Ideal Worlds *

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Abstract

This essay has two purposes. First, it presents a critical analysis of John Rawls' attempt, in a text called *The Law of Peoples*, to extend to international affairs the conception of justice and politics he developed in his earlier books. In his new work, he derives a number of principles for the state behavior from a contract among representatives of "peoples" behind a "veil of ignorance" — the same method he had used in the *Theory of Justice* for representatives of individuals within a state. This essay tries to show that Rawls' new "ideal theory" is flawed, because of the many unsolved questions raised by the notion of "peoples", and because of serious shortcomings in his conception of human rights and of consensus.

A second purpose of the essay is to situate Rawls' attempt at an ideal moral-philosophical theory for world politics, amidst other such efforts, especially Michael Walzer's communitarianism (in his recent book *Thick and Thin*) and Judith Shklar's essay on the *Liberalism of Fear*. One of the conclusions reached here is that in international affairs the distinction between ideal and non-ideal theory is untenable.

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On Human Rights - The Oxford Amnesty Lectures 1993 edited by Stephen Shute and Susan Hurley. Basic Books 1993.
Thick and Thin - Moral Argument at Home and Abroad by Michael Walzer. Univ. of Notre Dame Press, 1994.

IDEAL WORLDS

Stanley Hoffmann

I

Moral and political philosophy have had little to say about international affairs. Rousseau and Kant told us that we would never be truly free beings as long as wars pitted societies against each other and made it easier for authoritarian leaders to rule arbitrarily. But political and moral philosophers have remained concerned with the quest for the good life within society and for the just political state. Insofar as international affairs preoccupied them at all, some of them, the Realists, told us that the "state of nature" in which states find themselves competing for power, ruled out moral behavior and allowed for no better conditions than those which the balancing of power would produce. Others told us that the triumph of representative and constitutional government at home, and of the principle of national self-determination, would produce a harmonious liberal world of cooperating nation-states which reduced powers for mischief. Still others, the Marxists, informed us that the revolutionary triumph of the proletariat would result in the "withering away" of the state, and therefore of the division of the world into competing states as well.

The failure of both the Liberal and the Marxist prophecies seemed to abandon the field to the cheerless "eternal verities" of Realism, warning us that the need for order - always threatened by the states' contest - takes precedence over the quest for justice(1). Far from stifling the hunger for a philosophy that might offer some picture of a better international society, Realism - rejuvenated by E. H. Carr, Hans Morgenthau, George Kennan and Henry Kissinger - exacerbated it. Realism seemed inadequate in a world of clashing sovereign states that could be destroyed by the nuclear weapons: this time, the struggle for power risked destroying the whole field of players, and not just some of them - even Hans Morgenthau concluded that a nuclear world of states, without any central power above them, had become intolerable. Indeed, in the early 1960s and again in the 1980s theologians and philosophers fought fiercely over nuclear ethics, arguing about both the probability and the morality of nuclear war, and over whether a resort to nuclear weapons could ever be justified(2). At the same time formerly colonized states raised the issue of distributive justice - how unfairly resources and wealth are distributed - in a world whose parts were increasingly interdependent, yet divided by a widening gap between rich and poor. A third reason was the relatively recent but powerful concern for the environment - the awareness that the onslaught of human activities against the world's resources, climate and species could not be addressed by the old methods of leisurely diplomacy. Finally, after the horrors of the second world war, there was the spread of a new variant of Liberalism: the ideology of human rights. It did not concentrate on the virtues of Liberal nation-states, as before, but on the crimes committed against human beings in a very large number of states: the advocates of human rights pointed out that the very notions of state sovereignty and national self-determination that 19th century Liberalism had endorsed were being used by governments and militant nationalists as a shield protecting a broad range of violations of individual and group rights from external scrutiny and correction.

In other words, the time had come to apply the traditional concerns and queries of political and moral philosophy to international society as a whole. Debates about the principles to apply to the issues I have mentioned were mainly over what John Rawls in his Theory of Justice calls "non-ideal theory". It deals, on the one hand, with overcoming those "natural limitations and historical contingencies" (T.J. p. 246) that prevent "the poorer and less technologically-advanced societies of the world" from attaining "historical and social conditions that allow them to establish just and workable institutions" (Law of Peoples, p. 52-53) and, on the other hand, with "principles for meeting injustice" (T.J. p. 246), i.e. how to handle evil and aggressive regimes. What was missing, however, was ideal theory. In Rawls's terms, when (as in A Theory of Justice) it deals with justice in a national society, it provides "the principles that characterize a well-ordered society under favorable circumstances" (T.J. p. 245). When it deals with international society, it sets rules of behavior for "well-ordered" societies, i.e. societies whose citizens accept the same principles of justice, whose institutions satisfy those principles, and whose governments comply with the rules of conduct they have endorsed. Such a theory would serve as a yardstick with which the existing international society could be judged, and provide us with directions for reform. The distinction between ideal and non ideal theory is an old one. In The Social Contract Rousseau was giving us ideal theory: the principles and institutions of a perfect democracy; in his essays on Poland and Corsica he adapted it to non-ideal, specific historical cases.

It is not surprising that Rawls should be the one contemporary philosopher who tries systematically - if so far only in a short set of lectures delivered at Oxford and published in a collection of lectures on human rights sponsored by Amnesty International - to provide us with an ideal theory for international society. In this essay, he uses his "social contract doctrine" in order to develop what he calls "the law of peoples". This is not international law, but "a political conception of right and justice" (p. 42), based on liberal ideas of justice "similar to but more general" than his central idea of "justice as fairness" presented in *A Theory of Justice*, and applied to international affairs. In his famous earlier book, and in his more recent essays on *Political Liberalism*(3), Rawls had tried, in a way, something that might seem impossible: to define a conception and principles of justice that would apply to the "main political, social and economic institutions" of society, conceived as a "fair system of cooperation over time" (P.L. p.15), and would also be acceptable to men and women who hold very different conceptions of ethics and metaphysics - what he calls different "comprehensive doctrines". The principles are the object of a social contract among "free and rational persons concerned to further their own interests" (T.J. p. 11) and the result of Rawls's famous procedure in which he seeks principles of justice that such persons would "accept in an initial position of equality as defining the fundamental terms of their association" (T.J. p.11). For that purpose, he imagines representatives of the individual members of society, in that "original position", as being behind a "veil of ignorance". They don't know their place, class position, social status, fortune, strength, or "even their conceptions of the good or their special psychological propensities" (*Theory of Justice*, p. 2). They have only "the two powers of moral personality, namely the capacity for a sense of justice and the capacity for a conception of the good" (P.L. p. 34). In this state they are to choose the principles of justice they prefer. This procedure formalizes the situation of citizens - free and equal - in the "public political culture of a constitutional democratic regime" (P.L. p. 34). The principles that emerge from it grant to each person an equal claim to "a fully adequate scheme of equal rights and liberties", and tolerate inequalities only if they are "attached to positions . . . open to all . . . and - this is the famous "difference principle" - only if "they are to be to the greatest benefit of the least

advantaged members of society" (PL, pp. 5-6). These principles are, in two respects, strictly political - they deal merely with the "basic structure", and they constitute a conception that is "political not metaphysical". That makes it possible for believers in a wide variety of "reasonable" moral and religious doctrines to arrive to accept and endorse this conception of justice. A "reasonable" person is one who is "ready to propose principles . . . as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so" . . .; he is also "ready to discuss the fair terms that others propose" (P.L. p. 49). Furthermore, a reasonable person or doctrine is willing to recognize what Rawls calls the "burdens of judgment" - the inevitability of "reasonable disagreement", given "the many hazards involved in the correct (and conscientious) exercise of our powers of reason and judgment in the ordinary course of political life" (conflicting evidence, different weighing of values, different individual experiences, difficulty in setting priorities, etc.) (P.L. pp. 56 ff). In this way, he hopes to reconcile a pluralism of reasonable conceptions of the good (for instance different beliefs about the role of religion in society) with a single political conception of justice. It is itself a conception of the good, but limited to the political realm. By endorsing it, citizens "affirm the same political conception of justice" (*Political Liberalism*, p. 202): this means that they share "one very basic political end": supporting just institutions and giving one another justice accordingly. The "good of justice" and mutual self-respect, secured by a just political society, are fundamental needs of all citizens.

Rawls had already sketched what the extension of this conception to the "Law of peoples" would look like in a couple of pages of his *Theory of Justice* (pp. 377-379) and had disappointed several of his disciples(4). The new, longer version has revived and sharpened those disappointments. It is not obvious that the social contract method is the best approach to ideal theory, that the specific features of Rawls's brand of social contract lead to satisfactory results, and that the distinction between ideal and non ideal theory really suits international relations.

II

Rawls returns to the method of the original position and of the veil of ignorance. But this time, the "parties" who, behind this veil, are to adopt the principles of justice for international society are not persons who stand in for your and me. They are (in a first stage) delegates of democratic "peoples": "representatives of societies well ordered by liberal conceptions of justice". They would not know "the size of the territory, or the population, or the relative strength of the people whose fundamental interest they represent", or "the extent of the natural resources, or level of economic development" (*Law of Peoples*, p. 54). (It is worth noting that Rawls does not ask them to ignore their political culture, whereas he had asked the parties representing individuals in a democratic political culture to ignore their conceptions of the good: for Rawls, the diversity of political cultures seems irremediable, whereas that of "comprehensive doctrines" can be overcome in the political realm of a democracy.) What principles would these representatives of "peoples" decide to adopt? Rawls argues they would arrive at fairly classical principles of international law: "peoples" are to be free, independent, equal, entitled to defend themselves but not to wage war, obliged to respect treaties, to honor human rights, and not to intervene in each other's affairs. This is also close to what Michael Walzer, in *Just and Unjust Wars*(5), had called the "legalist paradigm": a morality of and for states.

But this approach begs a fundamental question for social contract theorists - and for other theorists of international society. International society is a society of both individuals (acting across borders, for instance as investors, or seeking protection from abroad against their

government) *and* states. Are we seeking principles for states or for individuals? Do the delegates behind the veil of ignorance represent states, or the world's individuals? Rawls's "peoples" are "corporate bodies organized by their governments", i.e. states (p. 51). To be sure, the "original position" devised by Rawls is, in the first part of his essay, a position for representatives of liberal democracies whose states are based on the citizens' consent and respect the citizens' rights. But even among liberal societies, the state is not a mere agglomeration of citizens, an association comparable to, although larger than, all the others (see *Political Liberalism*, pp. 40 ff). The state shapes the individual and group interests it chooses to defend, and the state has the monopoly of coercion. Thus, the law of "peoples" runs immediately into three obstacles.

First, what is a "people"? Rawls says that one of his reasons for not starting with "a global original position" in which individuals would ask "whether and in what form there should be states, or peoples, at all" is that "peoples as corporate bodies organized by their governments now exist in some form all over the world". (*Law of Peoples*, p. 50). Indeed - but in the non-ideal world to which he thus refers many of these "corporate bodies" such as Yugoslavia, the former Soviet Union, the Sudan, Algeria, Rwanda, are disintegrating because they are racked by opposing conceptions of what constitutes a people: non only multi-national vs. national conceptions, but rival philosophies of nationality and citizenship. Moreover, states are also increasingly porous, penetrated by refugees and immigrants, and, as Rawls acknowledges (but he does not elaborate), the right of "peoples" to regulate or exclude immigration is a source of intense ethical controversies among politicians and philosophers in Europe and the U.S.. In other words, *before* we can have an ideal "law of *peoples*", we need a theory that would tell us what are the legitimate political units and, if they are states, we need to know who is entitled to become one, and who is entitled to become a citizen. Such a theory of state formation and membership would include the issues of self-determination, secession, the treatment of minorities, population movements, the regulation of entry and exit. Rawls merely states (*Law of Peoples*, p. 56) that the rights to independence, self-determination and secession require certain limits, such as respect for the freedom of another people, and he acknowledges a people's "qualified right to limit immigration". But without much deeper consideration of such subjects, "ideal theory" risks, in the philosopher Onora O'Neill's words(6), being not just abstract but "idealized", in the sense of applying "only to idealized agents", agents with at least one feature that cannot be found in reality - in this instance, sovereign states whose sovereignty creates, by definition, no problems. Here we find already one difference between ideal theory for domestic society and ideal theory for "peoples": the former provides guidance for the solution of political problems, the latter tends to leave out some of the more fundamental issues from the beginning, such as the issues of what constitutes a "people", and of the relation of "people" to "state.

This is confirmed by a second difficulty. The "peoples" organized into democratic states very often promote the rights and interests of their members across borders in ways that lead to clashes. Japanese-American trade relations, Franco-American political and security relations, Canadian and Spanish fishing practices, are cases in point. They also pursue what might be called "state interests" of a geo-political nature that are often quite risky, and different from those of the citizens. America's cold war interventions in Central America or Vietnam, French interventions in Black Africa, American and French support for a variety of repressive regimes, easily come to mind. How should states pursue their objectives? Rawls' "law of peoples" gives us only limited guidance. He tells us that states are not supposed to wage wars other than for self-defense, and that they are to comply with obligations they have accepted. So far so good: the representatives

of democratic "peoples" may well agree on such obligations. However, Rawls goes on to say that "we must reformulate the powers of sovereignty", so as to get rid not only of the right to war but also of the "right to internal autonomy" (i.e. to freedom from external intervention), which "fails in the case of disordered societies in which wars and serious violations of human rights are endemic" (p. 56); but the principles he proposes - not surprisingly, given the method by which they are arrived at - by imaginary representatives of organized "peoples" interested in protecting their own people from the intrusion of others - entail no such "reformulation". They offer far too thin and conservative a code of behavior, especially in a world in which interdependence empties sovereignty of much of its substance. A couple of sentences about (unspecified)" principles for forming and regulating" possible associations of democratic societies and "standards of fairness" for trade and other cooperative arrangements (p. 56) are all we find in this connection. A world of "peoples" would have no world state: the peoples' delegates would, in Rawls's view, reject it on the same grounds as Kant: because it would be either tyrannical or excessively fragile. If this is so, then a theory of international justice has to address far more specifically the issue of the instruments, means and methods states should use in their relations. It is an issue that can perhaps be left out of the ideal theory of a "well-ordered" democratic society where the state is assumed to be acting in our behalf and has a monopoly on coercion, but it is a crucial issue for a world of competing (even democratic) states.

Moreover, a world of (even democratic) "peoples" for which principles of justice are being sought is likely to remain a highly inequalitarian world of rich and poor states, given the uneven distribution of the world's resources and wealth. The *Theory of Justice* offered drastically equalitarian guidelines for distributive justice - the famous "difference principle" that has provoked so much debate, which holds that "the social and economic inequalities attached to offices and positions are to be adjusted so that, whatever the level of those inequalities, . . . they are to the greatest benefit of the least advantaged members of society". (*Political Liberalism* pp. 6-7). Rawls' ideal theory here simply assumes that the "peoples" will be well-ordered societies maintaining "decent social institutions" (LP, p. 76) - a very optimistic assumption - and will agree on "certain provisions for mutual assistance between peoples in times of famine and drought" and "were it feasible, as it should be", on provisions for ensuring that in all "reasonably developed liberal societies people's basic needs are met": a very vague and limited provision. Here, we find Rawls's ideal theory to be more timid than even the practices of our definitely non-ideal international society. We will see below the reasons for this timidity.

These are the flaws of a theory for "peoples". However, an ideal theory derived from a "global original position" (for individuals, not peoples), requested by some of Rawls' disciples, such as Thomas Pogge, would run into serious trouble also. An ideal "law of peoples", as we have seen, looks a bit empty; but the kind of ideal theory for international society that begins not with "peoples" but with "abstracted" individuals placed behind the veil of ignorance is a blur. Does it concern itself with principles acceptable by all "reasonable" persons whatever their political culture? These risk being both few and elementary , if they are supposed to accommodate cultures that restrict or deny basic individual rights or liberties. Does it seek principles acceptable to reasonable persons who share the political culture of democracy? It would be a richer set, but leave the relations between these persons and all the others problematic. (Indeed, Rawls's second reason for rejecting a global original position is that it would treat "all persons, regardless of their society and culture, as individuals who are free and equal" (L.P. p. 66), and that this would make the basis for the law of peoples too narrow, since this is only the liberal conception.

A "global" ideal theory could, on the one hand, reach principles comparable to, or identical with, those of the *Theory of Justice*, including a global "difference" principle dealing with the huge economic and social inequalities that exist in the world. This would require a drastic redistribution of the world's resources. It would thus be hard to carry out in the absence of some kind of a world government, or of some highly unlikely consensus of states to enforce such provisions. On the other hand, what such a theory would have to say about the fundamental problem of international politics: the division of the world into a maze of separate communities - states and nations - remains unclear. In *A Theory of Justice*, the parties behind the veil of ignorance are asked only to define principles of justice for an already constituted society and state. In a global original position the parties would have to decide how international society should be constituted: as a single society, or as a society of societies organized as states, or as a society of societies less endowed than the present states with the powers usually associated with state sovereignty (such as the right to wage war, to be safe from external interference, to close its borders). Would individuals, who, behind their veil of ignorance, would have "lost" their nationality along with their other distinctive characteristics and beliefs, choose to reduce boundaries to mere administrative divisions in a global polity? This too would be utopian. Would those denationalized persons, aware of the material, cultural and psychological advantages that membership in a close-knit society (such as, say, Japan) entails, reaffirm the need for separate states on moral grounds - such as the human need to belong to a political society smaller and less remote than humanity as a whole (and in this case, when could a foreign state intervene legitimately to protect the "equal basic liberties" to which each person has an equal right?). A global original position for individuals raises the issue of the moral significance and importance of state boundaries. It is assumed to be great by communitarians (including Michael Walzer and Charles Taylor), and by all those who begin with peoples and states. By contrast, state boundaries tend to be dismissed as arbitrary and morally uncompelling by "globalists", such as Martha Nussbaum. There are intermediary positions (held by writers such as Charles Beitz and Yael Tamir, who deem borders morally important only if they are open and if what happens behind them is just). But the discussion of that crucial issue has only begun(7). The attempt to arrive at a social contract for international affairs leads to an impasse.

III

The tension between individuals and "peoples" that plagues it is also at the root of the quarrel between communitarians, who stress the distinctiveness of the values and culture of each society and treat "the beliefs and practices of all recognized subcommunities as equally valid", and universalists who emphasize the need to protect human rights everywhere, "from utilitarian sacrifices, communitarian impositions, and from injury, degradation and arbitrariness"(8). This tension is particularly visible in the writings of Michael Walzer. On the one hand, he argues in the essays collected in *Thick and Thin* that "thick" morality - the "culturally integrated, fully resonant" code of values and principles "elaborated" by every society - can only be that of a particular society; "societies are necessarily particular because they have members and memories . . . of their common life", whereas "humanity has members but no memory, and so it has no history and no culture . . . no shared understandings of social goods" (p. 8). On the other hand, he recognizes that there exists a "thin" universal morality of which he gives a double account. On the one hand, it seems to be what the many "thick", communitarian moralities all have in common; on the other, he believes that there are some elementary moral demands and protests - for truth, against

oppression, for justice, against genocide - that we all formulate, and which can unite us at exceptional moments, usually against a common enemy, the "product of a historical conjuncture" (p. 18). At such moments, he told us recently(9), a "politics of rescue" ought to override the principles of sovereignty and non-intervention, as should have been the case in Bosnia. But Walzer, on balance, is a very "minimalist" universalist: the "thick" morality of each society is not based on or derived from the "thin" morality of universal principles; the latter is "only a piece" of the former (p. 18). As a result, social critics should mostly work from within their community's beliefs - and the world will remain a world of "tribes" - distinctive, often antagonistic ethnic groups (his concrete references cover mainly Eastern Europe, Caucasia and the Near East). "Tribalism names the commitment of individuals and groups to their own history, culture and identity, and this commitment (though not any particular version of it) is a permanent feature of human social life" (p. 81). Parochialism can't be overcome, it must be accommodated. Hence, Walzer writes sensible things about the need to make the tribes less destructive of one another and of minorities in their midst - by helping people have and accept multiple, overlapping identities and "divided selves", but he provides no road map toward this goal, and his final say is that "the crucial commonality of the human race is particularism" (p. 83) and that the nation-state is "most obviously appropriate in those cases where a particular identity is . . . under siege" (p. 103). In these essays of "moral argument at home and abroad", there is very little about the content of even a "thin" trans-communal morality - indeed, there is nothing at all about international distributive justice.

Rawls's approach is almost the opposite. He presents his doctrine as "universal in its reach", even though his methods are never general principles for all aspects of social life, but principles "for each kind of subject as it arises", beginning with "principles of political justice for the basic structure of a closed and self-contained democratic society" and continuing with, say, principles for the law of peoples and principles for "special social questions". The final result is what he calls "a constructivist liberal doctrine", the sum of all these principles "endorsed on due reflection by the reasonable agents to whom the corresponding principles apply", with its authority resting "on the principles and conception of practical reason" (LP, p. 46). But if it is universal in the sense of being applicable to a variety of social and political *issues*, it is not universal in the sense of being acceptable to all *societies*. His principles for the law of peoples are derived from the "common understanding of liberal societies" (p. 50), just as the principles of justice as fairness were embedded in the political culture of Western democracies. A key element of Rawls's law of peoples is his emphasis on human rights. How widely endorsable are these? In accordance with his own attempt, in his earlier work, to distinguish a "political conception" of justice from a "comprehensive" philosophical doctrine, Rawls avoids raising the controversial problem of the foundation of human rights: are they derived from God's will expressed in natural law? from human nature? from human sociability? from the dictates of reason? Each comprehensive doctrine has its own answer. Moreover, many of the world's societies would reject all these ideas as "in some way distinctive of the Western political tradition and prejudicial to other cultures" (L.P. p. 68). And just as he had, in his previous work, derived the principles of justice, not from any "comprehensive" doctrine but from the idea of society "as a fair system of cooperation" among philosophically diverse individuals (PL, p. 15), Rawls wants human rights not to depend "on any particular comprehensive moral doctrine or philosophical conception of human nature" (LP, p. 68); instead, he states that human rights "express a minimum standard of well-ordered political institutions for all peoples who belong . . . to a just political society of peoples"

(LP, p. 68) - i.e., they are a requirement for a just international society. But two things happen here, which show once again the differences between ideal theory for a domestic society, and for international society.

The "domestic" Rawls wanted to show that the principles of political justice derived from the original position could be endorsed by individuals who believe in a variety of "reasonable" comprehensive doctrines - for instance, a Catholic doctrine that accepts the principle of toleration and a constitutional regime, a "comprehensive liberal moral doctrine" such as Kant's, and an "unsystematic", pluralist view (PL p. 145). This endorsement is what Rawls calls an "overlapping consensus"- without which political liberalism would be merely a doctrine, not a conception providing for political legitimacy and stability. Rawls has a very special definition of consensus: he has firmly insisted on the difference between a rallying around principles arrived at first, independently of any comprehensive doctrine - which is what he seeks - and a *modus vivendi*, i.e., a mere compromise among such doctrines or among group interests, which he deems unstable, since each party will keep trying to push forward its own views or interests (the example he gives is that of Catholics and Protestants in the 16th century)(10). The object of the "overlapping consensus" is a moral conception "affirmed on moral grounds", and limited to the political domain, i.e., the basic liberties and the "basic structure", i.e., the main political, social and economic institutions (PL p. 11). (Of course, critics have pointed out that the distinction between the political and the non-political spheres is elusive, that few moral and religious "comprehensive doctrines" are likely to endorse a liberal conception of the political life, that many such doctrines have their own conception not only of how we should live but also of how we should govern ourselves(11)).

In his Oxford lectures, Rawls wanted again to show that the liberal principles of international behavior, the "law of peoples" devised by representatives of democratic "peoples", could be freely endorsed also by other states, so that this liberal conception could not be denounced by representatives of other traditions as paternalistic or imperialistic. But this time, in order to build his "overlapping consensus", he departed from his previous approach in two ways.

First, the principles of the law of peoples themselves were defined in such a way as to be acceptable to more than liberal democracies. Even though he presents the principles as an extension of the liberal conception of justice to international relations (LP pp. 53-54), it is a very impoverished conception that he extends. This is obvious in two respects. He begins by removing from his earlier conception of political justice "the three egalitarian features of the fair value of the political liberties, of fair equality of opportunity, and of the difference principle" (LP, p. 51), in order to reach "greater generality". Thus the scope of acceptability now shapes the substance He is particularly explicit about this when he explains his rejection of the difference principle: appropriate for a democratic society, it is not valid for international society (even though we're dealing with ideal theory), and the reasons he gives is that this principle wasn't "framed for our present case" (a rather insufficient explanation) and that many societies - even liberal ones - would find it unacceptable. Moreover, the list of basic human rights is, insofar as liberty is concerned, restricted to "the right to life and security", the right to emigration, and "freedom from slavery, serfdom and forced occupations". Only "a certain liberty of conscience and freedom of association" are mentioned. Freedom of expression and freedom of the press do not appear. These rights are said to be "distinct from the rights of democratic citizenship" (i.e., there is no right to vote) and "politically neutral", not "peculiarly liberal or special to our Western tradition" (LP, p. 69) - a weird statement, for there is nothing "neutral" about human rights, and

while, indeed, non-Western states have signed treaties that commit them to respect these rights, they are clearly liberal in origin and substance.

Why is Rawls's list skimpier than the rights covered in many of these treaties? The purpose of these restrictions and qualifications is to make such rights acceptable to a second category of "peoples": non-liberal societies whom Rawls calls "hierarchical". Like "well-ordered liberal societies" they are an ideal type. Unlike the former, however, they have no, or barely any, empirical, non-ideal counterpart in the real world; one can, perhaps, think of Jordan, or Singapore, or Tunisia, but Rawls's category is an idealization (in the sense of beautification) of a very tiny group of real states. Once again, we find that what is mere "abstraction" in the philosophy of domestic government becomes utopia in the philosophy of international relations. These hierarchical societies, to be well-ordered, must be peaceful, "guided by a common good conception of justice" (i.e., a conception "founded on certain religious or philosophical doctrines", PL, p. 109), have a legal system which "takes into account people's essential interests and imposes moral duties and obligations on all members of society", and respect basic human rights (LP, p. 61). Even though they may have an established religion, they don't persecute other religions; even though persons are not seen there as free and equal, and even though there are no elected legislatures, there is "a reasonable consultation hierarchy" and all persons are treated as "responsible members of society". The representatives of such societies, placed behind a veil of ignorance, would accept the same "law of peoples" as democratic societies. As one critic of Rawls has pointed out(12), this is far from obvious: would they really accept to be bound by international law to respect human rights? Are ideological or religiously-driven societies likely to respect basic human rights at all? How would we know that their "system of law meet(s) the essentials of legitimacy in the eyes of (their) own people" (L.P. p. 79) since there are no free elections? Whatever the answers, what is clear is that the law of peoples has been shaped so as to appeal to a purely hypothetical group of "peoples".

The fallacy, here, is in the parallel Rawls seems to drawn between an "overlapping consensus" of comprehensive doctrines that endorse a single conception of justice within the framework of a democratic political culture (and do so after the domestic principles of justice have been set), and an "overlapping consensus" of *societies* based on very different political conceptions of justice, which endorse a "law of peoples" whose thinness can only be explained as the result of an *implicit* modus vivendi among egalitarian liberal societies based on Rawls's original "justice as fairness", "liberal societies whose institutions are considerably less egalitarian", and "hierarchical" societies. As Thomas Pogge and Bertrand Guillarme, a young French political philosopher, have pointed out(13), Rawls had applied the liberal imperative of toleration, in domestic affairs, only to non-political matters where different conceptions of the good were free to compete. Within the (very extensive) political sphere, only his liberal principles of justice ruled, and "unreasonable" doctrines that rejected them - which Rawls expects to be few in a democratic political culture - were not to be accommodated. In Rawls's "law of peoples", we are asked not only to tolerate certain non-liberal regimes (Rawls refers here to "Liberalism's own principle of toleration for other reasonable ways of ordering society") (LP p. 80), but to set up principles of world order that accommodate them. It is as if Rawls had taken too seriously the argument, made by so many repressive regimes, that the liberal conception of justice is "ethnocentric" - as if one couldn't find (repressed or suppressed) believers in liberal values everywhere, and many anti-liberals in the West.(14) Rawls is sufficiently aware of the difference between domestic and international affairs to suggest that in international affairs the concept of "reasonableness" has to

be relaxed; when he develops his "ideal conception of a society of well-ordered peoples", his principles are meant to include into that ideal society regimes that are"not unreasonable" - neither expansionist nor regimes of terror (LP p. 78). An international law of peoples that goes out of its way to suit at least some of the non-liberal ones may be a political necessity, it may be a stage, in non-ideal theory, toward the realization of an ideal world, but can it be, as he presents it, a moral conception for an ideal world?(15)

IV

What lessons can we derive from the flaws of Rawls' approach? First, the social contract method is difficult to apply to international society because it is *both* a society of separate states (or peoples) and a society of individuals, who play an increasingly important role in world affairs, as their capacity to disrupt borders and destroy states shows, and as the formidable and uncontrolled growth of a transnational economy of private investors and financial markets able to overwhelm central banks, sink currencies and ruin economies is proving every day. It makes a huge difference whether one places behind the veil of ignorance individual actors or state representatives. To develop an adequate ideal theory for international relations, following Rawls's prescription that "each kind of subject . . . must be governed by its own characteristic principles . . . worked out by a suitable procedure beginning from a correct starting point" (LP p. 76), one might need at least three contracts: first, a global one defining the rights and obligations of individuals whatever "people" they belong to, and defining the structures they would want to live in - a global state, a multitude of states, or entirely new institutions; should the parties reassert the need for states, this global contract would put limits on state sovereignty and autonomy, especially concerning human rights; secondly, a contract among representatives of states, or of whatever other structures the global contract might have set up, defining the principles of their own intercourse; thirdly, a contract to which the parties would be representatives both of individuals and of states (or of alternative structures) setting up authoritative international institutions and procedures to deal with issues that cannot be left merely to arrangements among separate units or to an unregulated market, such as much of the world economy. There must be easier ways to ideal theory!

This difficulty is magnified by a second problem. Theories of social contract, whether Locke's, Rousseau's or Rawls', yield "ideal theory". But in thinking about international affairs the best we can come up with, in "ideal theory", is pretty thin. It may produce the idea of a world government, established either by individuals in the "original position", or by states acting as their agents (as world federalists would want), or by states behaving like Hobbes' subjects in the state of nature, impelled by insecurity and the fear of violent death to transfer their powers to a Leviathan. Or else ideal theory can take the form of Rawls's meager law of peoples which does not add much to old liberal notions of world harmony, and particularly to Kant's provisions for perpetual peace, calling for an end to war and standing armies, and for the establishment of a league of constitutional regimes. Ideal theory based on the social contract method thus leads either to utopia, or to a minimal set of principles acceptable by an "overlapping consensus" of "not unreasonable" regimes.

Most of the philosophical and ethical problems of world affairs are the concern of non-ideal theory: how to produce both order and justice in a world of different "corporate bodies" and regimes, which reflect different conceptions not only of the social good but of political justice, and are based at least as often on coercion and repression as on consent. Rawls, having spent most

of his essay on ideal theory, spends only seven pages on what to do "about the highly non-ideal conditions of our world with its great injustices and widespread social evils" (LP p. 71). He examines both what he calls non compliance - how to deal with regimes that "refuse to acknowledge a reasonable law of peoples", which he calls outlaw regimes, and how to deal with societies that lack the traditions, human capital, know-how and resources needed to be "well-ordered". What he tells there is limited, if unassailable. First, well-ordered societies must bring eventually all societies to honor the law of peoples and to secure human rights - but these are matters of foreign policy and political wisdom to which political philosophy has not "much to add" (LP p. 73), except for suggesting a "federative center" of well-ordered peoples (such as the United Nations) to expose the cruelties of outlaw regimes, and for granting a right to war against these if they attack "the society of well-ordered peoples" and, "in grave cases", if they violate the human rights of their innocent subjects. Secondly, well-ordered societies must see to it that basic human needs are met everywhere (even though, in his view, economic injustice results more from domestic factors - "the public political culture and its roots in the background social structure", oppressive governments, corrupt elites, religions that repress women - (LP, p. 77) than from the international maldistribution of resources). Thus, hugely important issues are left in the dark: What is "a grave case" that justifies a war to defend human beings whose rights are trampled by an outlaw regime? Is forcible intervention also justified when such rights are crushed in a civil war? How can the authors of international crimes be brought to judgment? If "the duty of assistance is not based on some liberal principle of distributive justice" but on "the ideal conception of the society of peoples itself as consisting of well-ordered societies" (LP p. 76), what kind of assistance should be granted by the rich and how can it be made to reach the poor in poor countries? How much of a priority should be given by a state to helping its own poor? How should non-citizens and minorities be treated?

There is another problem. In *A Theory of Justice*, Rawls's domestic ideal theory assumed "strict compliance" with the principles of justice - a not unreasonable assumption, for in a liberal democracy, once citizens agree on what policy should be followed, there is a judicial system and a state with the means of coercion that will ensure compliance. In *The Law of Peoples*, Rawls again relegates non-compliance to the short section devoted to non-ideal theory, where he tells us how well-ordered societies should deal with outlaw regimes. But in a world of formally sovereign states, and of individuals who trade and speculate freely across borders, with no central Executive, legislature, or police, and a rarely used World Court, the issue of compliance is fundamental - even among democratic regimes. An ideal theory for "peoples" should no more leave it out than Rawls's ideal theory of domestic justice left out the issue of inequality. The failure to comply is built into the very structure of a society of states; when a state violates the obligations that result from agreements or from a World Court decision, trade conflicts, resorts to force to change borders or to help insurgents abroad, massive violations of human rights can occur. An ideal theory that does not deal with this issue is left up in the air.

How, then, is moral and political philosophy to proceed? One approach, often followed by Sissela Bok in her works,(16) tries to find a common ground among existing ethical traditions, secular and religious. The problem, here, is that the common notions are often extremely fuzzy, and provide little guidance for action; also, there is more common ground to be found in matters such as individual and family values and behavior, than on subjects such as the basic structures of society and its political organization (although the battles over abortion and population control

remind us of how hard it is to disconnect those levels, and how much disagreement exists over the most basic issues).

Another approach consists in applying to international society what Rawls calls a comprehensive doctrine, in order to promote what it sees as universally and absolutely valid principles, capable of establishing both order and justice. Thus, one could imagine a modern version of a natural law ethic (but it requires believers in the will of God), or a utilitarian ethic, or a Kantian one that tries to formulate universalizable maxims based on the categorical imperative - which Kant saw as a "command of reason" that orders us to act "only on a maxim through which we can at the same time will that it should become a universal law" and to treat human beings "never simply as means but always at the same time as ends" - for the behavior of states and individuals across borders and to see how far, in the real world, one can go in applying them.(17)

The results of the Kantian attempt might not be very different from those of a third approach, which does not require acceptance of Kant's "transcendental idealism" and faith in "the coherence and unity of reason, both theoretical and practical, with itself" (PL p. 101). This would be an extension to international society of Judith Shklar's "liberalism of fear"(18). Its main purpose is the protection of the individual from cruelty, oppression and fear. Like Rawls, she wanted Liberalism to be a political doctrine, independent of the various philosophical formulations (such as Kant's and Mill's) that had been offered - indeed, independent of Rawls's formulation also. For unlike Rawls, she wanted to ground it, not in a procedure undertaken by free and equal persons seeking "fair terms of cooperation" (PL p. 22), but in what she deemed a fundamental, common and immediate emotional experience: the fear of cruelty and tyranny. The memories of "peoples" and communities are all too often distorted and antagonistic. The liberalism of fear is based on the one memory that, Walzer notwithstanding, is common to the men and women of this century: "the history of the world since 1914" and of its atrocities. It is, she thought, the only kind of liberalism that can still have a broad appeal, now that the liberalism of hope, of faith in reason, progress and harmony, has been destroyed.

Given her goal, she saw human rights as necessary "licenses and empowerments that citizens must have to preserve their freedom and to protect themselves against abuse", just as the prohibition of cruelty is a universally necessary "condition of the dignity of persons": the mphasis is on *their* moral needs as individuals, not on the idea of persons as "responsible and cooperating members of society" (LP, p. 69) (One of her permanent concerns was about refugees, exiles, members of minorities, i.e., involuntary misfits fallen between society's cracks).(19) To be sure, as Stephen Lukes points out in his own witty and spirited Oxford lectures defending human rights against a variety of "comprehensive doctrines" that ignore or restrict them, what needs to be protected is not only the integrity of the individuals, but "the activities and relations that make their lives more valuable" and that "cannot be conceived reductively as merely individual goods": Individuals do want and need to belong to associations and communities. But human beings also want and need not to be crushed, confined, or defined by them. Associations or communities can, in other words, be dangerous - and the most dangerous of them is the state. From the liberalism of fear and the imperatives of protection from cruelty and tyranny, important principles can be derived. She mentioned both negative liberties, protecting the weak from harm, excesses of power and the kind of inequality that amounts to oppression, and positive measures, about the kinds of institutions "without which freedom is unimaginable" - she recommended the division and dispersion of power, effective voluntary associations, procedural fairness, a well-informed and vigilant citizenry(20).

The great merit of Shklar's approach is that it is less hypnotized than other liberalisms by the problem of philosophical and religious pluralism, by the multiplicity of conceptions of the good. There are many views of the supreme good, she thought, but only one ultimate evil, "cruelty and the fear it inspires, and the very fear of fear itself". She used for her purposes the title of Thomas Nagel's book: her point of view, she wrote, was "the view from nowhere"; what she meant was: not the view from any given society or culture or doctrine, but rather from everywhere, for there are victims everywhere; and as such her liberalism "makes a universal and especially a cosmopolitan claim". Has there even been a more withering attack on cultural relativism and on the evils of nationalism?

> . . . Only the claims of universal humanity and rational argument cast in general terms can be put to the test of general scrutiny and public criticism . . .Unless there is an open and public review of all the practical alternatives . . . there can be no responsible choices and no way of controlling the authorities that claim to be the voice of the people and its spirit.(21)

She did not have the time to develop those ideas, and to apply them to world affairs. But the liberalism of fear, conceived for a non-ideal world, can provide us with the guidelines and principles needed to curb the pretensions and excesses of states and would-be "peoples", with criteria for such issues as the protection of human rights, the treatment of minorities and migrants, the problems of famine and poverty. Those ideas would appeal to a "consensus" of the likeliest victims, the least powerful persons", to be found in all societies and cultures. The liberalism of fear modestly aims at "damage control"- but today that in itself is a revolutionary aspiration. Over time, many people, and their political representatives, may come to share it and to support the measures and institutions needed to turn it into a plan of action.(22).

NOTES

1. See my essay, "The crisis of liberal internationalism", Foreign Policy, Spring 1995. 2. See Joseph Nye, Nuclear Ethics, Free Press, 1986. 3. Columbia University Press, 1993. 4. See especially Charles Beitz, Political Theory and International Relations, Princeton University Press, 1979, and Thomas Pogge, Realizing Rawls, Cornell University Press, 1989. 5. Basic Books, 1977. In Walzer's conception, states derive their rights from the consent of their citizens, and he assumes a "fit" between the former and the latter. But if there was no such fit, foreign states could intervene only to help a national group secede, not to help a people overthrow its tyrannical government (thus, they could help East Timor, or Chechnya, or Tibet, but not, say, the Shiites in Irak - or the fundamentalists in Algeria). 6. "Justice, gender, and international boundaries", in Martha C. Nussbaum and Amartya Sen (eds.), The Quality of Life, Clarendon Press, 1993, pp. 303-323, at p. 312. See also her essay "Ethical reasoning and ideological pluralism" in Ethics, July 1988, pp. 705-22. 7. See for instance the issue of Boston Review, October-November 1994, "Patriotism or cosmopolitanism?", and Yael Tamir's Liberal Nationalism (Princeton University Press, 1993). 8. Steven Lukes, "Five fables about human rights", in Shute and Hurley (eds.), On Human Rights, pp. 19-40, at p. 21 and 30. 9. "The politics of rescue", in Dissent, Winter 1995. 10. See Political Liberalism, pp. 146-147, 171. 11. See Stephen Holmes, "The gatekeeper", The New Republic, October 11, 1993, pp. 39-47. 12. Thomas Pogge, in "An egalitarian law of peoples", Philosophy and Public Affairs, Summer 1994, pp. 195-224. 13. On Pogge, see fn. 13. Guillarme's critique is in Ch. 10 of his still unpublished

doctoral thesis, Rawls: la justification contractualiste de la d,mocratie lib,rale (Paris, 1994), a careful and systematic exegesis of Rawls's thought. 14. For an Asian's refutation of the so-called "Asian" point of view, see Yash Ghai, "Human rights and governance: the Asian debate", 15 Australian Yearbook of International Law (1994), pp. 1-34. 15. A similar thought is expressed by Fernando R. Tes¢n, in his critique of Rawls's essay from a Kantian perspective, "The Rawlsian theory of international law", Ethics and International Affairs, 1995, vol. 9, pp. 79-100, at p. 98: "for the Kantian, the relationship between liberal and illiberal states can only be a peaceful modus vivendi and not a community of shared moral beliefs and political commonalities". 16. See her essay, "The search for a shared ethics", Common Knowledge 1 (3), pp. 12-25. See also Frances V. Harbour, "Basic moral values: a shared core", Ethics and International Affairs, 1995, pp. 155-170. 17. For such an attempt, see Onora O'Neil, Faces of Hunger (Allen and Unwin, 1986).. 18. See her essay, "The liberalism of fear", in Nancy Rosenblum (ed.), Liberalism and the Moral Life, (Harvard University Press, 1989), pp. 21-38. 19. Guillarme remarks that Rawls' formulation leaves dangling the issue of the rights of exiles and stateless people, who are not "clearly the members of any given society" (p. 416). Judith Shklar had planned to write a book on exile. 20. We are not far from Onora O'Neill's suggestion (see fn. 6), to begin "with the thought of a plurality of interacting and diverse agents", and with principles that can be adopted by them, a procedure that rejects both "idealization" and relativism.. 21. "The liberalism of fear", pp. 34-35. 22. I am grateful to the comments and criticisms of Bertrand Guillarme, Percy Lehning and Daniel Philpott (whose essay: "Sovereignty", Journal of International Affairs, Winter 1995, pp. 353- 368, raises important issues for international theory).

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