

JOHN RAWLS'S AGENTS IN INTERNATIONAL THEORY OF JUSTICE. THE CONSISTENCY ISSUE

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Abstract: Various directions of criticism have developed from Rawlsian thinking on international society and international justice. One main criticism regarding Rawls's choice of and arguments for the agents in the international position comes from cosmopolitan thinkers. Thomas Pogge, in particular, speaks of an alleged 'incoherence' between Rawls's two theories of justice and, in order to explain this 'incoherence', much emphasis is placed on the choice of agents in Rawlsian model of representation of the original position. In this paper, I will focus on Pogge's criticism regarding Rawls's choice of agents and I will show that some recent attempts have been conducted and have succeeded, through various mechanisms of thought, to 'reconcile' the Rawlsian domestic and international theories of justice, providing a defence to the Rawlsian choice of agents and, sometimes, a rehabilitation of 'peoples' as a concept. I will then challenge a discussion on the limitations in both Pogge's and some of his critics' arguments regarding the participation of individuals in an international original position.

Keywords: John Rawls; Thomas Pogge; global justice; cosmopolitanism; the Rawlsian 'peoples'.

1. Context

Following his 1971 groundbreaking *A Theory of Justice* (hereafter, TJ), providing a contractualist theory of justice for domestic society, John Rawls attempted to expand his concept of *justice as fairness* over international relations as well. More precisely, he seeks to assess how the content of a 'political conception of right and justice' that applies to the principles and norms of international law and practice might be developed out of a liberal idea of justice similar to the idea of 'justice as fairness' (Rawls 1999, 3-4). Rawls focuses on how could a 'realistic utopia' be possible, and under which conditions. His work on *The Law of Peoples* (hereafter, LP) 1993, completed and republished in 1999, conceives a new contract, this time concluded between representatives of domestic societies, that would regulate the behaviour of these societies towards each other. The primary appeal is, once again, to liberal democratic societies, as a manner to complete a theory of justice with 'an articulate understanding of the society's international responsibilities' (Beitz 2000, 669).

In order to identify the principles of justice for the international order, Rawls uses once again his thought experiment of the original position. Taken as a device/model of representation, the original position is used in both contexts in the same manner. The two uses of the original position differ, however, in the adjustments necessary given the different subject matter and agents (Rawls 1999, 32-33), due to the different aims of domestic vs. international society.

In the international theory of justice, the original position models what would be regarded as fair conditions under which the parties would design the Law of Peoples. The parties are now *rational representatives of liberal peoples*, and they operate a selection from among available principles in order to identify *the content* of the Law of Peoples, which is meant to govern the *basic structure of the relations between peoples* (Rawls 1999, 30-32). The veil of ignorance is 'adjusted' so that the parties are unaware of matters such as the sizes of their territories or populations, the extent of the national resources, the level of economic development and so on (Rawls 1999, 40). In these conditions, the first task of the parties is to identify the ideals, principles, and standards of the Law of Peoples, and to learn how to apply them to international relations. To be noted, while domestic society aims at choosing principles of justice for institutions that would include everyone,

apply to everyone, and, consequently, affect everyone, the Society of Peoples is not concerned with establishing principles for international institutions (Beitz 2000, 675; Viola 2001, 133).

Regarding the decisions reached by the parties in this context, Rawls claims that liberal societies would agree, in their international relations, to certain principles of justice applicable among free and democratic peoples. The list contains eight traditional principles of international law and practice (such as non-aggression, non-intervention, the duty of assistance), which would constitute 'the basic charter of the Law of Peoples' (Rawls 1999, 37). The only possible choices are these eight principles identified by Rawls, the task of the parties being mainly to select among different formulations and interpretations of them (Rawls 1999, 39-41).

These (and other) points of disanalogy between the two theories became points of criticism from contemporary thinkers, particularly cosmopolitan ones, who were expecting a global application of the difference principle from domestic theory and more concern for the interests of individuals. Cosmopolitan thinkers argued that the original position can show not only what a society 'owes in justice' to its members, but also what a society and its members owe to individuals everywhere, focusing on the point that justice is cosmopolitan: it is the same ideal of justice that makes demands both within and across societies (Pettit 2006, 39). The choice of agents in Rawlsian international theory has accordingly been a major point of criticism, and this is the issue that I attempt to clarify.

2. The Rawlsian agents in the international original position

The Rawlsian unit of representation in the international original position are 'peoples', not states or individual persons. In this section I will present Rawls's arguments for choosing peoples over states, and I will explain the typology of peoples that can be actors in Rawlsian international society, the requirements that must be met in order to become such an actor.

Rawls justifies his choice for referring to peoples rather than states in order to differentiate his theory from the traditional understanding of the State, which would imply a wrongly-granted absolute sovereignty (Rawls 1999, 25-27; Förster 154). This traditional sovereignty implies a right to wage war in pursuit of state policies, as well as a certain degree of autonomy regarding its people. As far as external sovereignty is concerned, Rawls argues in favour of establishing it through the Law of Peoples, in the joint operation of selection made by the deliberators in the second OP, with the purpose of denying to states this traditional right to wage war (Rawls 1999, 27). In what concerns internal autonomy, Rawls understands it in the traditional sense in which state possesses an alleged right 'to do as it wills with people within its own borders' (Rawls 1999, 26), and the agreement achieved in the international OP should also deny to states this 'unrestricted' internal autonomy. A reformulation of the powers of sovereignty is thus necessary, in which the rights and duties of peoples regarding this 'so-called sovereignty' derive from the Law of Peoples itself (Rawls 1999, 26-27), based on a reciprocal agreement with other peoples.

Moreover, Rawls attributes peoples with a 'moral character' (Rawls 1999, 27), that the states, in his view, do not possess. Peoples are thus treated by Rawls as 'capable of agency' and 'as possessed of something that parallels the psychology of an individual agent', as 'actors' to whom motives, including moral motives, can be ascribed (Pettit 2006, 42). The distinction between peoples and states is, from this perspective, based on the manner in which rationality, the concern with power, and a state's basic interests are filled in. As far as states are concerned, their 'rationality' would exclude 'the reasonable' (the aims of the state would be preponderant and the criterion of reciprocity in its international relations would be ignored), their concern with power would be predominant, and they would follow certain interests that the peoples wouldn't – such as winning territory or gaining imperial or national prestige and glory (Rawls 1999, 28). Unlike states, peoples work beyond 'the prudent or rational pursuit interests' or the 'reasons of state' and 'limit their basic interests as required by the reasonable' (Rawls 1999, 27). Moreover, peoples would attempt, beyond meeting their basic interests (protection of territory, security of their citizens, preservation of their free political institutions, civic liberties and culture), to achieve reasonable

justice both for their citizens and for the other similar peoples, with whom they can act together `in upholding justice and preserving peace` (Rawls 1999, 29).

Rawls uses, thus, the term `peoples` in order to emphasize the peoples' features of being limited in their external and internal sovereignty, distinctively from states, in their traditional understanding, and to highlight their moral character. The idea of referring to peoples rather than states is crucial, Rawls claims, since it enables one to `attribute moral motives` to peoples (as actors), which cannot be done for states (Rawls 1999, 17).

The actors in Rawls's Society of Peoples are liberal democratic peoples and decent peoples. The elements that I identified thus far I attribute to both liberal and decent peoples, namely to 'peoples' in general, as opposed to states. I specify this since Rawls's language is ambiguous, and various interpretations have been provided as to what differentiates peoples from states or liberal peoples from decent peoples.

Rawls shows, for instance, that liberal peoples are identified by `a reasonably just constitutional democratic government that serves their fundamental interests` (an institutional feature); `citizens united by what Mill called "common sympathies" (a cultural feature) and a `moral nature`, by which Rawls means `a firm attachment to a political (moral) conception of right and justice` (Rawls 1999, 23-24). These features are attributed to liberal peoples. However, as Rawls later shows, they all have some analogue regarding decent peoples as well, which makes them, I believe, common features to peoples, in a broad sense, with the adjustments necessary to refer to decent peoples as well.

When Rawls speaks of a liberal society, for the purpose of his international thesis, he speaks of an internally reasonably just constitutional democracy. What is essential is a reasonable liberal conception of justice, which subsumes three characteristic principles: basic rights and liberties `familiar from a constitutional regime`; assigning these rights, liberties, and opportunities a special priority; assuring for all citizens the requisite primary goods to enable them to make intelligent and effective use of their freedoms (Rawls 1999, 14).

The so-called `decent` societies are non-liberal societies with basic institutions that meet certain conditions of political right and justice and `lead their citizens to honour a reasonably just law for the Society of Peoples` (Rawls 1999, 4, n. 2). Rawls identifies and expands on one specific type of decent people, particularized by the fact that its basic structure has a `decent consultation hierarchy`, but specifies that other types of decent peoples could be identified (Rawls 1999, 63).

Rawls identifies two conditions that these societies would meet in order to gain membership in the reasonable Society of Peoples. The first criterion, of external character, is that such a society lacks aggressive aims, and it recognizes diplomacy, trade and other ways of peace as means to gain its legitimate ends, and also respects the political and social order of other societies (Rawls 1999, 64, 67); hence, it must be a peaceful society. The second criterion has an internal character and is divided by Rawls in three parts. Firstly, the system of law specific to a decent hierarchical people, in accordance with its own `common good idea of justice`, must secure certain human rights for all its members. Secondly, the system of law must be conceived as imposing `bona fide moral duties and obligations` on its inhabitants and it needs to contain a decent scheme of political and social cooperation. Thirdly, there must be a sincere and reasonable belief of those administering the legal system that the law is `indeed guided by a common good idea of justice`, taking into account what a decent people sees as the fundamental interests of everyone in its society (Rawls 1999, 65-67).

It can easily be noted that, while liberal societies are marked by the *reasonable*, decent societies are marked by the *decent*. Rawls speaks of decency `as a normative idea of the same kind as reasonableness, though weaker`, thus covering `less than reasonableness does`. Societies conceived as `decent`, although don't meet the liberal conceptions specific to liberal democratic states, have the aforementioned characteristics granting them `the decent moral status` required for membership in the reasonable Society of Peoples that Rawls proposes (Rawls 1999, 68).

A people, although not a liberal one, meeting these requirements, would be `tolerated`, and what this toleration means, beyond abstaining from imposing political sanctions upon them, is that these societies would be recognized as members participating equally in the Society of Peoples,

with the specific rights and obligations (Rawls 1999, 59). In order to extend the Law of Peoples to decent societies, Rawls designs a third model of representation that draws upon the original position, in an attempt to demonstrate that decent peoples would accept, among them, the same Law of Peoples as liberal societies.

Liberal democratic peoples and decent peoples, which, together, follow the same principles in their international relations and form the Society of Peoples, or a society of well-ordered peoples, are not the only types of domestic societies that Rawls identifies. He speaks of three more types, which are not, however, tolerated in the aforementioned sense: outlaw states, societies burdened by unfavourable conditions and benevolent absolutisms.

Outlaw states are regimes that refuse to comply with a reasonable Law of Peoples (Rawls 1999, 5), are aggressive and dangerous (Rawls 1999, 81) and find it justifiable to engage in war in order to advance their rational, instead of reasonable, interests (Rawls 1999, 90). These states are not tolerated by and within the Society of Peoples as a direct consequence of the liberalism and decency characterizing well-ordered peoples.

Burdened societies are societies that cannot comply with a reasonable Law of Peoples due to historical, social, and economic circumstances (Rawls 1999, 5, 90). These societies, while not expansive or aggressive, do, however, 'lack the political and cultural traditions, the human capital and know-how, and, often, the material and technological resources needed to be well-ordered' (Rawls 1999, 106). Well-ordered peoples are bound by a duty of assistance towards these societies, in order for them to establish their own institutions, reasonable or decent, and this duty is important enough as to constitute the eighth principle of the Law of Peoples.

The fifth type of political entity in Rawls' international theory is represented by benevolent absolutisms, characterized by the fact that they do honour human rights, but its members are denied a meaningful role in political decision-making, which makes them not well-ordered (Rawls 1999, 4, 63, 92), and, as such, not a member of the Society of Peoples.

A language issue further deepens the idea that only peoples are members in the Rawlsian international theory and that only liberal and decent societies are 'peoples': when speaking of the other three types of domestic societies, Rawls avoids using the term 'peoples', and appeals, instead, to notions such as 'societies' or 'states'. As Viola rightly noticed, not all societies that are non-liberal are excluded from international society, as founded on the Law of Peoples, but 'only those the word people cannot be referred to' (Viola 2001, 126). Returning to the differentiation between peoples and states, Förster builds an interesting case: that 'peoples are positively idealized states (states as they should be), while Rawlsian states are 'negative idealizations of states (states as they should not be)' (Förster 2014, 31). These are, in the most widespread interpretation of Rawlsian thinking, the agents in the international original position: (liberal and decent) peoples, as idealized versions of states.

3. Thomas Pogge's claim for 'incoherence' regarding Rawls's choice of agents

Thomas Pogge argued extensively that Rawls's theory of international justice lacks consistency, or coherence, with his previous theory of domestic justice, and identified various divergences and asymmetries. First of all, Pogge sees as a 'divergence' the fact that the representatives (deliberators, as he calls them) in the second original position are conceived as representing *peoples* rather than persons, and the international original position is built to model the *freedom and equality of peoples*. Secondly, representation is granted in a selective manner, only to well-ordered peoples (having either a liberal or a decent domestic institutional order), while the other three types of peoples as identified by Rawls are not accepted as equals and are denied, as a consequence, equal respect and tolerance. Thirdly, the veil of ignorance is thinner, allowing the parties to be aware of whether they are representing a liberal or a decent people, and Rawls therefore uses the original position experiment twice in the international theory, for the representatives of each of these well-ordered peoples. Fourthly, the task assigned to the parties in the international original position is 'disanalogous', since the parties are not charged with agreeing on a public criterion for the assessment, design, and reform of the global institutional order, but

with agreeing directly on a set of rules (Pogge 2004, 1740; Pogge 2006, 206-207). A fifth 'unexplained asymmetry' is represented by the fact that Rawls's theory of international justice refuses to assume the entire world as a 'closed society' and to structure it in accordance with the public criterion of social justice (Pogge 2004, 1754-1759; Pogge 2006, 207-210). Much emphasis in Pogge's criticism is placed on Rawls's choice of agents (and their tasks and decisions) in the original position.

Thomas Pogge finds the entire notion of 'peoples' as flawed, marked by 'a double vagueness' (Pogge 2004, 1743; Pogge 2006, 211). He finds it not 'clear enough and significant enough in the human world to play the conceptual role and to have the moral significance that Rawls assigns to it'. He approaches the matter by referring to the world as we know it contemporarily and shows that the existing borders don't always match the main features which identify *a people* or *a nation*, features such as common ethnicity, language, culture, history, tradition (Pogge 1994, 197). A first element of alleged vagueness would be, thus, the fact that the difference between a group and a people is uncertain. In this sense, he questions Rawls's choice of referring to peoples, as opposed to states, by raising the issue of the constituents of such a people, more precisely, whether a people would be composed of the group of persons within the territorial borders of a state. If the answer would be positive, this would leave aside various groups that have a shared (national) identity beyond the borders of one single state. The second element of alleged vagueness comes from the fact that Rawls did not consider the elements that delimit peoples from each other, did not name the criteria for belonging to a people, such as passport, culture, descent, choice, a combination of these or even other criteria. He thus wonders whether an individual person could belong to several peoples in the same time or whether one is bound to belong to a single people, and argues that Rawls paid no attention to such issues (Pogge 2004, 1743; Pogge 2006, 211).

The main criticism provided by Pogge to the Rawlsian theory of international justice regards, however, the approach (as understood by Pogge) on individual human beings, particularly since Pogge challenged the very idea that individuals cannot participate directly in the process of designing the just global institutions (Pogge 1989).

First of all, Pogge discusses the rejection of normative individualism that allegedly characterizes Rawls's theory of international justice as opposed to domestic theory. Pogge counts as 'asymmetry' the fact that, while in domestic theory the interests of collectives are given 'no independent weight', in international theory it is peoples ('collectives with interests that are *not* reducible to interests of individual persons') that are the ultimate units of moral concern – and their equality and independence are the main interests shown in conceiving the Law of Peoples. Moreover, Pogge speaks of Rawls's 'insistence that the interests of individuals *should not count at all* for purposes of selecting and justifying a particular set of rules governing state conduct' and claims that, while the interests of 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, in an 'undefended and dramatic asymmetry' (Pogge 2004, 1744; Pogge 2006, 212). Pogge does acknowledge Rawls's interest in the fact that, in reasonable societies – liberal and decent – the basic needs of individuals should be met, but shows that meeting basic needs in international theory doesn't have a moral importance, but at most an instrumental one, 'insofar as it contributes to preserving the internal stability or the external equality or independence of liberal or decent societies' (Pogge 2006, 211). Moreover, Pogge challenges the approach on the basic needs of citizens belonging to the other categories of peoples, excluded by Rawls from the Society of Peoples, and shows that, although members of burdened societies would benefit from some interest in their basic needs, through the introduction of the eighth principle of justice, the basic needs of human beings in benevolent absolutisms and outlaw states are entirely ignored (Pogge 2006, 211-212).

Rawls made it clear that both types of *reasonable* societies manifest an interest in the well-being of the individuals composing them, but Pogge shifts attention towards the inclusion of this interest in the international original position itself, arguing it could have incorporated a concern for

at least the jointly recognized individual interests (Pogge 2004, 1745; Pogge 2006, 212-213). The point Pogge is attempting to demonstrate, following his concerns for global inequality, is that, if the representatives in the international original position were to consider the interests of individuals from the point of view of their socio-economic position, then the international choice of principles would have looked different, with some 'global economic rules that tend to moderate rather than aggravate international economic inequality' (Pogge 2004, 1745; Pogge 2006, 212).

Pogge insists that Rawls's international theory gives *no* weight to individuals and their interests, and claims that, while the interest of peoples (to preserve their equality and independence as a well-ordered society) may accord with the interest of individuals to live in a well-ordered society, the equality and independence of which are preserved, individuals also have other interests. Many of these other interests are relevant in what concerns formulating rules for the good conduct of states, Pogge shows, and returns to his focus on global inequality by exemplifying with the interest in avoiding severe poverty or in being able to avoid very large discrepancies between their own socio-economic level and the (higher) one in other societies (Pogge 2004, 1752; Pogge 2006, 222).

Beyond this major element of asymmetry represented by the exclusive concern, in Pogge's interpretation of Rawls, for the interests of peoples, there are two other structural discrepancies that play a role in Pogge's argument – the fact that, unlike the domestic theory of justice, which is 'three-tiered' and 'institutional', the international theory of justice is 'two-tiered' and 'interactional'. Thus, on the one hand, while, in the domestic case, the parties are to adopt a public criterion of justice to be applied on the domestic institutional order, within variable circumstances, in the international case the parties are asked to directly endorse certain rules, through a bargaining process (Pogge 2004, 1745-1746). On the other hand, Rawls's domestic theory is three-tiered and, through its middle tier, allows for considerations on alternative feasible institutional arrangements, the criterion of social justice demanding systematic reflection on the basic structure, while Rawls's two-tiered international theory does not provide the flexibility that characterized the former. Instead, the members of Rawls's Society of Peoples 'are locked into a particular set of rules which may well prove too rigid to fulfil their interests as peoples under changing global circumstances' (Pogge 2004, 1746). Pogge claims that the representatives of well-ordered peoples *do* have reasons to propose alternatives to the eight principles of international justice, aiming for a more egalitarian scheme of economic cooperation and a more egalitarian Law of Peoples. Pogge concludes that, even if these three 'unexplained asymmetries' are accepted, and even if the entire thought experiment would be conducted as Rawls intended, the representatives in the original position would still have reason to favour a more egalitarian global order over one designed by bargaining among states.

In yet another 'unexplained asymmetry', Pogge argues in favour of viewing the world as a 'closed society', by the stipulations used in the domestic theory. Such a closed society could be structured, in Pogge's view, in accordance with the public criterion of social justice Rawls proposes in his domestic theory (and refuses to apply in the international one). Once more, Pogge identifies flaws in Rawlsian international thinking and refutes them with an appeal to his suggestion that the most important interests of *persons* should be represented in the international original position, together with those of peoples. For instance, in analyzing the toleration of decent peoples (given they even exist) alongside liberal peoples, Pogge shows that contemporary justifications of decent regimes might also take the interests of persons as morally fundamental. Hence, if decent regimes are justified as such, or if no decent people even exists, then 'a liberal commitment to accommodate decent societies would *not* support an international original position that represents peoples rather than persons' (Pogge 2004, 1756; Pogge 2006, 209). The global order, in Pogge's view, without involving non-toleration, should be 'in itself decidedly liberal in character' (Pogge 1994, 218), and an indication of how this could be obtained is by acknowledging (only) individual persons as ultimate units of equal moral concern.

4. Recent attempts to defend consistency

Criticism to Rawls's international theory of justice and his choice of agents fuelled some attempts at reconciliation. I will show that the more recent approaches of Shmuel Nili and Paul Baran, with different methodologies, provide some valuable criticism to Pogge's (and other cosmopolitans') arguments and successfully demonstrate that there is a normative internal consistency between Rawls's two theories, also reflected in the choice of agents.

Shmuel Nili attempts to argue, against Pogge, that the domestic and the international theories of justice can be seen as coherent by means of using a Rousseauian reading of the domestic theory, instead of a Kantian (economic) reading, and, as such, seeks to refute Pogge's incoherence arguments, which include the identity, motivations and decisions of the parties in the international original position (Nili 2010, 277).

In the Kantian, economic, cosmopolitan reading, TJ focuses, first of all, on the basic structure to which justice as fairness is to be applied, basic structure which is seen as the main interest of political philosophy, allowing one to see that 'the problem of social justice is qualitatively different from that of individual morality' (Nili 2010, 279). It is, secondly, concerned with the least advantaged. Pogge's interpretation of TJ, seeing the difference principle as central to the basic structure and the core of justice as fairness, applicable to the world as a whole, has obvious cosmopolitan implications, also reflected in his approach on LP. Pogge argues that political institutions need to be rearranged so as to implement egalitarian concerns, towards some global modes of governance, 'in accordance with the (essentially economic) rationality of justice' expressed in the original position (drawn from domestic theory). As Nili shows, Pogge's interpretation of TJ 'sees the economic as determining the political' (Nili 2010, 280-281).

The Rousseauian reading that Nili proposes is 'less cosmopolitan' and is focused rather on the sovereign democratic setting, instead of the economic setting (Nili 2010, 278), deeming it 'equally plausible' to see the focus of justice as fairness (and of the basic structure) not directly in the difference principle, but rather in the notion of 'public affirmation by sovereign institutions, and the psychological impact it has over society's members' (Nili 2010, 281). The members of a well-ordered society thus acquire an understanding of the 'morality of principles', strongly connected to Rawls's reading of Rousseau. A moral transformation does have some economic implications, but for Rousseau, as well as for Rawls, these implications are not primary, Nili claims. In the discourse on global justice, while it is possible to approach the domestic shaping process in a cosmopolitan manner, the same process can also be approached in a political manner. Hence, it is also equally plausible to read the argument for the two principles of domestic justice 'as arising *through* rather than *from* the OP', which makes it seem that the political is conditioning the economic, that 'it is the democratic setting that generates the OP and with it the difference principle' (Nili 2010, 283-284).

While Nili doesn't claim that TJ 'ought' to be read in this manner, but that it 'can' (nor does he claim that the Kantian and the Rousseauian readings are incompatible), he argues that, by attempting a Rousseauian-political-democratic reading of the domestic theory, there are important differences in the discussion on the global level as introduced by Rawls (Nili 2010, 279, 284) and interpreted by Pogge.

I already noted that one the main asymmetries identified by Pogge regarding Rawls's domestic and international theories of justice is the choice of agents, the fact that the international OP should either represent individual persons only, or at least include persons alongside peoples. Against Pogge's claim that Rawls rejects normative individualism in the international justice discourse, Nili attempts to show that individual interests do count in LP, *even if individuals are not represented as parties*, and, also, that they count in a way that is 'commensurate with Rawls' picture of the person in TJ' (Nili 2010, 286). In what regards individual interests, Nili shows that they are incorporated in the international OP, since both liberal and decent societies recognize the interest of their members in a well-ordered society (they are conceived as to even presuppose this type of interest, I believe) and the respect for certain basic human rights. It is true that Rawls deems certain individual interests as not worth considering, such as the economic interests of individuals belonging to decent societies, but Pogge's criticism regarding an absolute rejection of the interests

of individuals in the international theory cannot be sustained. Nili particularly refutes Pogge's claims that the interests of individuals in the absolute and relative socio-economic position are not taken into consideration. He shows, moreover, that, in Rawlsian thinking, ever since TJ, wealth is not seen as the basis of self-respect, and moral psychology is deeply and crucially shaped by political institutions, 'in what is arguably a very Rousseauian fashion' (Nili 2010, 287).

Nili's second argument to the matter, that the approach on the individuals in LP is coherent with the approach on the person in TJ, is developed through an appeal to the 'Rousseauian spirit', as present in Rawlsian international theory. On the one hand, Rawls bases his 'realistic utopia' on Rousseau's desire to see 'men as they are and the laws as they might be', and, on the other hand, Nili identifies 'a strong Rousseauian emphasis on individuals' ability to influence political decisions as a morally significant factor' (Nili 2010, 287). This can be seen in the requirement of consultation mechanisms presupposed by decent societies, where a meaningful voice provided to the members of such societies is a condition for their mere admittance in the Society of Peoples. In Nili's view, this 'can be said to maintain a crucial element of the public affirmation of their self-respect' (Nili 2010, 287).

By applying the Rousseauian filter of interpretation, Nili shows, first of all, that Rawls' choice of peoples rather than individuals as parties in the international OP is not an abandonment of TJ's normative individualism. He manages to refute Pogge's other arguments on inconsistency as well, arguing that, through the same filter, Rawls's avoidance of a global criterion of justice in favour of rules of conduct coheres with TJ's notion of public affirmation of rights and liberties by sovereign institutions; that there is no incoherence in rejecting a global difference principle since this principle can already be read in TJ as arising from a sovereign democratic setting; that the context of sovereignty explains why Rawls does not treat the world as a 'closed system', as in TJ, and that the respect granted by liberal democracies to 'decent hierarchies' can be justified through their public affirmation of their members' fundamental rights (Nili 2010, 278).

In a methodologically different attempt, Paul Baran also aims at refuting the charge of inconsistency advanced by cosmopolitans such as Thomas Pogge or Gillian Brock. What he identifies as the main point missed by cosmopolitans in Rawls's LP is the fundamental difference between peoples and individuals, reflected in the first principle of the Law of Peoples, namely that 'Peoples are free and independent, and their freedom and independence are to be respected by other peoples'. The implications of this principle and the motivations behind it, Baran claims, are central to Rawls' international theory. By introducing this principle in the Law of Peoples, Rawls is acknowledging the fact that 'peoples can live independently of other peoples in a way that individuals on a domestic level cannot', that 'peoples have the capacity to be self-sufficient and individuals do not' (Baran 2013, 183).

Not only does this mean that Rawls is not, in fact, inconsistent to his earlier work, but, in Baran's view, this fundamental difference between peoples and individuals explains why a different set of principles ought to apply in international vs. domestic setting. Given the fact that peoples differ in a significant way from individuals, and the delegates in the original position acknowledge this difference, it 'would make sense' for different rules to apply (Baran 2013, 183). Baran emphasizes on the different conditions that apply to individuals on a domestic level and peoples on a global level and, as such, doesn't identify a change in Rawls's position from his earlier work. In an attempt to find a Rawlsian response to his cosmopolitan critics, Baran shows that Rawls would claim that peoples, in a similar manner to individuals, are moral agents worthy of respect, but they differ 'in their capacity for independence' (Baran 2013, 186).

Baran argues, moreover, that precisely by the fact that different principles are selected is Rawls, in fact, consistent, or that, if the same principles would have been selected, inconsistency would have occurred. He thus attempts to show that, by the selection of different principles (this claim particularly regards the lack of a difference principle in the international case), what Rawls accomplishes is to secure 'the interests behind the principles rather than securing the principles themselves' (Baran 2013, 183). The defence provided by Baran against the claim for inconsistency is based on the priority of self-respect.

In this sense, he shows that the acceptance of a difference principle on the global level and the rejection of a difference principle on the international level are `both attempts to secure the same end: the self-respect of a peoples on the international level and the self-respect of individuals on a domestic level` (Baran 2013, 184-185). Since the primary concern of a people would be maintaining and preserving its autonomy, a global difference principle would be a threat to its self-determination, a violation of the priority and importance of its self-respect. Hence, in Rawlsian domestic theory, self-respect and the liberty principle take priority over the difference principle, and, in international theory, the same order of priority seems to apply. As such, the two theories *are* consistent with each other, and this also explains the lack of a difference principle in the international setting. What is essential is the significant difference between the domestic level and the international level regarding the capacity for self-sufficiency– while one cannot reasonably expect complete self-sufficiency among individuals, there can be a reasonable expectation of (at least potential) self-sufficiency of peoples (Baran 2013, 183-187), since individuals cannot live independent of other individuals in the way that peoples can live independent of other peoples. Hence, it isn't necessary that the principles of justice apply globally in the way they apply domestically, and missing this essential difference between peoples and individuals is a potential cause as to why Rawls's critics see his work as inconsistent (Baran 2013, 186).

5. Discussion

I believe that Thomas Pogge's claim for incoherence regarding Rawls's international theory is heavily influenced by Pogge's own economic, distributive justice-oriented theoretical interest, which precludes, in certain matters, an academic fidelity to Rawls's own purposes. While designing his own theory on Rawls's, following the original position idea, the theoretical role of which he doesn't deny, most of Pogge's claims and arguments depart from Rawlsian international thinking up to the point where they miss Rawls's own goal. It wasn't difficult for authors such as Nili and Baran to refute some of Pogge's main claims – Nili does appeal to a different interpretation of Rawls, but maintains it in a Rawlsian sense, and Baran attempts and succeeds to identify some possible Rawlsian responses to cosmopolitan criticism. Departing from Rawls's intentions, which are not to provide an account of global distributive justice, or straightforwardly ignoring some of Rawls's claims, puts Pogge's work in an easily objectionable place.

To begin with, I will argue my claim by showing that Pogge's insistence on Rawls's complete disregard for individual interests in the international theory is based on ignoring altogether the Rawlsian first, domestic original position. Rawls did not set aside the domestic original position, on the contrary, it is still essential in international theory, and the second original position is only a further step, a continuation, a second level of use, not the *sole* level of representation in his international theory of justice. As such, the claim for the complete rejection of normative individualism, as Nili showed through his different methodological approach and as a faithful critic should have noticed, is built from entirely setting aside an important point of Rawls's reasoning. Individual interests *are* given due consideration, firstly by maintaining the original position at the domestic level, where socio-economic interests of all individuals are properly taken into account, and, secondly, they are given consideration in the sense that the beneficiaries of an international settlement meant to avoid war and preserve peace and stability, are, ultimately, individual persons. It is not necessary for the scope of Rawls's work on international justice to reiterate socio-economic individual interests at the international level, in the arrangement concluded between representatives of liberal democratic peoples. Individual interests are not ignored, they are set aside only insofar as they have already been given proper consideration in the first original position.

The same holds for the participation of decent societies in the international order. It is simply not congruent with Rawls's purposes to incorporate a concern for the jointly recognized individual interests of liberal democratic and decent societies, since decent societies, by definition, are non-liberal, and realistically diverse, and could not plausibly participate in an original position, which is designed specifically for liberal societies. As a matter of fact, even if we would refute this claim, and allow representatives of both liberal and decent societies to participate in an international

original position, by maintaining Rawls's point towards a just and stable world order, and not an egalitarian order, there is no indication that the economic purposes emphasized by Pogge would be of primary concern. Pogge's claim that, even if the entire thought experiment would have been conducted as Rawls intended, the representatives in the original position would still have reason to favour a more egalitarian global order is valid *if* the task of the parties would have been to establish an egalitarian world order, in other words, if Rawls would have aimed towards global distributive justice. This it is not to say that Pogge's point toward egalitarianism cannot be seen as rightful – but its rightfulness attaches to a different goal, Pogge's goal, not Rawls's.

Shmuel Nili challenges Pogge's approach using, methodologically, a Rousseauian interpretation of Rawls's TJ, by which the sovereign democratic setting, not the economic one, would become the main key of lecture. Such an interpretation proves successful in refuting Pogge's claim for inconsistency. Nili shows that, in this key, Rawls' choice of peoples rather than individuals as parties for the international original position is not an abandonment of the normative individualism specific to TJ, and manages to refute, as well, Pogge's other charges of inconsistency. Paul Baran, also attempting to defend consistency in Rawlsian thinking, shows that the main key to understand Rawls's international project is peoples' freedom and independence. What differentiates individuals and peoples is their capacity for independence, for becoming self-sustainable, and this difference explains why consistency requires a different set of principles in the international setting.

The explanations or interpretations provided by Nili and Baran rightfully show how the interests of individuals are given consideration in Rawls's international theory, as well as why is it consistent for Rawls to choose different agents and principles than in his domestic theory. They fail to successfully refute, however, one of Pogge's main points, that individuals *could* (and should) participate in an international OP. In my opinion, without departing from Rawls's goals, a participation of individuals in an international original position would be possible, at least in what concerns their international interests. Such international interests, in line with Rawls's own purposes, can be different than peoples' interests and, as such, can be better identified and accounted for by granting individuals direct participation in an international OP.

6. Conclusions

I believe that Pogge and other cosmopolitans make a valid point in claiming the participation of individual persons in the international original position. However, if one is to be faithful to Rawls's goals, and acknowledges the fact that he does not abandon the domestic original position in international theory, a claim for inconsistency or incoherence regarding the Rawlsian choice of agents seems rather harsh. Both Nili and Baran managed to normatively refute it successfully – it does make sense that the motivations, tasks and decisions of the parties in an international original position would be different from their counterparts in the domestic original position.

However, I believe that Rawls's international theory could be developed in a more inclusive manner, with broader participation in the international setting, without departing from Rawls's ultimate goals of a stable, peaceful world order, of justice and stability for the right reasons. Rawlsian international goals don't preclude, in my opinion, the possibility that individuals participate themselves in an international original position, or that a (new) level of use of the original position couldn't be fair to individual persons as well.

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