

Global or National Justice? An Analysis of Pogge's and Buchanan's Reply to Rawls's *Law of Peoples*

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Abstract. The paper discusses Thomas Pogge's and Allan Buchanan's criticisms of Rawls' *Law of Peoples*. Rawls argues for the exclusion of distributive justice from the global arena. Pogge and Buchanan attack Rawls starting from the premise that if there is a global basic structure, then there should be global distributive justice. The paper accepts the existence of a global system which resembles the domestic basic structure, but argues that the Rawlsian argument is still tenable. Rawls argues that because the basic structure, made up by social and political institutions, deeply affects the lives of individuals, it must be considered the primary subject of justice. However, in the *Law of Peoples*, Rawls refuses to establish principles of distributive justice at the global level by arguing that no basic structure exists. He uses a two-step model of the original position to establish principles of justice at the global level. In *Realizing Rawls*, Pogge disapproves of Rawls not using a one-time global original position model in order to arrive at the global definition of justice. Pogge attacks the two-step model and defends a single global original position. Buchanan, in "Rawls' Law of Peoples: Rules for a Vanished Westphalian World," accepts the two-step model, but argues that a global original position with peoples as represented parties would lead to more stringent demands of global distributive justice. The paper incorporates Laura Valentini's distinction between interactional coercion and systemic coercion, but argues that even if the global system is systemically coercive it does not need to be subjected to Rawls' principles of justice for domestic societies. Rather, it can be reformed to become less coercive. Then the paper argues that in this non-coercive system of internally just states, Pogge and Buchanan would not have an argument against Rawls.

Key words: global justice, Pogge, Buchanan, Rawls, coercion.

John Rawls seems to have disappointed many when trying to expand his discussion of internal domestic justice to the international plane. As Rawls was known for his highly egalitarian two principles of justice, which are based on a maximin theory, readers would have expected him to draw similar conclusions for the international arena. However, Rawls refuses to extend his sympathies for the least advantaged to the global poor. Rather, he chooses conservative principles of justice in the international sphere, placing such desiderata as state sovereignty and the principle of non-intervention at the core, to be tempered only by a universal demand for the respect of basic human rights.

This paper will discuss criticisms brought against Rawls by two authors: Allan Buchanan and Thomas Pogge. It will present Rawls's argument that justice belongs to the basic structure and the two-step original position model. Then, it will discuss the interaction-based criticism of Pogge and Buchanan, underlining the differences among the two arguments. The paper will argue for Rawls' interpretation of the law of nations.

Rather than attacking Rawls' normative premises, which both accept, Pogge and Buchanan have went against his empirical premise. Rawls's normative premise, that the basic structure should be a subject of justice is rather difficult to reject. Unlike the libertarians, Rawls believes that the conditions under which a transaction is carried

through should be fair, rather than just the consent of the parties free. Because the basic structure deeply affects these conditions, Rawls has argued and all his critics have accepted, it should be the subject of justice. However, his detractors have argued that if there is a global basic structure, with similar characteristics as the internal one, it should also be a subject of justice.

This paper will proceed the opposite way. It will accept the empirical premise of Pogge and Buchanan: that the current international system has similar features to the domestic basic structure. It is coercive and affects the life prospects of individuals. Firstly, relying on Laura Valentini's distinction between interactional and systemic coercion, the paper will argue that the global basic structure is only systemically and not interactionally coercive (no group agent meaningfully coerces other individuals or group agents in the same way as a state coerces citizens). On the other hand, the domestic basic structure is both interactionally and systemically coercive. Moreover, for a state to exist, there necessarily has to be an interactionally coercive structure. Thus, the paper will maintain that Rawls' suggestions in *Law of Peoples* are meant to make the current global basic structure less coercive and thus, if fully realized, there is no reason to impose on the global system the same requirements as for domestic systems.

Secondly, after claiming that the international system can be made less coercive, the pervasive impact theory (Abizadeh 2007) shall be rejected. According to this theory, the duties of global are triggered not because of coercion, but because the basic structure has pervasive impact on the life of individuals. Yet, it can be argued that internal democracy in a non-coercive world of just states allows for peoples to decide on their economic future at the domestic level. In the world of Rawls' *Law of Peoples* the only pervasive impact would be that of the domestic basic structure.

Finally, against Buchanan, the paper will argue that Rawls's principles allow enough space for states to democratically participate or to have an important say in the global affairs. Under the current, conservative arrangements, based on state sovereignty as they are, even small states can participate and have an important word to say. Therefore, Rawls' apparently conventional principles can give enough satisfaction to Buchanan's more stringent demands.

I. LITERATURE REVIEW

John Rawls takes up his discussion of the basic structure as a subject of justice and establishes the normative premise on which the argument will follow in, among other places, the third part of *Political Liberalism*. Against utilitarians, Rawls establishes that different moral principles are necessary for the conduct of individuals and for the assessment of institutions. He asserts that the principles of justice, which he had established in *A Theory of Justice* are not applicable for a general theory, but only to the basic structure of a society. This can be argued due to the fact that these two principles, applied to other cases,

would give self-contradicting results. For example, an internally just, in Rawlsian terms, church, would be impossible (Rawls 1993, 260-61).

Secondly, against libertarians, Rawls defends his concept of basic structure by showing that their own conception of justice, as a series of internally just transactions is not self sufficient. For example, Rawls argues, even if justice is established at the beginning and then all transactions are fair, due to historical contingencies and social trends, the society will move away from just conditions. In other words, some will accumulate far too much power and therefore subsequent transactions will end up not being fair (Rawls 1993, 265-67).

Finally, Rawls establishes his notion of basic structure, as “the institutions that comprise the social background” and “those operations that continually adjust and compensate for the inevitable tendencies away from background fairness.” (Rawls 1993, 268) The main reason for which it should be the subject of justice is that it deeply and unequivocally shapes the life prospects and expectations of individuals. Moreover, the way the basic structure is fashioned is the basis for the types and degree of inequalities which will be present at any time in the given society. The basic structure is the one which allows the development or under-development of natural talents, as well as for the advantage or lack of advantage given by birth. Finally, individuals cannot escape the basic structure they are born into without great costs. If they disobey the law they are coerced and if they leave the state they are born into, they lose everything. Thus, in Rawls’ conception, the basic structure is the crucial decider in the life of individuals (Rawls 1993, 268).

However, in *Political Liberalism*, Rawls leaves aside the problem of justice among nations and places it merely in a footnote. In this rather ambiguous footnote, Rawls claims that we are “better prepared” to take up the problem of justice for a society, which we can see as a more or less self-sufficient scheme of social cooperation. He does admit that we must find the ultimate system, the one which is the ultimate background of social transactions, but still remains at the conclusion that since culture is also part of this background and since only a national society possesses a complete culture, we should look for justice primordially at the national level (Rawls 1993, 272).

Rawls comes back to the problem of international justice in *The Law of Peoples*. There, Rawls starts from a two-step original position mode. In the first step, citizens establish just internal arrangements for their domestic societies. Then, peoples, understood as politically organized communities, connected by just democratic institutions, a common culture (“common sympathies”) and a moral nature, come together in the second original position. In this second original position, the representatives of peoples, modeled as equal and rational, choose principles for the law of peoples (Rawls 1999, 33-34). However, instead of offering a theory of distributive justice among peoples, Rawls comes up with surprisingly modest principles of the law of peoples. Chief among such principles is the principle of equality between peoples, followed by *pacta sunt servanda*. The third principle looks like a combination of the first two, while the rest sanction a duty of non-intervention, a duty not to instigate war, a duty to honor human rights, a duty to act humanely in war and finally a duty

of assistance to less developed societies. Moreover, no hierarchy between the principles is clearly established, and even if Rawls claims that the duty of non-intervention should be qualified by the general requirement to protect human rights, he places the duty towards human rights lower in the list than the principle of non-interference (Rawls 1999, 37).

One thing to be kept in mind at this point is that later in the book, Rawls directly contrasts his work to the cosmopolitan ideal of global distributive justice and rejects the latter. His rejection is based on the argument that it would impose unfair burdens on societies that have cultural prerequisites for economic development. As long as societies that do not have these prerequisites are well ordered, Rawls' argument goes, the richer societies have no duty of assistance. One of his examples is based on two well ordered societies, one which has a decline in birthrates and one which, due to cultural reasons, freely accepted by women, keeps a high birthrate. The society with the lower birthrate will now be considerably richer, and it would be unfair to subject it to the stringencies of a global principle of distributive justice (Rawls 1999, 40).

The first attack on Rawls comes from Allan Buchanan. Buchanan argues that, when conceiving the principles of the Law of Peoples, Rawls had in mind a Westphalian world. In other words, Buchanan claims, the empirical premise on which Rawls bases his argument is false. Unlike the Westphalian world which Rawls envisions, the world now has a global basic structure.

Buchanan, however, is quite conservative in his portrayal of how the existence of the global basic structure can affect the situation. Rather than globalizing the original position to its very end, Buchanan accepts the two-step model. The representatives in the second original position are still representatives of peoples and the law of peoples remains a law for the conduct of business among peoples. Thus, the basic subject stays the same. However, the principles chosen are rather different. These would involve a principle of equality of opportunity, a principle of democratic participation and a principle of limiting economic inequalities. The first principle would involve the participation of peoples in international financial and political institutions regardless of their natural endowments with resources or other material benefits. The second principle would signify the equal participation of the peoples in international institutions rather than allowing for the disproportionate powers of certain wealthier or more powerful nations. Finally, the third principle is supported by Buchanan by arguing that if the relevant actors are still peoples, even inegalitarian societies would support an equalitarian global principle of redistribution (Buchanan 2000, 711-12).

In a text ten years older than the *Law of Peoples*, Thomas Pogge goes much further in his criticism. Rather than accepting the two-step model, Pogge demands the full globalization of the original position. He argues that because there are certain inconsistencies in Rawls' texts, he will interpret Rawls' arguments in lights of his moral individualism. Thus, starting from the only notes on global justice available from Rawls' texts at the time, Pogge views two possible conceptions of a global basic original position. The first possibility Pogge discusses is still based on the two-step model. However, unlike

in Rawls, the representatives in the second session of the original position represent individuals rather than states. The second possible interpretation is more akin to Rawls and Buchanan's. It views the representatives in the second session as the representatives of states. Pogge then proposes his own alternative of the original position: he jettisons the two-step model completely and states that the only valuable situation is a single, global original position, which includes all individuals (Pogge 1989, 245).

Pogge then moves to the charge against Rawls' conception. He proceeds by comparing his own alternative to both constructs of Rawls and argues the global position is better. His first argument compares his proposal to the two-step model with representatives of states in the second step. His accusations look similar to that which Rawls himself had brought against the libertarians. In a Rawlsian world, Pogge claims, the same processes would take place that Rawls himself claims would take place in a libertarian world. Even if the initial distribution was fair, Pogge argues that free bargaining enforced by *pacta sunt servanda* among societies would lead to a concentration of power in the hands of some and the possibility of less than free deals at a later time. Moreover, even first order principles would be compromised in such a world. Certain societies would lack enough material resources to ensure basic human rights. War and the fear of war will turn peoples against each other and make them live in a perpetual state of nature. Finally, Pogge argues that Rawls' commitment to moral individualism is incompatible with giving states a voice in the global original position (Pogge 1989, 244).

Then, Pogge continues his argument by showing how the global, one time original position is superior to the individualistic two-step model. Firstly, representatives who have chosen principles of domestic justice would regret their choices once they find out that their society is part of a global institutional system. Secondly, any two-step model would accept that national principles of justice could be developed without looking to the international system. Eventually, Pogge concludes that a global one-time original position would not take the state system for granted, would allow for cultural diversity and would not suffer from the over-complexity associated with inter-state rules (Pogge 1989, 244).

II. ON THE GLOBAL BASIC STRUCTURE

Once again, before proceeding to the discussion of the arguments, the paper will accept the empirical premise on which Pogge and Buchanan's argument lie: that there exists a system of global interactions, which, at this time, affects the distributional autonomy of states and deeply shapes the life prospects of individuals. The paper will defend the thesis that this system should be reformed, but that realizing Rawls' proposals in the *Law of Peoples* is all that can be morally demanded of the global system. Asking to subject the global system to Rawls' principles of justice for domestic societies is too much.

Firstly, the global system is not coercive in the sense that its national correspondent is. While financial transactions and intellectual property rights exist, they are still enforced by the respective states. One should remember the history of the church and state during

the medieval period to understand that, as coercive and unjust the verdicts of the church were, people were burned at the stake not by agents of the church but by representatives of the secular power. Similarly, financial institutions might force states into high-interest loans, but it is their own states which, for example, ban the right to strike and to enter trade unions.

Anti-cosmopolitans have rallied to the same argument in defense of Rawls. Thomas Nagel (2005) and Michael Blake (2001) have argued that, since only states use coercion, and only coercion needs justification, only states need to be internally just. Because a person needs to feel that he is coerced "in his name" (Nagel) and because only physical coercion violates autonomy (Blake), the two argue against global justice. They were criticized by Arash Abizadeh (2007), who pointed to coercion at the borders as a case for global justice. The criticism of Laura Valentini (2011) goes even further, as she reinterprets the very meaning of the term coercion and maintains that coercion can be also systemic. She argues that "a system of rules *S* is coercive if it foreseeably and avoidably places nontrivial constraints on some agents' freedom, compared to their freedom in the absence of that system" (Valentini 2011, 212). In a clever fashion she distinguishes between interactional coercion (that performed by an agent, even a group agent, such as the state) and systemic coercion, created merely by a system of rules (Valentini 2011, 215). On the face of it, if one accepts Buchanan's empirical premise (that a global structure exists, which affects distributional autonomy of states), then Valentini's argument would establish the cosmopolitan conclusion. Yet, the global system of today is only systemically coercive, since no global authority corresponding to a coercive group agent exists.

Valentini (2011, 218) herself realizes that her argument does not necessarily lead to cosmopolitanism. Discussing the case of the WTO, she accepts that all her argument might require is smaller bargaining power differentials in the WTO, which would lead to fairer results. All that Valentini's argument establishes is that coercion can be understood more widely than before, as either systemic or interactional coercion. Yet, a system like the current global one can be reformed in two ways (as one can imply from Valentini's above mentioned WTO discussion): it can be made to conform to Rawls' two principles of justice, while keeping its coerciveness, or it can be made less coercive. Fully realizing Rawls' principle of equality of peoples would solve the problem of possible and currently existing coercion at the global level.

However, if one argues that the international system can be made to avoid the problems of the internationally coercive global structure argument one would have to show that and why the domestic system cannot. This can be simply done by arguing that cooperation between individuals necessarily requires assurance between participants and thus coercion (of the interactional type), while international cooperation does not. A system of states might be coercive (either interactionally or systemically) but it does not necessarily need to be in order to function as a system of just states. Cooperation between individuals has to be coercive, at least in the case of a modern, industrialized society. Thus, conceptually, a society of individuals requires a coercive state and socioeconomic justice,

but a global system in which interactions are not coercive (the society of Rawls' *Law of Peoples*-even accepting wide scale international interaction) the demands of justice are not triggered.

Secondly, once it has been established that a non-coercive (either systemically or interactionally) international system can exist, other justifications for it triggering duties of justice have to be rejected. The most obvious one is the pervasive impact thesis: that the global system has (and would also have in the world of Rawls' *Law of Peoples*) a pervasive impact on the lives of individuals. But, there is no reason not to believe that in a non-coercive world of internally democratic states societies cannot choose the extent to which they are affected by the global system. Although poor, if a society is internally just, its members have a voice in the domestic arena. Therefore, they can freely discuss measures to end any subservience, can apply them and enforce them against non-compliance. Once internal Rawlsian justice is established, a just state can, in a system like that suggested by Rawls in the *Law of Peoples* freely choose to enter or abstain from entering into economic relations with other states. Moreover, in such a system, both the commencement and the content of economic relations would be non-coercive. There is no reason to believe that in such a world the nightmare scenario which Pogge describes would take place. A one-time global original position would not be required.

The same argument can be made against Buchanan's less sweeping statement in favor of a two-step original position, which, however, results in several principles of justice among states. It can be said that Rawls' theory fully includes Buchanan's demands and that it is not necessary to develop it in the way Buchanan does.

Firstly, the principle of equality of peoples presupposes sovereignty and equal participation in the world's institutions. For example, no institution can be established unless there is unanimous agreement of the participant parties. Moreover, most institutions, so established will make decisions by the rule of unanimity, or when departing from it, will only depart to the extent that all members agree. The most quoted example is the UN Security Council voting rules, which confers a privileged position to certain powerful nations. Or, alternatively, the IMF, in which the share of votes is given by the economic contribution of each state, is also quoted as an example. However, what these critics refuse to say is that most other institutions actually offer a great deal of democratic participation. It has to be remembered that in the General Assembly of the United Nations, all countries count as equals. Moreover, certain majorities actually are carried by smaller countries against larger countries. For example, resolutions which condemn Israel and which would have been blocked in the Security Council, were adopted several times in the General Assembly. Moreover, countries like Sudan and Saudi Arabia have ended up in the United Nations Human Rights Committee. In addition, the IMF takes decision by a supermajority and the US only has the power to block a decision. In other words, rather than being the preferred playground of the few and powerful states, the current international order, based on principles similar to those averred by Rawls offer a

wide chance of democratic participation for small states. Rarely there is a departure from unanimity, and when there is, it still must have a unanimous decision in the background.

Buchanan's second claim is that states would choose a principle of fair equality of opportunity, which implies their equal participation in the global arena regardless of their natural endowments. However, this seems also included in the duty of assistance to the point in which the society becomes well-ordered. Once again, at the moment in which a society becomes well-ordered, it can participate meaningfully in a well-ordered international system. In order to prove that more than well-orderedness is necessary, Buchanan would have to show how a well-ordered but poor society is precluded from having an equal share in the global community. In a society based on equality, all well-ordered societies have the opportunity to engage others equally, regardless of their own lack of resources.

The arguments made by Pogge and Buchanan seem to take the world as it exists today for granted (with a systemically coercive global system and internally unjust states) and argue that the only way out of this problem is full Rawlsian justice at the global level. In addition to the theoretical challenges presented above, it can be argued that, attempting to make the international system Rawlsianly just at this time can lead to counterintuitive and undesirable consequences.

It is true that many societies are not internally just and therefore their citizens do not have a voice. Thus, it can be argued that, if these societies are left to their own devices, and if Rawls' proposals in *Law of Peoples* are implemented, then there is no duty imposed on the just societies to minimize poverty in unjust societies, in which elites keep their populations in poverty without necessarily egregiously infringing human rights. Moreover, such societies could not freely raise the question of their own dependence and try to find democratic solutions to it. Therefore, the global original position would be needed to impose duties of justice on the affluent societies rather than to hope in vain that less affluent societies would first become internally just.

However, such an argument would run into the trouble of demanding unacceptable actions from the affluent well ordered societies. Rather than insisting that these help the less affluent and less well-ordered societies become well ordered, it would demand that the affluent and well-ordered societies impose well-orderedness on the less well ordered. This conclusion can be reached by looking how the situation of the global poor can be maximized. Firstly, just a transfer of resources, through their unjust states would rather have deleterious effects, in the sense that it would strengthen rather than weaken the power of local oppressive elites. Therefore, before maximizing the share of resources that the global worst off enjoy, the affluent, well ordered societies would have to either make sure that these societies are internally just and transferred resources are not squandered. This could be done either by first imposing well-orderedness or by finding ways to transfer resources without any interference of local elites. The second is probably difficult to achieve. The first could be achieved by two ways: either non-violent promotion of democracy or massive military intervention. The second also leads to other moral dilemmas, which

will not be discussed here. But, those that support the cosmopolitan conclusion would have to accept that at least in principle, military intervention for democratization could be considered a moral duty in case other means, non-violent promotion of democracy fails. Rawlsians on global justice would not have to face such a conclusion because they would support only non-violent means to promote democracy included in the duty of assistance.

III. CONCLUSION

This paper has reviewed some of the arguments which Thomas Pogge and Allan Buchanan bring against Rawls' *Law of Peoples*. It has offered arguments to defend Rawls from the criticism of being too cautious and conservative when designing the *Law of Peoples*. Moreover, it has done so by accepting the empirical premise of Rawls' opponents, that there currently exists a coercive global system. By using Valentini's distinction, the paper has argued that a systemically coercive system can be made less coercive, but one that requires interactional coercion to exist does not and has to conform to justice. Rawls' suggestions in the *Law of Peoples* are nothing else than a way to make the global system less coercive.

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