

Lecture 11

International justice
'The Law of Peoples'

1 International justice

- Rawls had always conceived his theory of justice as having an international dimension. But in TJ he said very little about this, and it was only in his last major piece of work *The Law of Peoples* (1999) that he addressed it. By this time, of course, his position had shifted generally, from TJ to PL; so it is the position of PL that he here attempts to extrapolate to the international sphere.

‘In TJ and PL I sketched out the more reasonable conceptions of justice for a liberal democratic regime and presented a candidate for the most reasonable. In this monograph on the Law of Peoples I have tried to extend these ideas in order to set out the guidelines for a liberal society’s foreign policy in a reasonably just Society of Peoples’ (LP 128)

2 Why 'Peoples'

- Why not 'states'? Rawls gives two reasons –
 - (i) Negative
States are traditionally conceived as 'sovereign', with the right to wage war if they choose. Rawls rejects this conception of sovereignty since he holds that there is no right to wage war except for self-defence. So, since he rejects this implication of state sovereignty, he chooses another word – 'people'.
 - (ii) Positive
'Peoples' have a unity, due to their history, constitution, culture; they are the proper objects of popular 'patriotism' (LP 44)

3 Comments

(a) The units involved here need to be those also dealt with by PL etc.. Those were ‘political societies’, so surely these should be too – i.e. we should have ‘the law of political societies’.

But it looks as though Rawls has taken on board aspects of the communitarian position – so ‘political societies’ are now described as ‘peoples’ in order to emphasize their common culture. In fact, despite his dislike of the term ‘state’ Rawls’s ‘peoples’ are pretty much what we often call ‘nation-states’.

(b) But one good reason for not just talking of states (nations, countries) is that it seems to take it for granted that inquiries here have to start by taking for granted the system of nation-states that are currently recognised. And we need a concept for a political society (community), a that isn’t currently recognised as a nation/state (e.g. Basques, Kurds, Tibetans etc..), so that we can ask whether they should not be so recognised.

In fact, the word ‘people’ is often used for this purpose -
cf. www.UNPO.org for details of ‘unrecognised peoples’.

4 ‘Cosmopolitan’ vs ‘International’ Justice

- Although these questions –
 - How does a ‘people’ become a recognised nation-state?
 - What is the significance of recognition?- call into question the currently existing system of nation-states, they still assume that the primary focus of legitimacy, law and justice in this area is ‘international’ – i.e. concerns relations between nation-states.
- By contrast, ‘Cosmopolitan’ theorists take it that approaches of this kind start at the wrong place, since the legitimacy of nation-states, or unrecognised peoples, needs to be investigated not only with respect to other nation-states and peoples, but, most fundamentally, with respect to all other persons and groups of them. For the cosmopolitan theorist we are all fundamentally members of the ‘cosmos’, the one world, and all political institutions need to have reference to this fundamental social relationship.

5 Key issues in international affairs

- Three major attributes of a nation-state are:
 - (i) territory;
 - (ii) government;
 - (iii) citizenship;

Typically these are recognised by the governments of other nation-states.

- But, there are also often challenges:
 - (i) concerning territory (e.g. Ulster, Kashmir)
 - (ii) concerning government (e.g. (now) Syria)
 - (iii) concerning citizenship (e.g. Palenstinians)
- Sometimes these challenges are external; but sometimes they are internal and connected with demands for secession (e.g. Basques)

6 How to deal with these challenges?

- International institutions (esp. UN) offer a variety of ways of managing these issues. But they are open to the objection that challenges of these kinds to the existing order cannot be properly resolved within that very existing international order which is being challenged.
- Hence cosmopolitan theorists argue that there needs to be a further normative system which appeals to ‘all the people of the world’ to deal with these challenges and modify the existing international order.
- What’s then difficult is to think of a satisfactory way of achieving this (come back to this).
- Back now to Rawls’s approach --

7 Rawls' taxonomy of 'peoples'

According to Rawls, there are four of five main types of 'peoples'

- (i) Reasonable liberal peoples
(‘western liberal democracies’)
 - (ii) Decent peoples
(non-democratic ‘hierarchical’ societies which are not oppressive)
 - (iii) ‘Outlaw’ states
(typically aggressive)
 - (iv) ‘Burdened’ states
(typically under-developed and poor)
- (+ (v) Benevolent absolutisms – but not discussed).

8 How to apply these categories?

Rawls's taxonomy is clearly highly tendentious and difficult to apply – e.g. which African states count as 'reasonable liberal peoples'? (Where do we place Zimbabwe?)

Is it a helpful taxonomy? - I doubt it.

But it is central to Rawls's development of his position – he holds

- (i) There can be an 'ideal theory' specifying a Law – the Law of peoples, for reasonable peoples.
- (ii) This theory can be extended to apply much the same Law to decent peoples.
- (iii) Outlaw states and burdened states raise the issue of 'non-ideal' theory.

9 A 'realistic utopia'

- The 'Law of Peoples' is to apply to liberal and decent peoples; and the aim of 'non-ideal' theory is to facilitate changes in other states to make them liberal or decent, so that the Law of Peoples can apply here too.
- This goal, Rawls thinks, is a 'realistic utopia':

which is not a world of abundance and prosperity, instead the focus is just in international relations and the aim is to put an end to the global anarchy of an unregulated international power system and replace it with a just international order. (i.e. to move from Hobbes' State of War to Kant's 'Perpetual Peace').

10 The 'Society of Peoples'

Rawls starts from 'Reasonable liberal peoples' and thinks of them coming together to agree some principles that are to govern their relationships. As such they form a 'Society of Peoples'. Not surprisingly, he thinks one can model these principles by thinking of them as the outcome of an 'original position' argument, with representatives of different peoples making their choice behind a veil of ignorance.

What are the basic interests of peoples? (cf. primary social goods in TJ)

- security, territory, institutions, culture, patriotic self-respect (LP pp. 18, 34-5).

11 Rawls's 'Law of Peoples'

- (i) Peoples are free and independent, and their freedom and independence are to be respected by other people
- (ii) Peoples are to observe treaties and undertakings
- (iii) Peoples are equal and are parties to the agreements that bind them
- (iv) Peoples are to observe a duty of non-intervention
- (v) Peoples have the right to self-defence but no right to instigate war for reasons other than self-defence
- (vi) Peoples are to honour human rights
- (vii) Peoples are to observe certain specified restrictions in the conduct of war
- (viii) Peoples have a duty to assist other peoples living under unfavourable conditions that prevent their having a just or decent political and social regime.

12 The control of territory

- One can see the similarity with the ‘domestic’ case, where the principles selected are fundamental to ‘domestic’ law and institutions.
- But there is a difference, concerning the control of territory:
- In the individual case, it’s not that individuals bring to the OP their concern to protect their existing property holdings, whatever they are; instead these entitlements are to be fixed by the principles of justice.
- But in the international case this is what Rawls has in mind: - i.e. it’s not just that a people needs *a* territory, but that it is concerned to protect *the territory* it actually has (this is implicit in Rawls ‘laws’ and explicit on pp. 38-9)

13 Rawls and Nozick on territory and property

- One way to think about Rawls's position here is to see it as comparable to Nozick's account of property (which Rawls rejects at the individual level). So: just as Nozick holds that redistributive taxation is inherently unjust because it violates individual property rights, Rawls's position here implies that the law of peoples cannot rightly modify the territorial boundaries of a people. He is content to leave these fixed by 'historical circumstances' (p. 39 - including, therefore, past conquests).
- This implies that we are dealing with nation-states with an established territory and not with peoples striving for recognition. But how, one wants to know, does an unrecognised people get a territory? Rawls says *nothing* about this. But this looks to be a fundamental question of international justice.
- So what we see here are primarily principles for existing nation/states. As is then predictable, Rawls takes a negative attitude to the question of secession for 'peoples' who are not recognised as nation/states (see p. 38).