, Pogge calls to 'make it become widely recognized among citizens of the developed West' that global egalitarian institutions are 'required by justice.'⁷³

Now, Rawls would obviously support the call to make it become widely recognized among Western citizens that they have more duties toward non-compatriots than is acknowledged today. Indeed, it is doubtful that one would have to witness a world in which 50,000 persons die every day of poverty-related causes, had Rawls' duty of assistance been complied with.⁷⁴ But it is not at all clear that such a call must, because of TJ, include anything like a global difference principle. A direct analogy between a domestic and a global difference principle in effect holds that there should be no distinction, in terms of distributive justice, between what one owes to one's compatriots and non-compatriots. Only a strongly economic and Kantian cosmopolitan reading of TJ can diminish so drastically the moral weight of shared sovereign institutions for distributive purposes: reading TJ as mandating a global difference principle works only if we assume, with Pogge, that the setting of justice as fairness is essentially economic. But this assumption is not self-evident: if we assume that the

political, and specifically the liberal-democratic context, is TJ's starting point, then the picture changes, and quite dramatically so.

Looking again at the context of the domestic difference principle provides a useful comparison. It is possible to read Rawls' fundamental question in TJ to be 'what does it mean for a liberal democratic government to treat its citizens with equal respect?' The domestic OP and its difference principle can be understood as following from this question. The difference principle represents the extension of our fixed judgment, that our government must treat all its citizens as persons of equal moral worth, to a topic in which we need guidance since our judgments are much less secure. But it is by no means clear that this integral part of 'the most appropriate moral basis for a democratic society'⁷⁵ is an integral part of a global liberal theory. It is doubtful that Pogge's marginalization of boundaries represents a reflective equilibrium, and it certainly remains questionable that 'we want to affirm'⁷⁶ from the beginning a global difference principle as strongly as we want to affirm a domestic difference principle in a liberal democracy.

Given all this, Rawls' belief that what is appropriate for the domestic context does not necessarily fit the global case might seem less surprising. LP's main ideas crucially depend on the notion that 'how peoples treat each other and how they treat their own members are ... two different things.'⁷⁷ Especially when discussing economic matters, one can contest this statement on empirical grounds, claiming that it ignores how, at the turn of the millennium, domestic societies are simply too intertwined for such a rigid division to hold. This is a powerful objection, but it cannot rely on TJ's ideal theory. And it is very difficult to ground *normative* objections to the domestic/global distinction on justice as fairness. 'The correct regulating principle for anything,' Rawls insisted already in TJ, 'depends on the nature of that thing.'⁷⁸ Justice might be 'the first virtue of *social* institutions,' but it is not the first virtue of everything—not of individual morality, and arguably not of global politics either. Supranational social institutions might exist, but supranational sovereign institutions still do not. Under the Rousseauian reading of justice as fairness, that is a crucial difference.

Perhaps the objection would arise that even with the weight of domestic, democratic sovereignty, Rawls' statism seems strongly counter-intuitive. But counter-intuitiveness does not mean incoherence. Pogge himself has forcefully argued exactly that, when he defended justice as fairness even when yielding highly counter-intuitive results, for instance regarding natural disabilities. Here, Pogge agreed with what he took to be the Rawlsian position, according to which justice does not compel society to compensate for natural disabilities as such, since it clearly did not cause these disabilities, insisting on Rawls' behalf that 'What persons may reasonably demand of an institutional scheme is only that it should situate them fairly as *participants* vis-à-vis the others ... the Rawlsian parties' selective concern with shares of benefits and burdens, however unintuitive psychologically, at least has a philosophical rationale.'⁷⁹ Of course, one can ask why is it impossible to insist that the relevant 'participants' are only those who share a sovereign setting. But even

beyond this, if TJ itself can produce counter-intuitive results, LP cannot be criticized as incoherent with TJ because of counter-intuitive assumptions.

Furthermore, the case of natural disabilities is also important against Pogge's other egalitarian objections, by emphasizing that at least under his reading, TJ *largely ignores* the question of whether or not predicament results from choice, a question that is key to all cosmopolitan theories, which emphasize that no one chooses his or her place of birth. When it comes to a collective rather than individual predicament, however, Pogge suggests that the element of choice or lack thereof *should* be taken into account, for example when later generations bear the costs of bad choices made by their forefathers, or when circumstances completely outside society's control take place. Perhaps because of the clear tension between the two, Pogge immediately goes on to argue that 'even where neither of these reasons applies, our domestic institutions often mitigate even self-caused hardships and disadvantages, for example through the tax system or the personal bankruptcy law.'⁸⁰ Yet Rawls does have a certain parallel to this domestic alleviation of severe hardship—that is exactly the role of his duty of assistance. Pogge may not be satisfied with this duty that only keeps poor peoples 'floating' in absolute terms rather than improve their relative economic standing, as in TJ, but a straight analogy between the two must rest on empirical, non-ideal rather than ideal theory grounds. LP's lack of global egalitarianism, then, can be understood as coherent with TJ.

WORLD STATE, A SOCIETY OF PEOPLES, OR DISPERSED POLITICAL AUTHORITY?

Rawls contends that while the principles adduced from the international OP 'make room for various forms of cooperative associations and federations among peoples,' they 'do not affirm a world state.'⁸¹ In this, Rawls understands himself as following 'Kant's lead in thinking that a world government . . . 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.'⁸² Pogge argues that this Rawlsian step is incoherent as well, also because while the assumption of a closed society at the background of TJ is clearly not relevant for specific societies in today's world, it is very relevant for the world itself—surely a 'self sustaining' unit.⁸³

Let me begin my answer by pointing to a certain ambiguity and uncertainty in Pogge's position. The ambiguity is found in the fact that, on the one hand, Pogge has explicitly sought to avoid a world government, including in his own theory that offers a vision of multilayered political authority, dispersed both below and above the level of current states.⁸⁴ Yet, on the other hand, he also protests Rawls' 'rather dogmatic pronouncement against a world government,'⁸⁵ and notes that 'Kant's view on this question may not be the best evidence one can have about whether a just world government is feasible in the twenty-first century or beyond.'⁸⁶ Nonetheless, it seems safe to say that Pogge, like many other cosmopolitans, does not defend a world state.

But if a global sovereign is indeed avoided, it remains far from certain that state sovereignty can be avoided as well: territorial borders will remain and some coercive power will be needed to maintain stability, and defend the property within these borders against both internal and external threats. It follows that pure cosmopolitanism, as Leif Wenar for example insists, is impossible insofar as ‘individuals’ basic rights and liberties cannot be fully specified without reference to those individuals’ territorial affiliation.’⁸⁷ State sovereignty still matters.

Perhaps anticipating this objection, Pogge also offers against Rawls intermediate arrangements that do incorporate state sovereignty, in the form of ‘a world federation like the one Kant envisioned or like the European Union.’⁸⁸ But the two are very different. Rawls is not committed in any way to rejecting a body like the European Union, nor, for that matter, is probably any other liberal theorist. By contrast, the question of whether such a body must be expanded to encompass the entire world is bound to raise intense disputes among liberals regarding both aims and means.⁸⁹

TJ enters the frame once we examine the two claims underlying Pogge’s charges here. First, Pogge argues that if Rawls ‘finds the view he attributes to Kant convincing, then he should have incorporated it into his domestic theory, which should then require that no society must grow beyond a certain population or area, or perhaps beyond a certain percentage of the global population or land surface area.’⁹⁰ Second, Pogge suggests that Rawls’ domestic theory ‘seems committed then to the view that it would be morally all right, even desirable, for all of mankind to be institutionally organized along the lines of the idealized USA of *A Theory of Justice*.’⁹¹ Yet it is not clear that the two claims generate the results Pogge desires. The most basic reason is that the relation between these claims could just as easily be read in the opposite way: it is precisely because Rawls envisions and is in many ways known to envision an idealized USA that he does not need to explicitly limit TJ’s society in land or population. As Pogge himself noted already in the 1980s, TJ’s focus clearly was on developed Western societies, and specifically on the USA.⁹² Utilitarians prior to TJ, and libertarians like communitarians after TJ, offered different answers to the question of what does a Western government’s equal respect toward its citizens mean. Pogge himself has defended Rawls’ answer to this question against those strands. Yet even if Pogge was willing to ask ‘what does it mean for a world government to treat its citizens with equal respect’—and apparently he is not—why does this require a global answer identical to the domestic one? And why is it necessarily ‘incoherent’ with TJ to simply ask how a liberal democracy should treat the world?

By making these arguments, I am not denying that it was between TJ and PL that Rawls’ particularism became much more explicit. I am only asserting the plausibility of an interpretation that immediately narrows TJ’s supposed commitment to cosmopolitanism. This interpretation emphasizes, for example, the fact that even at its most ambitious, justice as fairness applies to separate nation states, referring to a ‘self contained *national* community’; to ‘the sense of justice shared by the members’ of that community, which has ‘a fundamental role’ in ensuring that its ‘basic structure is stable with respect to justice’; and to the idea that this sense of justice is

inseparable from the national community just like 'the public realization of justice is a value of community.'⁹³ Therefore, even if all the particularist factors just mentioned are put aside solely for the sake of discussion, TJ seems compatible with a world of separate national communities internally regulated by justice as fairness. But even this is a much weaker claim than Pogge's insistence that TJ effectively *coheres only* with pure cosmopolitanism.

Pogge emphasizes, for instance, that TJ includes 'no suggestion' that 'the social order it proposes is morally acceptable only if there exist outsiders not subject to its rules.'⁹⁴ But surely this argument does not commit Rawls to global modes of governance or to the globalization of liberalism. That I am not committed to X does not commit me to Y. It simply means I can choose between X and Y. TJ *allows* Rawls to advocate a spread of liberal democracy around the world. But it simply does not *commit* him, on pain of incoherence, to such advocacy, let alone to a cosmopolitan vision like the one suggested by Pogge. We are left, then, with the idea that it would be 'alright' and 'even desirable' for all nations to be regulated by justice as fairness. But the question remains as to what such adjectives demand in practice from liberal societies. I now turn to this last issue.

EQUAL RESPECT FOR 'DECENT' HIERARCHIES?

The most distinctive element of LP's treatment of the non-liberal world is found in Rawls' decision to accord equal respect to decent hierarchies. This decision is an exception here since I believe it requires a different justification than that which Rawls himself offers. The explanation given in LP for why liberal societies owe equal respect to decent hierarchies *is* incoherent with Rawls' domestic theory, as Pogge rightly notes. Rawls draws on a puzzling analogy to *Political Liberalism*, arguing that just as the liberal state ought to accommodate within its borders varying comprehensive moral doctrines, it should also accept as legitimate, varying forms of political organization: 'If all societies were required to be liberal . . . then the idea of political liberalism would fail to express due toleration for other acceptable ways (if such there are, as I assume) of ordering societies.'⁹⁵ Yet the gap between the two cases is quite obvious: while the domestic accommodation assumes equal moral standing (of reasonable comprehensive moral doctrines), the international accommodation does not assume such equality when it comes to societies' normative status. As already noted and as Pogge reminds us, Rawls is after all explicit that non-liberal societies are morally inferior.⁹⁶

But the fact that Rawls provides a bad argument from PL does not mean a better argument cannot be given on his behalf. A more persuasive reasoning could come directly from TJ: a decent hierarchal society, just like a liberal one, is also well-ordered—its members enjoy meaningful (even if not liberal) autonomy in shaping their institutions and 'endorsing' the way these institutions shape them; their fundamental needs and, specifically, human rights are secured. Such a society therefore deserves full toleration. It is important that not all internal affairs remain

outside international reach: if the government in question is or becomes a ‘burdened’ society, a ‘benevolent absolutist’ one, or an ‘outlaw state,’ then it will not enjoy anything like full respect. But short of such extremes, the reciprocal influence of domestic institutions and their members is to be respected.

I wish to follow this argument with three broader points. First, methodologically, it is very hard to classify almost any liberal posture toward non-liberal regimes that Rawls would have suggested as ‘incoherent’ with TJ. It is perfectly logical to imagine TJ’s idealized USA pursuing a very wide range of foreign policies.⁹⁷ Second, the idea that there are regimes that are not liberal democracies but are still legitimate does seem to correspond with important moral intuitions. There are clearly regimes we would not consider liberal democracies but would still treat very differently than how we treat outright dictatorships. In this sense, Rawls’ position does seem to represent, as Charles Beitz recently put it, an intuitive ‘intermediate’ ground.⁹⁸

Yet, thirdly, alongside this normative appeal there is a profound empirical problem: no non-liberal regime has ever satisfied Rawls’ criteria for a decent society. Real life ‘middle ground’ regimes, while an important category, are actually much closer to being a liberal democracy than to Rawls’ model, if only because of the actual demands of a system of law that, as Rawls put in the article version of LP, ‘imposes obligations on all members of society.’⁹⁹ Where there is no democracy at all, there are very slim prospects for a stable rule of law. As Gerring and others argue, ‘while a limited rule of law has been successfully established in some authoritarian states, it is usually difficult to maintain and can never—by definition—bind the ultimate decision makers.’¹⁰⁰ This is a grave problem for Rawls’ account, yet one with two different sorts of implications: insofar as this is clearly an empirical issue, it seems safe to say that it involves no incoherence between LP and TJ’s ideal theory; but it also points to the need to focus on LP’s problems not from the perspective of justice as fairness, but simply from that of a profoundly non-ideal world. Instead of a conclusion, I suggest that Pogge has importantly achieved this task, and that Rawls’ empirical errors carry enormous consequences for how we ought to think about global justice.

INSTEAD OF A CONCLUSION—BETWEEN THEORY AND REALITY

LP’s problem is not that Rawls ‘forgot’ what he had written in the 1970s. The problem is rather that Rawls’ challenges and his picture of global politics remained those that existed even prior to the 1970s. LP encounters serious difficulties not because it is incoherent with TJ, but simply that it is incompatible with a truly global era, especially at the economic level. In the twenty-first century, it is impossible to attribute a people’s economic fortunes solely to its institutions or the ‘industriousness and cooperative talents of its members’ as Rawls does. In many cases, it is simply not true that the ‘causes of the wealth of a people and the forms it takes lie in their political culture,’ or in their ‘religious, philosophical, and moral traditions.’¹⁰¹ Rawls might be right that domestic society can be ‘psychologically’ self-sustaining, in the

sense discussed above, but it is not an economic unit that can be understood completely independently of any external factor.

International oil trade, to consider just one example, accounting annually for a trillion and a half dollars, which comprise half of total global commodity transactions, keeps entire nations destitute while tyrants and civil warriors oppressing them gain immense riches, selling as their own property what is supposed to belong to the population. Liberal democracies are complicit in this *de facto* armed robbery, through the official recognition and concurrent trading privileges they confer on the world's worst thugs. Wenar, for example, using the Freedom House index, had recently suggested that effectively stolen oil accounts for more than one in every eight barrels entering the USA every year.¹⁰² Whether or not societies' fortunes depended solely on their choices in a 'lost Westphalian world,'¹⁰³ then, this is certainly not the case at present. Pogge has powerfully captured the pivotal role external powers play in determining a nation's economic fate:

A group that overpowers the guards and takes control of a warehouse may be able to give some of the merchandise to others, accepting money in exchange. But the fence who pays them becomes merely the possessor, not the owner, of the loot. Contrast this with a group that overpowers an elected government and takes control of a country. Such a group, too, can give away some of the country's natural resources, accepting money in exchange. In this case, however, the purchaser acquires not merely possession, but all the rights and liberties of ownership, which are supposed to be—and actually are—protected and enforced by all other states' courts and police forces.¹⁰⁴

This simple and glaring lacuna has tremendous implications not only geopolitically but also philosophically: imagining an ideal world in which this lacuna does not exist would mean jumping ahead of our time, given the unprecedented changes that would be necessary to correct it—for example by democracies collectively boycotting severely oppressive regimes. Yet in order to even consider such non-ideal duties, there must be recognition of the non-ideal reality. Why did Rawls completely miss this reality? Perhaps one can only guess. But if one follows the main thread of the reading advanced here to its logical conclusion, then at least one possible answer would be this: in TJ, Rawls aimed to show that an egalitarian interpretation of liberal democracy whose actual manifestation we already see in the world is internally consistent—that, as Laden puts it, 'despite appearances, the thought and practice of democratic societies are not necessarily incoherent.'¹⁰⁵ This notion of philosophy as reconciliation, of moral intuitions regarding the existing world that not only provide us with building blocks but are also themselves an object of vindication, hints that Rawls was 'a child of his time' in all his books. And Rawls' time was not really Pogge's time.

One does not have to be a Nietzschean to endorse Nietzsche's view that all philosophy is to some degree personal. Fighting against monstrous evil in the Second World War, it was perhaps natural for Rawls to think that societies must be held (almost) entirely responsible for their position—from their greatest successes and failures to the worst tragedies they inflict on others. Rawls' shaping experiences were

far removed from the truly global period, which for many theorists began in earnest with the fall of the Berlin Wall, prompting Pogge, for example, to note that ‘The human future suddenly seems open.’¹⁰⁶ Rawls was not a part of this zeitgeist. In the 1990s, even when writing both the paper and the book version of LP, he did not incorporate the philosophical implications of the end of the Cold War, which made manifest the global prominence and increased the moral duties of liberal democracies. LP referenced Churchill, not Gorbachev. Rawls was arguably still more preoccupied with the moral meaning of the war in which he participated. This was true directly, when he reflected on ‘Fifty years after Hiroshima,’ and it was also true indirectly, when PL culminated his thoughts on a problem whose personal roots were found in his own loss of faith during the same war: how can a society deeply divided over metaphysical, religious questions be inherently stable—have not a mere *modus vivendi* but rather stability for the right reasons.¹⁰⁷

Even if this aspiration made Rawls an ‘End of History’ theorist at the domestic level, empirical facts mean that we simply cannot yet conceive an ‘End of History’ ideal theory of global politics. Rawls’ ideal global theory fails despite being coherent with TJ. It fails because we simply cannot think ideally within such a manifestly non-ideal world as ours. Insofar as LP is the best global ideal theory liberalism has to offer, liberals ought to realize that the problem is bigger than just Rawls’ corpus. What is necessary today is not an effort to extract a different global theory from TJ, or even a brand new ideal theory of global justice. Rather, what is needed is a theoretically coherent and empirically viable non-ideal theory, showing how liberal democracies can and should stop their ongoing complicity in flagrant injustice. That by itself is an enormous task.

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NOTES

1. John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999); Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Harvard University Press, 1999).
2. Rawls, *Political Liberalism* (New York: Columbia University Press, 1996). See for instance Stephen Macedo’s ‘What Self-governing Peoples Owe to One Another: Universalism, Diversity, and the Law of Peoples’, *Fordham Law Review* 72 (2003–4): 1721–38, and even

- more so Leif Wenar's 'The Unity of Rawls's Work', *The Journal of Moral Philosophy* 1 (2004): 265–75.
3. Thomas Pogge, *Realizing Rawls* (Ithaca: Cornell University Press, 1989) (hereafter *RR*), 9, 10 (note 7). Pogge's other works abbreviated here are:
CS = 'Cosmopolitanism and Sovereignty', *Ethics* 103 (1992): 48–75;
EGL = 'An Egalitarian Law of Peoples', *Philosophy and Public Affairs* 23 (1994): 195–224;
IC = 'The Incoherence between Rawls's Theories of Justice', *Fordham Law Review* 72 (2003–2004): 1739–59;
JR = *John Rawls*, trans. Michlle Kosch (Oxford: Oxford University Press, 2007);
KEM = 'Kant on Ends and the Meaning of Life', in *Reclaiming the History of Ethics: Essays for John Rawls*, ed. Andrews Reath, Barbara Herman and Christine M. Korsgaard (Cambridge: Cambridge University Press, 1997), 361–87;
KI = 'The Kantian Interpretation of Justice as Fairness', *Zeitschrift für philosophische Forschung* 35 (1981): 47–65;
RIJ = 'Rawls on International Justice: A Critical Study', *The Philosophical Quarterly* 51 (2001): 246–53;
RPR = 'Responsibilities for Poverty-Related Ill Health', *Ethics & International Affairs* 16 (2002): 71–79;
RVI = 'Recognized and Violated by International Law: The Human Rights of the Global Poor', *Leiden Journal of International Law* 18 (2005): 717–45;
SPH = 'Severe Poverty as Human Rights Violation,' in *Freedom from Poverty as a Human Right—Who Owes What to the Very Poor?* ed. Thomas Pogge (Oxford: Oxford University Press, 2007), 11–54;
TP = 'Three Problems with Contractarian-Consequentialist Ways of Assessing Social Institutions', *Social Philosophy & Policy* (1995): 241–66;
WPHR = *World Poverty and Human Rights* (Cambridge: Polity Press, 2002).
 4. These are the five accusations brought in *IC*, on which I focus here.
 5. Rawls, 'Rousseau', in *Lectures on the History of Political Philosophy*, ed. Samuel Freeman (Cambridge, MA: Harvard University Press, 2007), 200.
 6. *LP*, 13.
 7. *RR*, 10.
 8. *Ibid.*, 9.
 9. *KI*, 62.
 10. *Ibid.*, 58.
 11. *Ibid.*, 62.
 12. *Ibid.*, 60. It is not entirely clear that Pogge's move here from collective deliberation to concern for happiness holds. For example, it might be possible to wonder why a collective moral agent cannot simply reaffirm Kant's individual laws of conduct.
 13. *RR*, 10.
 14. *Ibid.*, 128.
 15. *Ibid.*, 10.
 16. *Ibid.*, 134.
 17. Indeed, they are the core of what Tony Laden has called the 'standard blueprint' for reading *TJ*. See Tony Laden, 'The House that Jack Built: Thirty Years of Reading Rawls', *Ethics* 113 (2003): 367–90.
 18. *RR*, 213, All italics are mine unless noted otherwise.
 19. *TJ*, 110.
 20. *RR*, 23. By emphasizing the very economic notion of 'bargaining,' I am not ignoring Pogge's statement that his notion of comprehensive social system includes 'important social interactions' that 'may take place outside the economic sphere.' But I do read his position, given both the points already made here and the overall thrust of his arguments (with regard

- to Rawls and elsewhere, especially with regard to the very concrete problem of extreme poverty), as first and foremost concerned with material means.
21. RR, 24.
 22. Arguing for instance that Michael Sandel's communitarian critique does not expose 'any deep flaw' in TJ; rather, Sandel 'merely misunderstood' TJ, 'albeit deeply.' Sandel claimed that Rawls implicitly conceives the person as a 'barren, unencumbered self, devoid of constitutive commitments and attachments.' But Pogge replies that Rawls does not hold such a view and that 'his conception of justice even depends, in part, on the denial of the conception of the person that Sandel attributes to him.' *Ibid.*, 2, 3.
 23. TJ, 386.
 24. *Ibid.*, 477.
 25. *Ibid.*, 347.
 26. See Rawls' 1963 article 'Sense of Justice', in Rawls, *Collected Papers*, ed. Samuel Freeman (Cambridge, MA: Harvard University Press, 1999), 96–116.
 27. TJ, 414.
 28. Rawls, *Lectures on the History of Political Philosophy*, 198–99. Rawls follows this interpretation with an explicit reference to Kant, noting that this Kantian interpretation of Rousseau 'is required to make sense of Rousseau's great works as a coherent and consistent view.' For a similar reading of Rousseau see also Frederick Neuhouser, *Rousseau's Theodicy of Self-Love: Evil, Rationality, and the Drive for Recognition* (New York: Oxford University Press, 2008).
 29. Quoted in Joshua Cohen, *Rousseau: A Free Community of Equals* (Oxford: Oxford University Press, 2010), 2.
 30. Jean Jacques Rousseau, 'The Social Contract', in *The Social Contract and Other Later Political Writings*, ed. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), book 2, chap. 7, sec. 3.
 31. Karl Marx, 'On the Jewish Question', in *Writings of the Young Marx*, trans. and ed. Loyd Easton and Kurt Guddat (Indianapolis, IN: Hackett, 1997), 241.
 32. Thomas Nagel, 'The Problem of Global Justice', *Philosophy & Public Affairs* 33 (2005), 119–20.
 33. Such a reading of the Rawls-Pogge debate is found in Roger Crisp and Dale Jamieson, 'Egalitarianism and a Global Resource Tax: Pogge on Rawls', in *The Idea of a Political Liberalism*, ed. Victoria Davion and Clark Wolf (Oxford: Rowman & Littlefield, 2000), 90–101.
 34. Most famously in Michael W. Doyle, 'Kant, Liberal Legacies, and Foreign Affairs', *Philosophy and Public Affairs* 12 (1983): 205–35, 323–53. For a recent version of Doyle's argument see Michael C. Desch, 'America's Liberal Illiberalism: The Ideological Origins of Overreaction in U.S. Foreign Policy', *International Security* 32 (Winter 2007/08). A Wilsonian picture of Kant from the perspective of political theory is offered in William E. Connolly, 'Speed, Concentric Cultures, and Cosmopolitanism', *Political Theory* 28 (2000): 596–618. For a much less combative Kant, see John MacMillan, 'A Kantian Protest against the Peculiar Discourse of Inter-Liberal State Peace', in *The Globalization of Liberalism*, ed. Elvind Hovden and Edward Keene (London: Palgrave, 2002), 57–74.
 35. Indeed, until the equal dignity of all human beings is assured, Pogge has insisted when offering a secular version of Kant's ideal of the highest good, the enlightenment project will not be complete: 'so long as "humankind does not enter a 'universal cosmopolitan condition,' does not organize itself into a 'moral whole', we can expect human beings to be, at best, cultivated and civilized—'nothing but illusion and glittering misery'—but not moralized.' KEM, 380, quoting from Kant's *Idea for a Universal History with a Cosmopolitan Purpose*.'
 36. Nagel, *The Problem of Global Justice*, 119–20.
 37. Rousseau, 'Considerations on the Government of Poland', in *Rousseau on International Relations*, ed. Stanley Hoffman and David P. Fidler (Oxford: Clarendon, 1991), 168.

38. Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1978), 181.
39. And not necessarily the only one. For an interpretation emphasizing the idea of democratic public affirmation in itself as generating the difference principle, through the duty to arrange social positions so that they are acceptable to the least advantaged, see Joshua Cohen, 'Democratic Equality', *Ethics* 99 (1989): 727–51. There are, of course, also contrary claims that the Rawlsian corpus as a whole pays far too *little* attention to the weight of democracy. Sheldon S. Wolin, 'The Liberal/Democratic Divide. On Rawls' Political Liberalism', *Political Theory* 24 (1996): 97–119.
40. Laden, *The House That Jack Built*, 380.
41. TJ, 18.
42. Some of those societies, like the France of his day, Rousseau believed to be so corrupt that any attempt to regulate them according to the general will was doomed to fail, and in general, actively trying to establish perpetual peace, surely by force, 'would perhaps do more harm in a moment than it would prevent for centuries.' Rousseau, 'Abstract and Judgment of Saint-Pierre's Project for Perpetual Peace,' in Hoffman and Fidler, *Rousseau on IR*, 89.
43. TJ, 222.
44. TJ, 18.
45. LP, 23–24.
46. *Ibid.*, 83.
47. *Ibid.*, 88.
48. *Ibid.*
49. *Ibid.*, 37.
50. See for example IC, RIJ, RPR, SPH, and EGL. Even in an introductory book to Rawls' theory, which is explicitly committed to explaining Rawls and is otherwise almost consistent in its praise, Pogge cannot help but noting 'I do not discuss Rawls's late extension of his theory to international relations because I could not construct a sufficiently convincing account of it.' JR, x.
51. It should be acknowledged that Pogge does *not*, in fact, now support a Rawlsian global theory of international relations. As opposed to his earlier writings, chiefly *Realizing Rawls*, Pogge currently holds that there are fundamental problems with TJ itself, as a 'purely recipient oriented' approach that is too consequentialist, paying too much attention to 'what people get' from an institutional order and too little to 'how they are they treated.' Pogge presents this criticism as a prelude to his 'incoherence' argument, as well as in RPR and TP. I do not enter the question of the purely recipient-oriented approach here, since it represents a very different kind of problem than the incoherence arguments.
52. Cf. Andrew Kuper, 'Rawlsian Global Justice: Beyond the Law of Peoples to a Cosmopolitan Law of Persons', *Political Theory* 28 (2000): 640–74.
53. IC, 1745.
54. LP, 69.
55. IC, 1745.
56. *Ibid.*
57. EGL, 208.
58. TJ, 104.
59. *Ibid.*, xviii.
60. I am not saying that Pogge denies the importance attached in TJ to the social basis of self-respect, but rather that once this importance is granted it is not clear that LP betrays the normative individualism of justice as fairness.
61. IC, 1751.
62. Nagel, *The Problem of Global Justice*, 128.
63. *Ibid.*, 129.

64. In this I am not trying to turn Rawls into a civic humanist of the type he explicitly rejects in *PL*, 206; I make no Rawlsian claim here for political participation as a necessary good in itself: my focus is entirely on public deliberation as an instrument for protecting basic liberties.
65. *LP*, 7.
66. Cf. *TJ*, 400–1.
67. David Reidy also emphasizes the point regarding psychological needs in his ‘Rawls on International Justice – a Defense’, *Political Theory* 32 (2004): 291–319. Note, however, that Reidy in effect accepts Rawls’ proposal, which I fundamentally reject, that a state in the twenty-first century can be seen as entirely responsible for its economic fortunes.
68. *TJ*, 5.
69. *IC*, 1751.
70. *EGL*, 219.
71. *Ibid.*
72. *RR*, 101. Note also that it is hard to commit *TJ* to the idea that the moral feelings will follow once the proper egalitarian institutions are enacted (and Pogge does not seem to claim otherwise). *TJ* remains vague on whether the difference principle requires a prior ‘fraternity’ and ‘social solidarity’ between citizens who are collectively sovereign, or produces such fraternity itself. In fact, somewhat ironically, it is *LP* that seems to resolve the question: here Rawls chooses Mill’s ‘shared sympathies’ as one of the three defining features of liberal societies. This is arguably an indication that there is a certain reliance on prior shared sentiments that are external to justice as fairness, if only because Rawls clearly did not hold at any point that all societies must be regulated by justice as fairness to qualify as liberal.
73. *EGL*, 220.
74. This horrifying number appears in *SPH*, 30. I do not enter here the heated debate over whether we should think about poverty in terms of positive or negative duties. For the latest survey of this debate see Alison Jagger, ed. *Thomas Pogge and His Critics* (London: Polity, 2010).
75. *TJ*, xviii.
76. *Ibid.*, 396.
77. *LP*, 83.
78. *TJ*, 25.
79. *RR*, 56–57. Admittedly, Pogge did try to overcome this problem elsewhere, but only as part of his overall rejection of Rawls, for example in *TP*.
80. *Ibid.*, 1747.
81. *LP*, 36.
82. *Ibid.*
83. *IC*, 1755.
84. See for example, *CS*.
85. *RIJ*, 248.
86. *IC*, 1755. Pogge also adds here that Rawls gives an ‘unbalanced’ reading of Kant.
87. Leif Wenar, ‘Why Rawls is Not a Cosmopolitan Egalitarian’, in *Rawls’ Law of Peoples – A Realistic Utopia?* ed. Rex Martin and David A. Reidy (Oxford: Blackwell, 2006), 108.
88. *IC*, 1755.
89. This dispute obviously has to do also with the nature of non-liberal regimes, which the next section discusses.
90. *IC*, 1756.
91. *RIJ*, 248.
92. A third of *TJ* is dedicated to combating utilitarianism, a particularly Western tradition, and Rawls’ reasons for targeting it are particularistic as well: ‘I wanted to work out a conception of justice that provides a reasonably systematic alternative to utilitarianism, which in one form or another has long dominated the Anglo-Saxon tradition of political thought,’ *TJ*, xi.

Pogge agrees, for example, with Philip Pettit that Rawls 'was not claiming to present a universal theory. . . which people in different circumstances, particularly people in different cultures, would have equal reasons to accept.' Yet Pogge's contention which immediately follows—that Rawls 'was also not prepared to admit that the parochial basis of his theory limits its applicability to societies in which our dominant liberal paradigm prevails'—seems much less convincing, if only because it insists on globally extending Rawls' profoundly domestic statement, that 'A Theory of Justice must work out from its own point of view how to treat those who dissent from it,' made in the rather different context of conscientious refusal. See RR, 212–13, TJ, 325, Philip Pettit, 'A Theory of Justice?' *Theory and Decision* 4 (1974), 311.

93. TJ, 463.
94. RIJ, 248.
95. LP, 59.
96. IC, 1758.
97. Specifically, LP's notion that a state's sovereignty ought to be respected, even if it is not as just as a liberal democracy, is not incoherent with how Rawls suggests a liberal democracy should organize its own affairs, and is clearly consistent with the few remarks on international affairs contained in TJ.
98. Charles Beitz, 'The Moral Standing of States Revisited', *Ethics and International Affairs* 23 (2009), 332. Rawls' position might of course have its philosophical flaws—for example, one could contest the idea that positive and negative sanctions meant to promote liberalization should be equally rejected. But this again has nothing to do with coherence. The same is true for Rawls' supposedly self-evident assumption, that all sanctions are always meant to produce change among 'them,' rather than disengage 'us' from practices we find unacceptable. But perhaps one could say that in order to adopt such a deontological viewpoint, one would have to change TJ as well. That, in a sense, is Pogge's later criticism regarding TJ's 'supposed deontology.' See RPR, 77.
99. Rawls, LP, in Freeman, *Collected Papers*, 529–64.
100. See John Gerring, Philip Bond, William T. Barndt, and Carola Moreno, 'Democracy and Economic Growth: A Historical Perspective', *World Politics* 57 (2005): 323–64, at 336.
101. LP, 108.
102. Leif Wenar, 'Property Rights and the Resource Curse', *Philosophy & Public Affairs* 36 (2008): 2–32, at 12–13.
103. Allen Buchanan, 'Rawls's Law of Peoples: Rules for a Vanished Westphalian World', *Ethics* 110 (2000): 697–721.
104. RVI, 737.
105. Laden, *The House That Jack Built*, 383.
106. CS, 48. Commenting on the same essay in 2002, Pogge even notes 'I have made no effort to change the tone of the chapter, which reflects the spirit of 1990, the year of its original composition.' WPHR, 168.
107. Rawls, 'Fifty Years after Hiroshima', in Freeman, *Collected Papers*, 565–72. The Holocaust's deep impression on Rawls was recently emphasized in Paul Weithman, 'John Rawls and the Task of Political Philosophy', *The Review of Politics* 71 (2009): 113–25.