
Normative Theory in International Relations A Pragmatic Approach

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Contents

<i>Acknowledgements</i>	page xi
<i>Abbreviations</i>	xiv
<i>Preface</i>	xv
Introduction	1

Part I: Evaluating the impasse

1	Cosmopolitanism: Rawlsian approaches to international distributive justice	21
2	Communitarianism: Michael Walzer and international justice	52
3	Beyond the impasse? Hegelian method in the cosmopolitanism of Andrew Linklater and the communitarianism of Mervyn Frost	78

Part II: Confronting the impasse

4	Poststructuralist antifoundationalism, ethics, and normative IR theory	121
5	Neo-pragmatist antifoundationalism, ethics, and normative IR theory	144

Part III: International ethics as pragmatic critique

6	International ethics as pragmatic critique: a pragmatic synthesis of the work of John Dewey and Richard Rorty	173
7	Facilitating moral inclusion: feminism and pragmatic critique	212
8	From moral imagination to international public spheres: the political and institutional implications of pragmatic critique	246
	Conclusion	273
	<i>References</i>	281
	<i>Index</i>	292

1 **Cosmopolitanism: Rawlsian approaches to international distributive justice**

Introduction

Cosmopolitans seek to interrogate and complicate the value conferred upon sovereign states in the contemporary international system, since cosmopolitans take individuals, not states, to be the starting point for moral consideration. They question the way in which boundaries of state authority serve as the boundaries of obligation owed among individuals in international practice. For example, cosmopolitans would challenge the claim of a particular state that the poor in the moral void outside its boundaries are not its responsibility. They do not accept that, at best, these poor can only hope to be the beneficiaries of charitable aid that flows across boundaries. For cosmopolitans, what is at issue here is the possibility of justice in an international system of states.

For cosmopolitans, to think about justice requires that we look past privileged practices and institutions, relinquish the power invested in these social constructions, and consider the simple question of what kind of relations between individuals can be said to be reasonable or fair. Accordingly, the question that considerations of justice raise for international practice is whether states represent a privileged power practice and whether they, like individuals, should be the subject of an inquiry into justice. In exploring this line of inquiry, I will concentrate upon cosmopolitan approaches which follow out of the work of John Rawls.

By choosing this focus, I do not intend to suggest that all conceptions of justice among cosmopolitans are to be identified with a Rawlsian approach. Clearly, one can point to cosmopolitan

approaches of a non-Rawlsian character.¹ However, I choose to concentrate on this perspective as it has been the most influential conception of justice in defining the cosmopolitan position in contemporary normative IR theory. Much of this influence can be attributed to the considerable extent to which the framework of the cosmopolitan/communitarian debate derives from contemporary justice debates in political theory between liberals and communitarians: a debate stimulated by the work of Rawls. Within IR, Charles Beitz (1979) is the writer generally attributed with the first significant contemporary attempt to tackle a cosmopolitan theory for deriving principles of international justice in which he adapts Rawls's domestic formula for establishing principles of justice.² Subsequent to the writings of Beitz, Thomas Pogge (1989) has also drawn upon Rawls's work in order to internationalize questions of distributive justice. This chapter aims to critically examine the work of Beitz and Pogge in light of the progression in Rawls's own work on justice in order to assess the cosmopolitan position as it stands within normative IR theory and the possibilities for accommodation in the cosmopolitan/communitarian debate. Interestingly, of all the writers discussed in this book, Beitz and Pogge are closer than any others to being archetypical of the position they represent, and it is only through tracing the developments within Rawls's work that possibilities for narrowing the poles of debate might be found.

In *A Theory of Justice (TJ)*, Rawls (1971) begins with the problem of how we can develop procedures to arrive at fair principles of justice that can be agreed to by all.³ Critics point to a fundamental problem in his formulation. The assumptions upon which these procedures are derived are not universal (as Rawls suggests), but instead, are particular to Rawlsian liberalism. Since 1971, Rawls has written numerous articles, recently revised and collected in *Political Liberalism*

¹ For a non-Rawlsian, Kantian conception of cosmopolitan justice see O'Neill (1986), (1990), and (1994). Barry (1989) is another cosmopolitan who takes a non-Rawlsian route to international justice, which instead, draws from Thomas Scanlon.

² Although not a developed study of international distributive justice, Danielson (1973) offers an earlier critique of Rawls for failing to extend the redistributive principle beyond domestic societies.

³ It is important to note here that Rawls is not concerned with the question of whether considerations of justice apply to states. His aim is to develop a theory of justice for individuals within the confines of domestic society.

(Rawls 1993b).⁴ In his later work, Rawls redirects emphases, and in the opinion not only of his critics, but those sympathetic to his earlier work as well, significantly alters his theory of justice. The first section begins by looking briefly at the early Rawls of *TJ* and then turns to an account of Beitz's efforts to construct a theory of international distributive justice. In the second section, I argue that it is important to explore the movement of Rawls's work since 1971 as this movement is reflected in the studies of international distributive justice by Beitz and Pogge. I use Chandran Kukathas and Philip Pettit's outline of two stages in Rawls's later work (Kukathas and Pettit 1990: chapter 7): first, to characterize Beitz's retreat from his critics as a retreat similar to that of the Rawls of stage one, which leans upon more expressly Kantian lines; and secondly, to examine Pogge's interest in international applications of Rawls's domestic conception of overlapping consensus in the second stage of his work. In the third section, I examine the implications of the development in Rawls's thought and its reflection in the work of these international theorists for the cosmopolitan position and the debate in normative IR theory as a whole. The extended exegesis of changes in Rawls's work and its influence on these writers makes the format of this chapter different from others in part I of the book. However, this exceptional treatment is warranted in order to indicate that while Beitz and Pogge are not specifically concerned to locate points of accommodation within the cosmopolitan/communitarian debate, the movement in Rawls's thinking suggests the possibility.

Early Rawls, Beitz and an international theory of justice

What follows is a simple exposition of a complex and important book. It is a thumbnail sketch of those points relevant to the concerns outlined above: themes Beitz draws upon, and themes redirected in Rawls's later writings that are picked up by Pogge. To begin, the basic

⁴ In this chapter I will refer to the original articles rather than their revised equivalents in Rawls (1993b). Granted, Rawls maintains that there is new thinking in these pieces collected in the book. However, the main points that I am extracting from them – his historical contextualism, his understanding of the self as being socially constructed as well, and his claim that moral personality can differ within varied social contexts – remain largely unchanged.

structure of society is the fundamental subject of justice for Rawls. He defines society as 'a cooperative venture for mutual advantage', and the role of justice as the provision of a set of principles by which participants in society can 'define the appropriate distribution of the benefits and burdens of social cooperation' (Rawls 1971: 4). Thus, Rawls's theory of justice is a theory of distributive justice, and therefore implies wider forms of moral inclusion.

Individuals cooperate because they recognize that life within society offers more beneficial returns than life on one's own. None the less, they do have divergent interests. Prior to entering societal arrangements, individuals have their own projects and desires, which are not always compatible. Rawls insists on the separateness of persons: they are not the means to societal ends. That individuals are free and equal in virtue of their capacity to have a sense of justice and to form and revise a conception of the good, is something Rawls takes as given and that cannot be overridden by any good of society. Thus, principles of justice must be publicly agreed to by all. Rawls revitalizes the contractarian tradition from its nineteenth-century slumber, to propose a formula by which principles appropriate to the justice of basic social institutions may be chosen by those participant in a cooperative social scheme for mutual advantage.

Rawls asks the reader to consider a hypothetical 'original position' in which individuals come together under a 'veil of ignorance'; that is, they know nothing of their own situation, talents, profession, or status. Thus, they do not possess the kind of knowledge which might bias or inhibit a fair choice of principles. Rawls argues that from such an original position, the agreements reached epitomize justice as fairness because they 'evaluate principles solely on the basis of general considerations' (1971: 137). In addition to understanding individuals to be free and equal, the concept of justice as fairness also holds that individuals are rational and mutually disinterested. In regard to these latter aspects attributed to persons under justice as fairness, Rawls makes two points of clarification. First, disinterestedness in one another's affairs does not mean that individuals are egoists. Disinterestedness only suggests that individuals attempt to procure as many primary social goods (rights and liberties, opportunity and income) as possible (Rawls 1971: 13, 144). Secondly, rationality should be interpreted in terms of economic theory; that is, we select the 'most effective means to given ends' (Rawls 1971: 14, 143). This formula for filtering 'arbitrary contingencies' from a

‘desired solution’ produces, in a pure procedural fashion, the following principles of justice (Rawls 1971: 302):

1. Each person is to have an equal right to the most extensive total system of liberties compatible with a similar system of liberty for all (the Maximum Equal Liberties Principle).
2. Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity (the Difference Principle).

Although Rawls’s *TJ* stimulated the development of cosmopolitan positions on international distributive justice, Rawls himself did not see that his principles of societal justice could be extended to the realm of the international for two reasons. First and foremost, as the basic structure of society is the subject of justice for Rawls, and society is defined as a cooperative venture for mutual advantage, the fact that the world is not such a society, according to Rawls, means that his principles of justice do not apply internationally. For Rawls, there is no *global* society as such that can be legitimately regarded as a collaborative scheme of self-sufficient relations. Secondly, as there is no global society, there is no global surplus for which principles of distributive justice need to be found. Rawls writes that he would be satisfied if he could ‘formulate a reasonable conception of justice for the basic structure of society conceived for the time being as a closed system isolated from other societies’ (1971: 8). One might seize upon the ‘for the time being’ in the above quote as a hint of an opening. Nevertheless, even in his most recent writings, Rawls offers no signs of changing his stance on the viability of a theory of international distributive justice: although he does argue for the just international distribution of basic liberties, he continues to deny the possibility of a theory covering the fair international distribution of opportunities and resources (1993a).⁵

⁵ See Rawls (1993b: xxviii–xxix), where he writes that justice between states, among other issues neglected in *TJ*, is provided for generally by ‘focusing on a few main and enduring classical problems’ in political theory. This recourse to classical political theory, conceived to be centrally concerned with the domestic polity, fails to address a question, the consideration of which distinguishes international political theory, and which is central to the discussion of justice between states in international political theory: the question of the actual moral relevance of states. Thus, possibilities for international distributive justice are not given adequate consideration here. However, in a more recent piece, while he still fails to justify or problematize the value placed

Rawls does consider an international original position, but it yields no more than international norms familiar to us all: the equality of nations, self-determination, a right to non-interference, and that treaties are to be kept (Rawls 1971: chapter 58). Clearly, this in no way represents a radical call for international redistribution. However, Beitz sees the potential for such a call within a Rawlsian framework. According to Beitz, Rawls has the facts wrong, and writes that an otherwise worthy theory of justice stops short of its full potential. Accepting Rawls's two principles of justice, Beitz aims 'to point out some features of this view that require further development in the face of certain facts about the world' (Beitz 1979: 129). There is a sense in which Beitz hedges his position by offering two arguments, which could be regarded as weak and strong,⁶ for international distributive justice: one argument takes states to be the subject of justice, and the other argument takes individuals to be the subject of justice. The first, or weak, argument takes on board the usual assumption in IR theory that states are self-sufficient entities in order to make a case for international distributive justice in arguing that there *is* a global surplus that requires distribution: natural resources. His second, or strong, argument challenges self-sufficiency as a fact about states in the light of international interdependence, and he uses this to make a case for a global difference principle.

In assuming the self-sufficiency of nation-states, Beitz turns to

upon sovereign states in international practice, Rawls does offer extended discussion of international justice in regard to human liberties (Rawls 1993a). In order to claim that Rawls maintains in this piece as well that his theory of justice cannot provide sufficiently for the possibility of international distributive justice, I must draw an important distinction. In thinking about international distributive justice, one must differentiate between theories that cover the fair distribution of liberties and those that are concerned not only to cover liberties, but the fair distribution of opportunities and resources as well. In developing the idea which Rawls labels as 'the law of peoples', an extension of his notion of the well-ordered society, Rawls is arguing for the just distribution of basic equal liberties in international practice. However, he is not suggesting that a theory of international distributive justice can cover fair distribution of opportunities and resources in the way his domestic theory of justice does. Thus, he continues to suggest that his theory of domestic justice does not have international application. As will be discussed, Beitz and Pogge demand a theory of international distributive justice that provides for both equality of liberties *and* equality of opportunities and resources. I must thank John Charvet for drawing my attention to the importance of making this distinction explicit.

⁶ Here I do not use the terms weak and strong in the same sense that I set out in the Introduction in regard to foundationalist argument. Where I do intend this meaning, the terms will be in italics.

Rawls's international original position to reconsider the development of principles of justice for the law of nations. He writes that Rawls's selection of principles 'seems unexceptionable', but he neglects an important consideration, the question of natural resources (Beitz 1979b: 136–43). Just as participants in the domestic original position would factor out considerations of natural talents due to their morally arbitrary nature, natural resources would be viewed as similarly arbitrary on an international level. Thus, the veil of ignorance over the international original position would compel the parties to examine the distribution of natural resources. Although Rawls's approach to natural talents is vulnerable to several objections, Beitz argues that the distribution of natural resources is a 'purer case' of being morally arbitrary, because 'unlike talents, resources are not naturally attached to persons' (Beitz 1979b: 139–40). Beitz also argues that it is wrong to assume that where there is no social cooperation there is no problem of resource distribution claims. Moral bonds are not limited to those with whom we are involved in a cooperative scheme. Those participant in the international original position would have as part of their general knowledge an awareness of the fact of uneven distribution and scarce resources; and thus, not knowing their own access to resources under the veil of ignorance, they would naturally agree on a resource redistribution principle (Beitz 1979: 140–1). Therefore, Beitz concludes that the 'case for an international resource redistribution principle is consistent with the assumption that states are self-sufficient cooperative schemes' (1979: 143).

His second argument renders the first to be superfluous, because he moves to make a strong case for international redistribution in writing that we all know that the assumption of self-sufficiency is unsustainable. The fact of international interdependence, 'by now part of the conventional wisdom of international relations', undermines the notion of the state as a self-contained, self-sufficient cooperative scheme (Beitz 1979: 149). Thus, we cannot limit Rawls's concept of society to the nation-state, because the network of international interdependent relationships points to a 'global scheme of social cooperation' (Beitz 1979: 144). This being the case, global interdependence means that the difference principle can apply internationally. Beitz sees no reason why the widened scope of a cooperative venture for mutual advantage would necessarily change the principles of justice (1979: 151). An international difference principle works for the globally least advantaged representative *person* in the first instance, but it

would also require that intrastate inequalities be addressed as well (Beitz 1979: 153). Despite making individuals the subject of international distributive justice in this strong argument, he goes on to write that as states remain the central players in world politics, they, as a 'second-best solution', are in the best position to follow through on the measures necessary to realize an international difference principle.

Why do states represent a second-best solution? Despite the indecision in Beitz's conclusions on the appropriate subject of justice, states or individuals, his case for international distributive justice denies the empirical and moral relevance of states. He writes that the existence of states is a fact of world politics, but the autonomy of states cannot be maintained in the face of interdependence. Global interdependence infringes upon a state's autonomy. Autonomy is something we confer upon states, a mistake which results from 'reading "states" for "persons"' (Beitz 1979: 76). In addition, Beitz finds that international interdependence constitutes global social cooperation; and thus, statehood becomes morally irrelevant. Moral relations do not begin and end at state boundaries, since social cooperation extends beyond the reaches of the state. Therefore, according to Beitz, international distributive justice applies only derivatively to states and principally to persons in founding principles for the establishment of just social arrangements.

The later Rawls and his influence on cosmopolitan thinking on justice

Having outlined Rawls's *TJ* and Beitz's extension of this work to establish a theory of international distributive justice, I will now trace the movement of Rawls's subsequent work and its reflection in the work of Beitz and Pogge. *TJ* is often attributed with revitalizing political theory, as what has since been labelled the 'communitarian critique' in response to Rawlsian liberalism has generated a debate between liberals and communitarians that has captured the attention of much of contemporary political theory.⁷ It is clear in Rawls's later work that he is concerned to address elements of this critique, but the extent to which he has been swayed by the communitarian position is

⁷ See Sandel (1982); MacIntyre (1981) and (1988); Walzer (1981), (1983), and (1984); and Taylor (1985b) and (1990).

open to debate. None the less, many commentators note that Rawls is today offering a political liberalism with more expressly communitarian concerns than the Rawls of 1971 (Kukathas and Pettit 1990: 110–18; Mulhall and Swift 1992: 198–220; Bellamy 1992: 234–40). Are the changes no more than clarifications or shifts in emphasis; or do they represent a more significant alteration of his theory of justice? First, we must turn briefly to the substance of the critique.

It must be acknowledged that the communitarian critics are not speaking with one voice, but one can generally discuss their principal concerns as follows.⁸ These writers point to the inadequacy of liberal abstraction in theorizing about political life, and liberalism's failure to appreciate the value placed by individuals on shared communal understandings and notions of the good. Michael Sandel criticizes deontological liberals such as Rawls for an incoherent conception of the person as prior to her ends, detached from her attributes (Sandel 1982: 19–23). For Charles Taylor, Rawls's theory is a form of atomism, which as a 'basic error' fails to appreciate the ways in which individuals are socially constituted (Taylor 1985b: 309). This conception of the person is reflected in Rawls's claim for the primacy of justice, a well-ordered society being one in which rights act as a constraint upon societal goods that may impinge upon self-defining individuals. For Alasdair MacIntyre, this search for rational, broadly practicable moral foundations represents a Western political culture in decline, because we have turned our backs on the tradition of the virtues, which locate moral life within communities (MacIntyre 1981: chapter 17). Michael Walzer advocates the particular and the plural, the value of communal meanings denied by the universalism of Rawls's original position (Walzer 1981: 388–93).

From the Kantian to the political: movements in the later work of Rawls

With these criticisms in mind, let us turn to what Kukathas and Pettit argue are two movements in Rawls's work since 1971 (Kukathas and

⁸ Allen (1992) makes a distinction between strong communitarians such as Sandel and MacIntyre versus the moderate communitarianism of Walzer and Taylor. Mulhall and Swift (1992: 155) also separate Walzer and Taylor from the pack, as their communitarian critique does not 'entail a wholesale rejection of liberalism and liberal values'. For a similar interpretation, see Bellamy (1992: 242–43).

Pettit 1990: 120–21).⁹ Rawls's writings from 1971 to 1982 represent the first movement, as Rawls concentrates upon elaborating the Kantian underpinnings of his moral philosophy. I will label this first movement, the 'Kantian phase'. From 1982 onwards, the second movement is marked by a move away from his Kantian roots, in which he rewrites his account of liberal justice as political not moral. I refer to this second movement as the 'political leap'. In this section, I will discuss the key texts of the first and second movements respectively, 'Kantian Constructivism in Moral Theory' ('KC') and 'The Idea of an Overlapping Consensus' ('OC'), and assess any significant changes and their relation to the communitarian critique (Rawls 1980; Rawls 1987).¹⁰

The Kantian phase

Critics of *TJ* maintain that Rawls's conception of the person is unclear. Rawls does discuss two attributes of persons – first, that they are free and equal moral persons, and secondly, that they are rational choosers – yet these critics demand a more precise answer from Rawls to the question: exactly what kind of person is behind the veil of ignorance and participant in the original position? In 'KC', Rawls elaborates the Kantian orientation of his work, in particular, he aims to emphasize the way in which a Kantian understanding of moral personality is at the base of his theory of justice – a move Beitz repeats in response to his critics. Rawls seeks a notion of Kantian autonomy which leaves behind the metaphysics of a noumenal, rational self that is free of moral conflict (Rawls 1980: 516). Alternatively, he appeals to what we can agree to on the basis of common sense. Moral principles are constructed upon a fair procedure that represents ideals we already intuitively accept. Rawls is also more specific on the scope of the 'we' here. His concern is to focus upon a theory of justice which draws upon the latent understandings within liberal democratic societies. Thus, unlike Kant, he suggests that conceptions of moral personality vary from one moral tradition to another (Kukathas and Pettit 1990: 126).¹¹ It is Rawls's assumption that a fair procedure among those who

⁹ Kukathas's and Pettit's discussion of these movements is similar to Arneson's (1989) outline of three significant changes in Rawls.

¹⁰ I regard these texts as key, not simply within the body of Rawls's work, but also with respect to the writings of the international theorists concerned.

¹¹ This conception of variance in moral personhood has interesting repercussions for IR theorists attempting to build upon Rawls. I will discuss this later in the chapter.

share common sense notions about 'how they conceive of their persons and construe the general features of social cooperation among persons so regarded' will yield fair principles of justice (Rawls 1980: 517).

Rawls's strategy for deriving such principles rests on three distinct model conceptions: the moral person, the well-ordered society and the original position (Rawls 1980: 533). The moral person has 'two highest order moral powers': the capacity for a sense of justice and the 'capacity to form, to revise and rationally pursue a conception of the good' (Rawls 1980: 525). It is the moral person's interest to realize and develop these powers as well as to preserve her conception of the good. The well-ordered society is characterized by four features. First, a well-ordered society is 'effectively regulated by a public conception of justice', based upon beliefs which are widely accepted (Rawls 1980: 537). Secondly, citizens of this society recognize themselves and each other as free and equal moral persons. The third and fourth characteristics are that the 'circumstances of justice' – moderate scarcity and a plurality of conflicting goods – will be in place, and finally that the well-ordered society will be stable as concerns its conception of justice (Rawls 1980: 522, 525). As for the original position, it incorporates the model conceptions of the moral person and well-ordered society. It constructs two principles of justice, upon an understanding of ourselves as moral persons and upon ideas of a well-ordered society, by assuming a preference for the primary goods necessary to our moral capacities and by a veil of ignorance which eliminates morally irrelevant factors that could influence decisions and result in unfair outcomes.

The setting of the original position is framed by what Rawls terms the 'Reasonable'. The Reasonable entails mutuality and reciprocity among free and equal moral persons, which is represented in the original position by demands for generality, publicity and universality, and by demands for primary goods and justice in regard to basic political structures. These are to be distinguished from the Rational features of the original position: the assumption that the parties are rational and that they pursue the greatest amount of primary goods possible. The distinction between the Reasonable and the Rational is important, as their relationship is the basis for a Kantian autonomy derived not from a dualistic metaphysical abstraction, but from a conception of rationality grounded in our common sense understanding of ourselves as free and equal moral persons. Rawls writes that the Reasonable presupposes as well as subordinates the Rational:

[t]he Reasonable presupposes the Rational, because, without conceptions of the good that move members of the group, there is no point to social cooperation nor to notions of right and justice . . . The Reasonable subordinates the Rational because its principles limit, and in the Kantian doctrine limit absolutely, the final ends that can be pursued. (Rawls 1980: 53)

To assess what has changed with this Kantian phase, I will look at the 'who', the 'whom' and the 'what' represented in 'KC' as compared to *TJ*. The 'who', a concept of the person, is much more developed in the Kantian phase. Rawls addresses the ambiguity which surrounded the concept of the person depicted in the original position of *TJ* as both a rational chooser of ends and a free and equal person inclined to follow justice. The rational autonomy (in an economic theory sense) of the individual in the original position was no more than a representation that is not to be confused with the ideal of the autonomous, moral person of a well-ordered society (Rawls 1980: 533–4). The distinction between the Rational and the Reasonable assists this clarification by framing rational autonomy within the purview of the Reasonable, providing for a fuller realization of autonomy. Not only has the concept of the person in Rawls been clarified, but it is also more pronounced, in the sense that the 'who' has taken on a fundamental role in Rawls's theory of justice. As William Galston writes, '[i]n the Dewey Lectures ['KC'], the ideal of the person plays a direct rather than a derivative role' (Galston 1982: 495). In 'KC', Rawls wants to make a clear distinction between three model conceptions, but as Galston argues, these three sets of constraints on choosers are not as independent as they may appear. Aspects of the well-ordered society (the publicity condition and the assumption of a diversity of ends) and aspects of the original position (the veil of ignorance and the account of pure procedural justice) are all grounded upon an assumption of moral personality: that the individual is free and equal in her moral capacities.

As stated earlier, this substantive moral position regarding a conception of the person is congruous with our shared understandings of ourselves as free and equal citizens, and the 'our' here represents those of us participant in liberal democratic societies. Thus, the scope of the 'whom' to which Rawls's theory of justice applies has narrowed from its interpretation in *TJ* where it was relevant to any society, defined as a cooperative venture for mutual advantage. Instead, in his Kantian phase, Rawls clarifies that he is not attributing universal

applicability to his principles of justice. In fact, the scope in 'KC' has narrowed to the degree that it encompasses not simply those within liberal democratic societies, but those within liberal democratic societies such as the United States. With Rawls's new emphasis upon moral personality, the validity of the principles of justice is now specific to contemporary liberal democracies such as the United States where such a conception of the person can be found within common political understandings.

The principles of justice have not changed in this Kantian phase, nor has the use of the original position to derive those principles. Yet Rawls works in 'KC' to clarify the function of the original position as a device that helps us realize shared ideals latent in our political culture. Here, the 'what' behind these principles, that which motivates the choice of the two principles of justice, is important. Rawls writes in 'KC' that '[f]ree persons have a regulative and effective desire to be a certain kind of person' (1980: 548). It is this assertion regarding moral personality – that it is our aim to develop our capacities for following justice and forming a conception of the good – which motivates the process of construction leading to Rawls's two principles of justice. But why should we be compelled by this assertion about ourselves? Is it enough that we can identify this concept of the person in liberal democratic culture?

The gap between the communitarians and Rawls is not as wide as originally perceived. Neglected within the communitarian critique are several points clarified in this Kantian phase, works written by Rawls prior to the first publication among the communitarians in 1981: MacIntyre's *After Virtue*. For example, Sandel's charge that Rawls holds an inadequate metaphysical assumption of the individual as unencumbered and pre-social neglects Rawls's assertion that to form and pursue a conception of the good is integral to moral personality. Thus, in no sense would Rawls presume that individuals could be wholly cut off from their ends. Also, there is Rawls's claim in 'KC' that moral personality is embedded in the political culture of liberal democracy. This claim takes the sting out of Walzer's charges against universal starting points and attempts at founding universal principles of distributive justice. In *TJ*, where the notion of primary goods was based upon needs determinable from general knowledge available in an original position, this could be a fair criticism. However Rawls's change of tack in 'KC' links primary goods to the assumption of moral personality and its 'higher order interests' which can be

located in liberal democratic practice. None the less, the communitarians do have Rawls on the defensive in this regard: that his theory of justice stands on a metaphysical assumption regarding personhood which constitutes not a thin, but a thick theory of a liberal good. It is to this defence that Rawls turns in the second movement.

The political leap

The difficulty Rawls faces is that the Reasonable, the basis for the original position, is a moral conception. As a moral conception, it cannot apply to everyone unless all accept the Reasonable. Thus, in the face of challenges to this moral conception, there is no ground for the original position. Rawls abandons the foundering position of Kantian moral personality in a leap to the political, stressing the importance of the political in finding consensus on justice in conditions of plurality and diversity.

Although Rawls does not presume that individuals can be wholly cut off from their ends, he does argue in 'KC' that there is a public/private distinction such that a person can put aside the goods she holds privately to pursue agreement on the arrangement of basic social institutions in the public, political sphere. It is upon this public, political sphere that Rawls builds a response to his communitarian critics. In his writings from 1982 to 1989, Rawls differentiates between a political conception of justice and a comprehensive moral doctrine, a distinction he had not made in previous writings. The concern of this political conception of justice is to secure an 'overlapping consensus' within liberal democratic societies, which must contend with the fact of pluralism. Kukathas and Pettit hold that this second movement represents a rejection of the Kantian impulse in his earlier work (1990: 121n, 139). While I appreciate the usefulness of understanding Rawls's work in terms of two phases, I will argue that this idea of a wholesale rejection of Kantian moral philosophy in his move to the political is misleading.

Rawls's article, 'The Idea of an Overlapping Consensus', is the key to understanding this distinction regarding the political, and is also important to Pogge's formulation of a theory of international distributive justice. Here, Rawls suggests that the aim of political philosophy within constitutional democracies is to find a *political* conception of justice, which is publicly justifiable and stable across generations. Rawls outlines three features of a political conception of justice (1987: 3–7). First, a political conception of justice remains a moral conception

regarding the basic structure of a constitutional democratic society; that is, how the main political, economic and social institutions fit together in a unified scheme of social cooperation. Secondly, a political conception is *not* a general and comprehensive moral conception with broad application, like perfectionism, utilitarianism or Marxism. Instead, it is concerned only with the basic structure of society, holding no prior commitment to a wider doctrine. Finally, a political conception of justice is formulated in terms of 'certain fundamental intuitive ideas viewed as latent in the public political culture of a democratic society' (Rawls 1987: 6).

What motivates this political conception of justice? It is Rawls's thesis that the historical and sociological conditions of democratic society demand that we look at the justice of its basic institutions in a certain way. The fact of pluralism is the principal one among these conditions. Within modern democratic society there is a diversity of general and comprehensive doctrines, incommensurable ideals of value and the good, which make the need for a political conception of justice a practical matter. Another condition to consider is that the fact of pluralism is not going to dissipate. Rawls sees the fact of pluralism to be a permanent feature of the public culture of constitutional democracies. Also, if any comprehensive doctrine were maintained in such a society, it could only be through the oppressive use of state power (Rawls 1987: 4).¹² These conditions require that a theory of justice must look beyond general and comprehensive conceptions in order to find a publicly acceptable *political* conception of justice which can specify fair terms of social cooperation among free and equal citizens, supported by an overlapping consensus. An overlapping consensus is that which can be supported among those who espouse different comprehensive religious, moral or philosophical doctrines. Although the comprehensive conceptions are conflicting, an overlapping consensus may still exist as different premisses may lead to the same conclusion. Rawls writes that 'we simply suppose that the essential elements of the political conception, its principles, standards and ideals, are theorems, as it were, at which the comprehensive doctrines in the consensus intersect or converge' (1987: 9).

In the second part of 'OC', Rawls is concerned to take up four objections against the idea of social unity founded on an overlapping consensus: (1) it is a mere *modus vivendi*; (2) it implies scepticism as to

¹² Rawls (1987: 4n) lists four additional social and historical conditions to consider.

whether a political conception is true; (3) a workable political conception must be general and comprehensive; and (4) an overlapping consensus is utopian. Against the objection that an overlapping consensus is a mere *modus vivendi*, Rawls writes that the object of consensus is moral. An overlapping consensus is affirmed on moral grounds and it is expressed in public life. These two factors contribute to its stability, something a *modus vivendi* clearly lacks. In response to the second charge of scepticism regarding the truth of political conceptions, Rawls says that he does not appeal to a political conception of justice simply to avoid conflict, but to distinguish between issues that can or cannot be removed from a political agenda in order to find a stable overlapping consensus. The problem is that difficult issues will not be eliminated, and at times, 'in affirming a political conception of justice we may have to assert at least certain aspects of our own comprehensive religious or philosophical doctrine' (Rawls 1987: 14). In this instance, restraint is called for in asserting no more than that which one thinks is compatible with consensus. Thirdly, those critics who argue that an overlapping consensus must be general and comprehensive say this is required in order to prioritise the conflicts of justice that are sure to arise. Rawls responds by saying that 'a political conception is at best a guiding framework of deliberation and reflection which helps us reach political agreement on at least the constitutional essentials', and that in itself is sufficient (1987: 16). Finally, Rawls answers the charge of utopianism, that no basis for overlap exists, by pointing to a way in which an overlapping consensus may emerge. It begins with a *modus vivendi* that changes in time to an overlapping consensus as people recognize the success of political cooperation over time and grow to have more trust in one another.

Now, let us turn back to the 'who', 'whom' and 'what' questions to assess any shifts in this second movement. As for the 'who', the distinction between political and comprehensive conceptions of justice has its implications for Rawls's concept of the person as well. The ideal of moral personality is fashioned into a political conception of the person as citizen, whose 'freedom and equality are to be understood in ways congenial to public political culture and explicable in terms of the designs and requirements of its basic institutions' (Rawls 1987: 7). This new emphasis upon a political conception of the person is prompted by Rawls's recent attention to what he calls the 'fact of pluralism' and the need to find a publicly justifiable concep-

tion of the person as citizen that spans diverse comprehensive goods. It is Rawls's assumption that this is possible because 'the comprehensive doctrines of most people are not fully comprehensive' (Rawls 1987: 22–3). Thus, the individual can separate the comprehensive doctrines one personally holds from ideas which facilitate agreement in the public, political realm. As Stephen Mulhall and Adam Swift write, for those who are not committed to a liberal conception of a public/private split, this will involve 'a greater or lesser degree of schizophrenia', making such a conception of the person undesirable (1992: 209). However, this is more than a question of desirability. It is a question of feasibility: whether an individual can legitimately set herself apart from what she regards as valuable in determining the justice of basic social institutions. Rawls does recognize that he cannot 'avoid comprehensive doctrines entirely', as his concern for public justifiability hinges upon his conception of moral personality as being valuable (Rawls 1987: 8).

The 'whom' has not changed in any real sense in Rawls's move to the political. The scope remains a conception of justice for liberal democratic societies in accordance with shared understandings therein. Only one difference is notable, not in the scope of the 'whom', but in his focus upon the circumstances of the 'whom'. Rawls has an increased awareness of social and historical situations, in particular, the fact of pluralism that clearly affects his turn to the political. The aim of his political philosophy has shifted from a concern in 'KC' to address the deadlock in reconciling freedom and equality in basic social institutions to a more gritty concern with the practical problem of identifying a shared political basis for a stable conception of justice.

Again the principles of justice put forward in *TJ* stand. Yet, the 'what' that motivates those principles has been re-articulated in Rawls's political leap. The Kantian concept of moral personality reflected in the derivation of Rawls's principles of justice is re-articulated as a political conception of the person. This, in turn, is a product of an overriding concern with the fact of pluralism. Kukathas and Pettit claim that Rawls turns his back on Kant as it appears that the condition of pluralism leads Rawls to abandon in 'OC' the comprehensive liberalism of Kant and Mill. They contend that Rawls is no longer concerned with what would be the most desirable principle of justice, but with what is feasible, what ensures stability (Kukathas and Pettit 1990: 142). However, although Rawls rejects comprehensive moral

doctrines as a basis for a conception of justice, he has not abandoned Kant nor has he abandoned a desirable conception of justice. To be sure, Rawls wants to move away from a Kantian moral conception that is universal in scope, but he maintains that within the historical and social circumstances of liberal democratic society, a Kantian idea of moral personality is publicly agreeable. On the other hand, Rawls's very concern for public justifiability is linked to his commitment to a Kantian understanding of moral personality as valuable in itself. As Mulhall and Swift write, if Rawls found himself in a non-liberal society forced to choose between public justifiability and a conception of the person as citizen, he would not yield to whatever was indeed publicly justifiable, but, instead, would work towards a conception of justice compatible with his conception of the person as free and equal (Mulhall and Swift 1992: 213). Rawls is not forswearing Kant, since his political conception of justice turns on an account of moral personality. The problem for Rawls, then, is *how* to maintain that what motivates his theory of justice is a substantive, not comprehensive, moral conception. Is such a matter of degree plausible?

This is an important question because Rawls wants to suggest that a political conception of justice based upon an understanding of persons as free and equal citizens is compatible with diverse comprehensive doctrines, such that when a comprehensive good clashes with a political good, we accept that the comprehensive good must be constrained in the name of that political good which is better able to win public agreement. Mulhall and Swift point out that Rawls is unclear in his defense of the inviolability of the political good (Mulhall and Swift 1992: 220–6). In 'OC', Rawls uses the example of a religious believer who challenges a public conception of justice that removes the truths of religion from the political agenda to support equal liberty of conscience. In responding to this challenge, Rawls acknowledges that 'we may have to assert at least certain aspects of our own comprehensive (by no means necessarily fully comprehensive) religious or philosophical doctrine' (1987: 14). Whether fully or partially comprehensive, the point is that it *is* comprehensive, making it difficult to maintain the political versus comprehensive distinction. In 'The Domain of the Political and Overlapping Consensus' ('DP'), Rawls (1989) offers an alternative defence. He invokes the idea of reasonable disagreement: there will always be unyielding issues of reasonable disagreement that we must bear with tolerance. So again, in response to the religious believer who challenges the inviolability

of the political, one can only suggest to him that it would be unreasonable to force his comprehensive religious doctrine upon others, thus avoiding recourse to a 'partially' comprehensive doctrine for a defence.

Mulhall and Swift argue that Rawls has a dilemma on his hands. Either he argues that challenging the domain of the political is wrong, and invokes a comprehensive or universal moral doctrine which in itself compromises the limits of the political, or he argues it is unreasonable, which seems to allow circumstances when violating the limits of the political would be legitimate (Mulhall and Swift 1992: 226). I will label this dilemma as Rawls's 'Kantian conundrum'. The appeal of Kant's practical philosophy is its invocation of a conception of the person as a free and equal moral being, which provides grounds for critical judgement without recourse to assertions of prior moral facts or foundations. The conundrum lies in whether one can indeed invoke a Kantian notion of moral personality without getting caught in universal, absolutist claims and the metaphysical oppositions of noumenal and phenomenal realms.

This is particularly difficult for someone like Rawls. Because he uses such a conception of the person as the basis for his distinctions between, and prioritisation of, the right over the good, the political over the comprehensive, and the public over the private, he must contend with the fact that Kant's own distinction between the right and the good hinges on an appeal to the idea of a transcendental noumenal self. From the above discussion, it is clear that Rawls has not found a satisfactory way of maintaining an argument for the right over the good, a political/comprehensive distinction. Thus, it leads one to question whether such an argument can be maintained *without* turning to foundationalist, metaphysical assumptions. This is reflected in the tension evident in the Reasonable constraining the Rational, so that the political is seen to be inviolable in clashes with comprehensive doctrines; and, thus, is not dissimilar to the strong opposition between the noumenal and phenomenal realms. Also, Rawls's original position, a procedural representation of the categorical imperative, works as an Archimedean point. Yet, this Archimedean point misses the crux of the conundrum. Despite attempts to ground moral personality in liberal democratic culture, to represent it as a political, not fully comprehensive conception, the understanding of the person as a free and equal moral being represents a notion of the good in itself. It does so without offering, nor seeing the need to offer, a

satisfactory answer to the question why we should support this conception of the person upon which Rawls's theory of justice is constructed. It is a foundational assumption which justifies, but is itself not up for question.

From the Kantian to the political in international distributive justice

These two movements in Rawls's later writings are evident in the work of Beitz and Pogge. Beitz, in response to critics of his theory of cosmopolitan justice in *Political Theory and International Relations*, falls back on more expressly Kantian lines, as does Rawls of the first movement. Pogge is interested in applying Rawls's domestic conception of overlapping consensus internationally. However, in fashioning a theory of international distributive justice upon Rawlsian lines, there are two difficulties which must be addressed by these writers. First, as discussed in part one, Rawls's theory of distributive justice applies only to the domestic realm and not to the international. Secondly, as the sections above argue, throughout his later writings, Rawls uses the 'good' of moral personality foundationally in his theory of justice and is caught in a Kantian conundrum. I will now examine the writings of these cosmopolitan theorists to see how their work reflects these movements in Rawls's thinking and how, if at all, they address these two difficulties.

Charles Beitz

In 'Cosmopolitan Ideals and National Sentiment', Beitz (1983) turns to 'KC' and the notion of moral personality to respond to his critics. Beitz accepts the argument of Brian Barry which challenges that international interdependence is not at a level that can sustain an argument for a global cooperative venture with the requisite mutuality (Barry 1989: 432–62). Resigned that his original justification 'misses the point', Beitz none the less maintains that the scope of the original position should still be global. Also, his position on the proper subject of justice is made clearer in this article when he writes that the original position represents *individuals* as free and equal moral persons. Since the criterion of membership is a capacity for a sense of justice and a capacity to form, revise and pursue a conception of the good, then membership should be global, because all humans have these capacities no matter if they are part of a