

Lecture 12

International justice
Beyond 'The Law of Peoples'

1 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.

2 An international ‘Sovereign’ ?

- In the domestic case Rawls accepts that the rule of law implies the need for a government with coercive power (a ‘sovereign’). What about the international case – does the ‘law of peoples’ need to be implemented by an international government with coercive power?
- Rawls does not favour this outcome – a supranational authority, powerful enough to enforce the law of peoples on any people, however powerful:
‘a world government ... would either be a global despotism or else would rule over a fragile empire torn by frequent civil strife’ (LP 36).
- Instead he seems to hope that the moral culture of the reasonable liberal peoples who form a ‘Society of Peoples’ will lead them to uphold the Law of Peoples without the need for much intervention.
- But he does also acknowledge a role for ‘the United Nations ideally conceived’ with ‘the authority to express for the society of well-ordered peoples their condemnation of unjust domestic institutions in other countries and clear cases of the violation of human rights. In grave cases they may try to correct them by economic sanctions, or even by military interventions’ (LP 36)

3 Rawls's optimism

- Rawls is surely right to reject 'world government' – it could only be a response to an external invasion by aliens.
- Instead Rawls seems to envisage his ideal United Nations as authorising coercion (by members of the Society of Peoples) in certain 'grave cases' – typically as a response to aggression by 'outlaw states', which are not members of the Society of Peoples (think, perhaps, of the UN response to the Iraqi invasion of Kuwait).
- Thus Rawls assumes where one is dealing with 'Reasonable liberal peoples' there is good reason to think that they will accept that disputes should not be settled by war or by other coercive measures – e.g. economic sanctions. That is the optimistic claim.
- But what if there are unresolved territorial disputes? Or if there are major disagreements about the measures needed to combat climate change? Or major trade disputes involving subsidies?

4 'Decent' peoples.

- An important feature of Rawls's position is that although the moral impetus of his Law of Peoples is provided by the 'reasonable liberal peoples' which belong to the Society of Peoples, the Society also includes 'Decent' peoples – so that the Law of Peoples also applies to them.
- Decent peoples are states which recognise basic non-political human rights internally and have no aggressive policies externally. But typically citizens are not all 'free and equal'; the state may well be hierarchical rather than democratic, or favour one religion over others. Nonetheless the people form a 'political association' which meets the requirements for decent social cooperation – 'persons have rights and duties enabling them to meet their duties and obligations' (p. 68).
- Rawls works this up into a hypothetical tolerant Muslim state – 'Kazanistan'.

5 Decent peoples and human rights

- Rawls's aim in including decent peoples in his Society is that he wants his Society to be a 'realistic utopia' – and he accepts that it would be unrealistic to suppose that international justice applies only to 'reasonable liberal peoples'. It may also be that 'reasonable pluralism' is in the background here, insofar as the dominant ideology of a decent people is assumed to be 'reasonable'.
- But it does give rise to a problem: Rawls's 'Law of Peoples' affirms that peoples will honour human rights. Hence this is to apply to decent peoples as well as reasonable liberal ones. But the mark of decent non-liberal peoples is precisely that they do not affirm democratic human rights (and may in other ways restrict Rawls's package of basic liberties).
- However, the Law of Peoples also affirms a duty of non-intervention. So there cannot be grounds under the Law for the Society's supreme authority, the 'ideal UN', to intervene in order to promote human rights within decent peoples.
- Hence Rawls's position has an in-built tension. I think he thinks of it as a tacit pressure on decent peoples towards the adoption of liberal democratic norms.

6 Toleration ?

- Having introduced ‘decent’ peoples, Rawls argues that the status of decent peoples within the Society of Peoples can be regarded as an application of a principle of toleration.
- Just as the authorities in a just society should respect the freedom of speech and association of proponents of non-liberal policies as long as they stay within the law, reasonable liberal peoples should tolerate non-liberal peoples as long as they abide by the Law of Peoples (including basic Human Rights which, then, must be assumed not to include democratic political rights). The important point is that decent peoples accept the duty of non-intervention, just as those who champion non-liberal views are to be tolerated as long as they pose no threat to the rights of others.
- As critics observe, however, the comparison is not altogether persuasive, since in the domestic case the proponents of non-liberal policies do not curtail the rights of other citizens, whereas in this case, the members of decent peoples do not enjoy the full rights of Rawls’s liberal peoples. So decent peoples actually practise their non-liberal policies, although they do not attempt to impose them on other peoples.

7 Outlaw states

- These are ‘states’ which are not members of the Society of Peoples because they do not affirm the Law of Peoples. They practise serious internal repression which violates basic human rights, and they are liable to engage in external aggressive war. Their existence is comparable to that of criminals within domestic society. Just as this gives rise to the ‘non-ideal’ aspect of the theory of (domestic) justice, these outlaw states give rise to the need for the non-ideal aspect of the Law of Peoples.
- One aspect of this is the question of legitimate ‘humanitarian’ intervention to protect groups from serious violent oppression (think of Rwanda, Kosovo, Sierra Leone). Rawls acknowledges the issue here (see esp. LP 93-4 n. 6), but is unspecific about details (experience teaches that such interventions are rarely straightforward).
- Rawls in fact uses the case of ‘outlaw states’ to discuss the way in which peoples may legitimately engage in a wars of self-defence. This leads him into a interesting discussion of the ‘laws of war’ especially in connection with WWII (remember that he himself was involved in this). Much of Rawls’s discussion covers familiar ground, though he rightly notes that ‘a great temptation to evil is airpower’ (p. 102 n. 26) – because of the temptation to inflict damage on one’s enemy without regard to the death of innocent civilians.
- Rawls also brings in here an interesting discussion of ‘the statesman’ (LP 97-105)

8 The status of ‘outlaw states’

- For Rawls, these ‘outlaw states’ are not members of the Society of Peoples, though the aim of other peoples should be to transform them into at least ‘decent’ peoples who are members of the Society of Peoples.
- But surely we need a way of ‘recognising’ them, not just to be able to put pressure on them, but to recognise them as political entities, ‘states’, with a territory, a population, and a government able to make treaties on behalf of their citizens etc. International recognition is essential even when it is combined with political dislike.
- Hence it looks as though we need two strands to a theory of international justice:
 - (i) an account of the legitimacy of nation-states, drawing both on effective control of a population within a territory and on recognition;
 - (ii) a more idealistic account of the way in which nation-states should relate to each other.

Rawls’s ‘Law of Peoples’ is an untidy hybrid of these two tasks.

9 Burdened states

- These are states which are too poor or underdeveloped to be able to meet the basic needs of their citizens. As a result they lack the social and political institutions to secure the basic rights of their citizens.
- Rawls infers that they do not belong to the ‘Society of Peoples’ (p. 106), but that the members of this Society should affirm the aim of assisting such peoples to achieve a level of development where they can sustain decent political institutions of their own and thereby become members of the Society.
- On the face of it, however, if these ‘burdened states’ do not belong to the Society of Peoples, their territorial rights, citizenship and government lack legitimacy – or at any right the legitimacy which the Law of Peoples gives to the territory, citizenship and governments of the members of the Society of Peoples. So - as with outlaw states - Rawls’s position on this point is problematic.

10 The duty of assistance

- Rawls takes it that the ‘natural duty of assistance’ requires us as individuals to come to the help of any persons in serious danger. This gives rise to a derivative duty upon ‘peoples’ – the members of the Society of Peoples – to assist burdened states.
- But the scope of this duty is limited. Just as in the individual case he separates the natural duty of assistance from the requirements of distributive justice within a political society, he argues that this international duty of assistance is not an international principle of distributive justice.
- Instead the duty requires us to help burdened states to get on their own feet economically and politically, and then leave them to construct a culture of their own. When helping a burdened society ‘throwing funds at it is usually undesirable’ (LP p. 110). It’s more important for them to develop suitable institutions – e.g. by educating women and giving them equal opportunity.
- What then does Rawls have to say about an international principle of distributive justice?

11 A Global Difference Principle?

- Why not a global difference principle in addition to the duty of assistance?
- The most contentious feature of LP is that Rawls flatly rejects this approach. Rawls here rejects the DP in favour of ‘the criterion of reciprocity’ interpreted now as a distributive duty to enable ‘the least advantaged have sufficient all-purpose means to make intelligent and effective use of their freedoms and to lead reasonable and worthwhile lives’.
- This is, in effect, an international analogue of the ‘zero principle’ of PL, which requires the society of peoples to enable burdened states to develop adequate resources to implement social and political institutions which deliver basic rights and liberties to their citizens.
- So, for Rawls, there is no general international requirement for distributive justice. Instead there is just an enhanced duty of assistance to lift ‘burdens’ from burdened states, so that they can develop a ‘reasonable and worthwhile’ life of their own. There is no ‘global cosmopolitan duty’ to seek equality for all humans, irrespective of their citizenship.

12 Contrast with TJ ?

- The contrast here with TJ is dramatic; and what's odd is that the doubtful considerations which Rawls introduced there about the way in which we do not deserve to benefit from our natural talents seem to apply much more strongly here, when one considers the distribution of valuable natural resources. These really are 'arbitrary from a moral point of view' – so there is good reason to think that their benefits should be made available to all, via some global distributive principle. (cf. Barry)
- But Rawls does not enter into this at all. Instead Rawls harms his case with some discussions in which he implies that the poor have only themselves to blame if they are not virtuous (pp. 117-8) – the kind of consideration which has rather better application against the use of the difference principle in TJ itself.
- Defenders of Rawls (e.g. Nagel) argues that it is a misconception to criticise Rawls for not extending his principles of justice from the 'domestic' sphere to the international one because there is no supranational political institution to enforce international rules of distributive justice and we would not want there to be one.

13 The problem of international order

- What is right here is the recognition that the international case is different, because of the absence of a supranational sovereign, a world government. The issue of legitimate coercion in international affairs is more difficult than in domestic affairs.
- But even if it is more difficult, it is possible to envisage ways of implementing a more ambitious programme than that envisaged by Rawls – e.g. via the WTO.
- More generally it looks to me as though the issues of international justice require a different starting point,
 - (i) with a distinction between ‘peoples’ and ‘states’,
 - (ii) with important questions about the recognition of states, governments, territory, and citizenship to be settled in a way that can modify the existing international order,
 - (iii) and thus some kind of supranational/cosmopolitan authority (a different United Nations) whose ‘coercion’ depends not on the potential use of force, but, instead on the implications of recognition, or the lack of it, via international organisations such as WTO.

14 Anarchism and the world order

I don't have a worked out theory for this; nor do I know of a defensible one. But I end with two points:

- (i) Legitimate national control of a territory is dependent on an international way of legitimating the distribution of resources to 'peoples'. So the international sphere, even though it is decentralised, has a logically prior moral role. Hence until there is justice in international affairs there cannot be justice in domestic (internal) affairs.
- (ii) The conception of a non-coercive international authority is a major theoretical challenge to the Hobbesian tradition in political philosophy which even Rawls endorses. Justice in international affairs requires a non-Hobbesian conception of political authority.
- (iii) In effect what's required is an anarchist legal and bureaucratic political order in which regulation is not thought of as an authoritative, top-down, command, but a middle-level way of securing effective co-operation.