

**PRUDENT COSMOPOLITANISM: TOWARDS A
FUNDAMENTALLY REALISTIC REALIZATION OF A
BETTER WORLD.**

Honors Thesis

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Abstract: In political philosophy, the concept of justice has been historically confined to the domestic state. In the last 50 years theorists have been forced to confront or defend the idea that their comprehensive doctrines say nothing about what the duties and entitlements are for people across state boundaries even though moral worth is not different based on where persons are born. It is within this context that John Rawls formulates a comprehensive theory of egalitarian justice for the domestic state that is explicitly not meant to apply to those outside the state. Opposing this view, cosmopolitans contend that it is morally incoherent to say that justice is bound by the state, even if state boundaries are relevant to the actual pursuit of justice for all persons. In exploring the reasons that Rawls creates tiered, unequal account of what persons deserve for justice, I defend the cosmopolitan foundation that justice applies to all equal persons regardless of the relationships of political association. A two step account of justice is morally incoherent because it relies on equal persons morally deserving certain protections in the domestic state and ignores that principle for persons elsewhere. Yet granting that Rawls claims to not rely on any moral law at all, I explore the implication of putting forward a theory of justice devoid of moral considerations. Political realism is a prevailing conception of the global order that would seem to necessitate amoral global justice and the metaphysical foundation that this doctrine is based on is highly unsettled and problematic.

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Introduction

Consider it is January 20, 2021, former presidential candidate Elizabeth Warren begins her first full day as leader of the free world. She sits down with her advisors in the Oval Office to chart the course forward on her controversial universal healthcare plan. One advisor in the room is a committed cosmopolitan. Consistent with the maxims of cosmopolitanism this advisor urges the President to extend the health care policy equally to every human being in the world. The cosmopolitan understands that to focus on Americans while neglecting others around the world is to act unjustly. Each person is born with no lesser or greater moral worth than any other. That certainly holds true between persons born arbitrarily into a poor state instead of a wealthy one. Therefore, to give special consideration to Americans in her health care plan, based on the arbitrary trait that they are Americans, would be a moral wrong.

Cosmopolitans recognize the insignificance of national membership in determining a person's moral worth. According to cosmopolitans, it is a condition just as morally arbitrary as all other predetermined conditions such as skin color, family membership, sex, and disability. These attributes have generally already achieved recognition as arbitrary conditions in liberal political philosophy and even motivate President Warren's healthcare agenda. As Martha Nussbaum (2002) points out, why should the galvanizing American ethos calling on citizens to "join hands across boundaries of ethnicity and class and gender and race, lose steam when they get to the borders of the nation?" adding, "By conceding that a morally arbitrary boundary such as the boundary of the nation has a deep and formative role in our deliberations, we seem to

be depriving ourselves of any principled way of arguing to citizens that they should in fact join hands across these other barriers” (p. 14).

While it may be evident enough that people in different countries do not have different moral worth on the basis of state membership alone, the view in international justice debates dubbed *political liberalism* warns against being tempted into taking the cosmopolitan approach to something like a global health care plan. Political liberals point out the special significance of political relationships between people in the state. Political in this context generally means relating to power, and justice is a political concept and not a strictly a moral one for political liberals. After all, Americans elected Warren through an open electoral process and in turn President Warren oversees a vast administrative network able to force and compel Americans to follow certain rules, even violently as a last resort. Accordingly, that relationship and division of power should provide the citizen a special status in the eyes of the state and the President (Blake, 2012, pp. 123-126).

When power and the political relationships in a state are considered, you can justify a Health Care plan only for American Citizens, without inherently diminishing the moral worth of people in other countries. You can go so far as to say that by focusing on political relationships the moral worth of people in the domestic state is recognized, rather than rejecting the moral worth of people in other states. At least some political conceptions of justice suggest that state boundaries are not arbitrary because what equal moral people deserve is some form of autonomy or freedom that the state is in a unique position to deny or grant. Some others may suggest that morality applies to persons but justice is something entirely separate from morality, applying to citizens not persons.

This is, at best, a rough and narrow sketch of the political liberal position opposing the cosmopolitan claim that all persons are the equal object of justice in all cases.

In spite of the important role of political relationships in the lives of persons, I argue that to be philosophically cohesive, political liberalism cannot suggest that the essence of justice includes unequal concern for equal moral people depending on a certain political vantage point. Justice must start by considering the equal moral worth of all persons without consideration to a person's political standing. Other considerations including a conception of what persons are entitled to and political relationships can and should be addressed downstream.

In truth there are cosmopolitan objections to President Warren's global health care plan. A global health care plan is unfavorable to a cosmopolitan perhaps because it advances certain western conceptions of the good connected to healthcare and market economies, and thus cannot yet claim be grounded in a fundamental interpretation of what is good for all persons; or because it disrupts hyper-sensitive global relationships risking even worse consequences in the future compared to current global health trends; or because the cost of implementing it and the available infrastructure in many countries mostly negates its effect; or because it could upset voters in the United States to an unprecedented level leading to prospect of even more ominous disruptions to justice generating institutions; or because what equal persons morally deserve turns out to be full autonomy over their property and they choose to give their tax dollars to their fellow citizens or to no one at all. The point is that justice is primarily concerned with all persons.

My argument suggests that the cosmopolitan Warren healthcare plan, or the cosmopolitan global democracy, or the cosmopolitan enforcement of a human right is always just but only if those things seek to advance something universally good and are actually effective in doing that, which are both admittedly challenging determinations to make. Persons are equally morally worthy of consideration and that principle is the basic principle of justice.

My position contrasts John Rawls's (1971) description of the objects of justice as free and equal citizens in a scheme of mutual cooperation and benefit. My argument in favor of a cosmopolitan foundation will be constructed in four main parts. 1. Examining John Rawls as a proponent of political liberalism (and other proponents of political liberalism) reveals moral inconsistencies that appear to arise from simultaneously privileging states themselves and the people that are members of the domestic state. 2. The reason given by Rawls to clarify the alleged inconsistency is either disingenuous or presupposes a particular understanding of the global order, human nature and other metaphysical items without defending them. 3. Political realism offers the closest account of the metaphysical assumptions that Rawls's theory would seem to require in order to warrant privileging both equal persons in the state and the state as fundamental objects of justice. 4. Evaluating political realism's outdated conception of the global order following from critical theorist Robert Cox and generally exploring the danger of building theory from fixed conceptions of human nature and the world order leaves Rawls with little reason to put forward a political conception of justice. As a result of this line of inquiry, I suggest that the cosmopolitan foundation for justice that the object of justice is always all persons must be considered right.

1. Contradictory Objects of Justice

Political liberalism is committed generally to the basic equality of persons as a baseline of justice but favors a conception that allows persons from common political associations to constitute the limit of that baseline in some ways. The state is the relevant political association between people and it is the boundary of whatever entitlements or duties that justice requires for equal people as part of the liberal doctrine. Cosmopolitans commonly subscribe to one or another liberal system advocating for certain goods that equal persons are entitled to or that may give rise to certain duties of people or institutions, but add that the political association is not a valid boundary that can allow these entitlement and duties to be nullified (Blake, 2012, p. 126). In defending the cosmopolitan view, first, establishing the perceived inconsistency of the political liberal position is necessary.

In “The Law of People’s” (1993), John Rawls expanded on his influential egalitarian theory of justice from his 1971 work *A Theory of Justice* (1971). For cosmopolitans, Rawls raised red flags when he suggested that his principles of egalitarian justice applied specifically to the formation of social contracts in domestic society and could not be applied to the global sphere, despite what many saw as a primary commitment to breaking down arbitrary barriers between persons. For cosmopolitans, states are clearly one such arbitrary barrier since a person born into another state is no more morally deserving than a person in any other state. Rawls’s (1971) veil of ignorance and original position are meant to allow participants to consider what kind of arrangements they would make and rules they would choose in a society they could be born into poverty or wealth, as a man or woman, talented or disabled, or any other

predetermined condition (p. 17). This was no doubt appealing to the strictly ‘impersonal’ commitment of the liberal school, enabling society to respect competing value systems while neutralizing the privileges granted by arbitrary conditions in society (MacIntyre, 1984, p. 7). Rawls’s (1971) project, as he himself puts it, aimed to “nullify the effects of specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage” (p. 118). That position sounds very cosmopolitan and certainly did to Rawls’s cosmopolitan readers at first glance.

But Rawls suggests that a separate, second original position must be imagined where state representatives meet to discuss what kinds of agreements they will make between each other. The second original position gives rise to certain rules among nations but not in service of the same constituency (persons) of the first original position that gives rise to a just, egalitarian domestic regime. Thomas Pogge (1994) tries to show how Rawls’s second original position seems inconsistent:

The danger here is not merely moral implausibility, but also philosophical incoherence between Rawls's conceptions of domestic and of global justice. According to the latter, a just domestic regime is an end in itself. According to the former, however, it is not an end in itself, but rather something we ought to realize for the sake of individual human persons, who are the ultimate units of moral concern. (p. 210)

The first original position and second original position place the state in very different roles. At minimum, Pogge prompts greater scrutiny of Rawls’s thought experiment by juxtapositioning 1) the apparent penultimate concern for equal human persons realized through ascension to the platform of the first original position and 2) the similar platform provided to states themselves to secure their own entitlements and rules. The state in the first original position is seen as being just only when it can secure certain baseline entitlements for or execute certain duties to equal persons. The first original position

actually charges the state with maintaining justice for equal people including such elements as egalitarian resource distribution according to the difference principle, fairly accessible political participation and power distribution, and reasonable tolerance of competing value systems. While these guidelines are built out with equal persons in the original position as their foundation, as was clearly stated by Rawls, and set out as the minimum elements of a fully just society, those guidelines do not make an appearance in the second original position.

The two original positions have two separate participants agreeing on distinct sets of rules and can consequently lead to scenarios that are simultaneously just and unjust. For example, Rawls (1993) allows that certain types of states not achieving remotely the type of regime required in his description of domestic justice that are also sufficiently ‘well ordered’ and decent may participate in and be entitled to the benefits and protections of the second original position (p. 44). This is all in the name of toleration. Rawls (1993) makes the analogy that if “citizens in a liberal society must respect other person’s comprehensive religious, philosophical, and moral doctrines provided they are pursued in accordance with a reasonable political conception of justice, [then] a liberal society must respect other societies organized by comprehensive doctrines” (p. 37). So in the domestic society toleration can prevail except when any religious or moral tradition’s principles conflict with the guidelines put forward for domestic justice. In these cases, toleration be damned: those principles and proposals “will not be allowed to come forward for a straight forward majority vote” (p. 252) if they violate justice, as Martha Nussbaum (2006) puts it. Yet the threshold changes on the international sphere.

Where, on the one hand, a debilitating tax on the very poorest of society would never be on the table in a society that is still considered to be sufficiently tolerant to Rawls; on the other hand, a ‘well ordered’ society taxing its poor in a similar way might count as tolerable via the second original position. The domestic policy would be unjust and strictly unallowable in domestic society because of Rawls's famous ‘difference principle’ from the first original position, even if certain religious customs strongly believed the tax was important. Democratic requirements of Rawls's just domestic regime that poor people utilize to oppose this tax (democratic being defined here not simply as majoritarianism) are also not part of the requirements to attain full territorial respect in Rawls's (1993) society of peoples (pp. 50-54). As one critic notes: “To say that the parties [in the second original position] represent peoples is, in effect, to ensure that the fundamental principles of international law that will be chosen reflect the interest of those who support the dominant or official conception of the good or of justice in the society, and this may mean that the interests of dissident individuals or minorities are utterly disregarded” (Buchanan, 2000, p. 698).

Martha Nussbaum further shows that the analogy made between state and person does not work because in the transnational sphere Rawls (1993) assumes some organic universal consent in other countries that have ‘comprehensive religious, philosophical, and moral doctrines’ (p. 37). Nussbaum (2006) goes as far to say this:

It seems extremely likely that there is no tradition anywhere, nor ever has been, in which its subordinated or minority endorse the lower lot in life they are offered. Women, for example, are often cowed, isolated, unable to resist effectively. But their "everyday resistance" has been amply documented all over the world. So the very idea that women (or other minorities) do not see themselves as distinct persons who have lives to plan, separate from those of the males (or the dominant group) with whom

they live, is an idea that would be extremely difficult to establish, and one that probably could not be established. (pp. 254-255)

The virtues of toleration between individuals may become the vice of toleration between peoples, since peoples can be intolerant. Rawls (1993) does seem to make various concessions to show he does not mean to give tyrants a free pass, including suggesting peoples can only access the protections of the Law of Peoples if within their society it is not the case that “the interests of some are arbitrarily privileged while the interests of others go for naught” (p. 51). But if it’s so important that persons are treated fairly *everywhere*, why are the requirements so different? Why not just say that justice means that persons everywhere equally deserve to not have their interests arbitrarily privileged at the expense of others. All of this is to say that Rawls’s level of concern for equal moral people in the domestic state is oddly different and even sometimes undermined on the international sphere.

For Rawls’s theory of domestic justice to actually be right, Pogge and Nussbaum and others have put forward that it must be tethered to equal moral persons exclusively. Therefore, all the same basic rules discovered through a process of recognizing the equal standing of persons in the domestic state ought to be sought for persons regardless of state membership, even if it is a hard thing to do and even if the states themselves are presently in the best position to provide it. If Rawls says that justice is founded on equality between persons then justice must apply equally to all persons. Every distributive principle or right or threshold or obligation or anything else that arises from the first original position are not to be negated simply on the basis of country. Otherwise, the prescriptions and ostensibly equalizing conclusions of the first original position are not credible. While Rawls (1993) does try to articulate a foundation of basic human rights

elsewhere (pp. 56-59), it then becomes difficult to think of his domestic egalitarian doctrine as consistently grounded in humanity since the baseline for domestic governments is much higher than basic human rights. By all appearances, Rawls seems to initially discover the essence of justice and all that comes with it by directly employing the idea of the equal moral worth of all persons, yet is willing to abandon that idea globally.

This difficulty produced by simultaneously privileging equal persons and political associations is highlighted by Charles Beitz. Beitz (1979) names and categorizes positions held regarding morality in international relations including: the states morality position, claiming that there are important human concerns internationally but in general they do not override and should coexist with respect for the rights of sovereign nations; as well as the cosmopolitan position that places ultimate weight on the moral obligations to persons in the international arena. Beitz reviews the conclusions of one advocate of the morality of states position on the issue of just and unjust warfare, Michael Walzer. Walzer proposes revisions to the legalist paradigm of just and unjust warfare. The legalist paradigm claims war is only permissible strictly when it is necessary to protect the territorial integrity of a country against overt aggression. Walzer favors this baseline but includes certain additional conditions when overt external aggression is not required for war including when citizens are threatened with massacre by their government or when governments deny people the right 'to build a common life.' These amendments somewhat resemble Rawls's baseline human rights considerations. Walzer makes these amendments in order to furnish the legalist paradigm with an actual moral, human

concern while also staying committed to the legalist paradigm that contains distinct rights for states.

Beitz (1979) criticizes Walzer by suggesting that if individual persons do have rights or any kind of entitlements, it raises questions about continuing to suggest that states themselves have rights also. Beitz wonders if it does make sense to call what states have a *right*. At the most basic level, by making commitments of rights to both equal humans and states, Walzer's proposal at the same time may require that despotic states be invaded to free enslaved citizens and despotic states' sovereign rights be respected. It is not enough to say this, however, because rights can coexist and conflict, as the right to life and bodily integrity may coexist in ethics debates elsewhere. The problem arises instead when Walzer attempts to define those thresholds where the rights of persons take priority. Walzer's mistake is more about a failure to admit what his amendments actually amount to: not a right for states. If the right to sovereignty can only be granted on a human rights basis then is there really a *right* to sovereignty? What rights would be left over for states if their standing depends entirely on a set of human concerns? Beitz (1979) frames the critical point:

The idea that the rights of states are based on the rights of their citizens is plausible only if the rights of citizens are given a definite moral content, but any definite moral content will require a limitation in the scope of the principle protecting the rights of states to those states which satisfy the corresponding moral criteria. For example, it might be argued that everyone has a basic moral right to live in institutions that are as nearly just as their circumstances permit. States whose institutions satisfy this condition might therefore claim rights of territorial integrity and political sovereignty. States whose institutions fail this test could not claim such rights, although it might still be argued that reform intervention would be wrong for other reasons. What is important in those cases, from a moral point of view, is that the argument against intervention does not raise questions of right but of strategic calculation... This is not only a nice philosophical point; its practical consequence is that each case of possible

reform intervention must be examined individually, in its own historical and political setting, to determine how the relevant strategic calculations are likely to come out in that case. (p. 414-415)

Patrick Hayden (2000) has called out the United Nations for making an identical mistake:

“Although the Universal Declaration of Human Rights (UDHR) seeks to establish minimum standards of treatment for the citizens of all states, the claims of sovereignty, including those to non-democratic and illiberal forms of government, have often trumped the practical implementation of rights intended to guarantee those standards” (p. 47). A better account of just warfare might be one that exclusively respects the territory of states insofar as they uphold justice and insofar as it is strategically and practically a wise decision to engage in warfare. Those two criteria should be abundantly comprehensive for anyone that believes that there is some fundamental human concern at all, as it appears Rawls and Walzer both do, even if the narrowest *content* of justice is challenging to find and agree upon.

The morality of states position held by Walzer, and maybe even the United Nations’ founding documents, are similar to what Rawls’s ends up prescribing as the rules among states that would arise from the second original position. They include a commitment to respecting territorial sovereignty as well as certain conditions that concern the rights of persons or basic human rights in other states. And in fact, Beitz (1999) has separately noted the morality of states position is just a useful title that he has given to the political liberalism position when applied to international theory (p. 518). Following from this analysis, it appears that Rawls and similar advocates of political liberalism fundamentally lean on the equality of persons on the one hand — calling on the central need to remove stratification of persons moral worth — in order to outline some specific set of protections and entitlements for equal people in the domestic society,

while on the other hand permitting admittedly equal people to have unequal protections of basic justice if they live in other countries. If respecting state sovereignty is a wise thing to do, it might be wise for reasons related to ‘strategic calculation,’ as Beitz puts it, and not relating to something more fundamental. It is difficult to imagine arguing that a state should have territorial rights without either entirely relying on the practical or entirely on human concerns or some combination of the two.

Rawls is a prominent exponent of the political conception of justice and so to the extent that political liberalism also calls on the equal moral worth of persons to put forward a doctrine of domestic justice and for the purposes of this limited paper, Rawls will be considered the representative of the political liberalism position as a whole going forward.

2. Defending the Contradiction

Rawls is well aware of the alleged tension in his theory and has an explanation for why there is no mistake at all. In short, Rawls can defend the tension — that is, rejecting the claim that all equal persons are the object of justice even as he acknowledges the claim as an important building block of domestic justice — by admitting to the entirely amoral status of his theory. Rawls would say the preceding section is a misnomer. Following Pogge and Nussbaum, I suggested that Rawls's theory calls on the fundamental moral equality of persons to get to a conception of domestic justice and then rejects that concept globally. Rawls does start from the idea of equal moral persons but only as an already agreed upon principle and not one that needs to be right or wrong as a matter of justice and not one that is claimed to be right or wrong everywhere. Rawls (1985) states his conception of justice “starts from within a certain political tradition” and “tries to draw solely upon basic intuitive ideas that are embedded in the political institutions of a constitutional democratic regime and the public traditions of their interpretation” (p. 225).

Instead of building up a conception of justice from some metaphysical or moral Archimedean points, such as something as basic as the equal worth persons, Rawls (1985) attempts to articulate a conception of justice building from a traditional or paradigmatic Archimedean point, in this case the ideas of equality and liberty in liberal democracies. Hence none of his theory of justice applies where the western liberal idea of basic equality between all persons, and other ideas utilized, are not dominant in the political institutions. Rawls utilizes these broad agreed upon principles and refers to them as ‘overlapping consensus.’ Rawls does not utilize any metaphysical ideas or natural laws

grounded in humanity that require acknowledgement in all cases, like that persons are equally worthy of consideration or that those persons deserve fairness. Although, it does seem like his human rights baseline must draw on the idea that people are equally morally worthy of consideration (afterall he suggests that, to receive the protections under the second original position, it must not be the case that ‘the interests of some are arbitrarily privileged while the interests of others go for naught’ even in other states) and he relies on the Kantian conception of the person in his theory of domestic justice (Nussbaum, 2006, p. 228). To the extent that the western liberal world comes to reject the idea that all persons deserve equal moral consideration, Rawls would presumably have no trouble saying his theory of domestic justice is moot. For example, if the western liberal world came to adopt the idea that there are natural slaves, Rawls would have to say not only that this idea is permissible but failing to uphold the overlapping consensus idea is unjust. Otherwise there is morality in the theory. Truly revolutionary stuff, Mr. Rawls. An entirely amoral theory of justice that draws on no metaphysical conceptions seems impossible. If Rawls claims to genuinely put together a coherent picture of justice without *any* natural laws and metaphysical assumptions, even one as basic as all persons being equally worthy of consideration, Rawls’s explanations require a deeper dive.

In “Law of Peoples,” Rawls (1993) suggests his theory of justice as fairness is constructivist, which he describes in this way:

A constructivist view such as justice as fairness, and liberal ideas more general than it, do not begin from universal first principles having authority in all cases. In justice as fairness the principles of justice for the basic structure of society are not suitable as fully general principles. They do not apply to all subjects: not to churches and universities, or to the basic structures of all societies, or to the law of peoples. Rather, they are constructed by way of a reasonable procedure in which rational parties adopt principles of justice for each kind of subject as it arises. (p. 39)

Justice does not refer to some specific unchanging natural law but refers to the execution of a procedure for particular types of agreements in the real world. So each criticism in the preceding section where it was noted that Rawls's theory 'appears' to be rooted in a concern for equal persons (evidenced by the apparently human centered first original position exercise) can be resolved by saying that no moral claim grounded in equal humanity was actually ever made. The theory only applies as far as there is consensus among the relevant political sphere on the principles of equality and liberty that the original position follows from. The original position is a group of people not knowing their circumstances within a tradition and society but knowing their tradition and society. Pogge and others may see the original position as stripping participants down to their raw humanity but it actually only brings them down to their membership in a political paradigm.

There is another framing of Rawls's constructivism that is important. Although Rawls's original position pushes participants toward objectives that remove people's particular interest and arbitrary preconditions in recognition of their equal moral worth, they naturally can only be expected to enter the arrangement in the first place for mutual benefit (and when equality is already agreed upon as a principle in the underlying tradition) (Nussbaum, 2006, p. 227). Constructivists such as Rawls see any kind of moral entitlements as generated by the agreement or contract itself rather than the contract becoming necessary as a result of deficiencies in certain pre-political entitlements like life, happiness, autonomy, or respect or anything else (Nussbaum, 2006, p. 231). Rawls accepts that important non-political questions do exist but that the concept of justice would involve only the political questions. For example, metaphysical conceptions of the

person outlining certain needs and capabilities and rendering the person morally deserving of something like freedom or fairness may be a worthwhile discussion to have and may even make its way into the paradigmatic, overlapping consensus that the ensuing political arrangement can work with. But it is the unique dynamics of the power exchanges and political relationships that are relevant to defining the rules within those boundaries. For this reason, Rawls can say his theory of justice is entirely amoral without describing a hopeless world devoid of morality; morality can and does make its way into the cultures and traditions that states form within.

This seems to conflict strongly with Rawls's main influences including Kant and Locke in particular who were very committed to natural rights or pre-political entitlements necessitating the social contract. Rawls (1971) does admit up front, "In justice as fairness, the original position of equality corresponds to the state of nature in the traditional theory of the social contract" (p. 11). The correspondence is only analogous for the exercise though, and not an admission that there are pre-political rights in the state of nature. Yet, the idea of fairness, equality, and tolerance in particular are central to Rawls's work in themselves. Are fairness and tolerance not things that Rawls thinks equal persons deserve in order to respect their humanity? It is hard to believe he has no particular prejudice favoring those principles in themselves and believing that all people are equal and deserve tolerance or fairness. To understand Rawls's apparent preference for those 'natural laws' on the one hand and constructivism on the other, it's worthwhile to examine more about Rawls's constructivism.

Before examining Rawls's constructivist account, it is worth pausing to say that Rawls does not appear to subscribe to one of the political liberal positions mentioned in

the introductory section of this essay: the position that sees state boundaries as not arbitrary to justice because states are capable of granting or denying some kind of respect of autonomy or freedom or liberty via the power they hold over citizens. Those political liberals do indeed lean on natural laws by citing freedom or something similar as something equal persons should have and then say that those natural laws should not be called unjust where they are lacking in a foreign country. Therefore, the critiques of Nussbaum, Beitz, Pogge and others should apply to that position and render it wrong to the extent it denies that justice fundamentally is concerned with all persons while it relies on the equal moral worth of persons in the domestic state. Instead, Rawls sees justice as entirely amoral so his account requires further examination.

Reading Rawls's constructivist account reveals Rawls does believe in the existence of natural laws but he rejects them in politics. Rawls is aware that constructivism poses a circular problem where if morals truly form from process alone then that process may turn out to reject anything Rawls knows to be clearly morally true including the basic equality of persons or the need for at least a basic level of tolerance. The process itself could be a very faulty one if the moral requirement of fairness and equality does not govern and proceed the process of deciding what morals are. In responding directly to this well known problem Rawls (2000) concludes that "we interpret constructivism as a view about how the structure and content of the soundest moral doctrine would look once it is laid out after due critical reflection" (p. 274). This statement, more clearly than any other, reveals that Rawls admits to the need for natural laws, rules grounded in humanity itself. It also may show why the tradition that Rawls chooses to build his conception of justice around is the liberal tradition. He does not

choose to build up a conception of justice for other traditions no doubt because at least some of the basic tenets of liberal democratic norms are ones that would also be found in his ‘soundest moral doctrine.’

Contextualizing this with the current problem of inconsistency in transnational and domestic accounts of justice, Rawls does believe certain moral maxims must have a definite or natural mandate. However, the problem remains that *justice* is not about morality for Rawls. Justice is purely political, not metaphysical or moral. Consequently, Rawls could be seen as squarely in line with the cosmopolitan on their basic belief in the moral equality of persons across state boundaries and other arbitrary considerations as an unchanging rule and a natural law. At the outset we noted that that sentiment is not at all controversial. But why is it that the essence of justice is purely political? The driving reason is value pluralism. Rawls believes that the convergence of values across cultures is not possible or at least that various value systems are mutually exclusive. Rawls takes this as a social fact. For Rawls (2005), even under the condition of enduring free institutions “human reason does not converge on a single comprehensive doctrine” (p. 129). Moreover, Rawls understands his theory as ‘ideal theory,’ enabling assumptions about people and states in order to reach the true core of justice where what is left is the “best that can be hoped for” in the real world we live in (Wenar, 2008). Apparently, the best that can be hoped for is frustratingly a level of human concern forever stratified by state boundaries. The best that can be hoped for is throwing equality and democracy out the window if the political tradition says so.

So far there does not seem to be any good reason that the essence of justice is bound by political context instead of being something that all humans should have,

whatever it is determined to be that all humans should have as part of justice and however challenging it may be to get there. After appearing to put forward a theory of domestic justice grounded in equality and fairness, Rawls can defend not extending those principles to international justice by suggesting that moral values such as fairness and equality were never preconditions of justice. Instead, any moral tradition may fill in the content of justice, not the particular moral principles themselves. This may be disingenuous given 1) Rawls's relatively obvious bias toward the ideas of tolerance, equality, and fairness as natural laws and 2) the limits he seems to put on political traditions' license, like a human rights baseline (Rawls, 1993, pp. 50-56) and the requirement that even in other countries it cannot be the case that "the interests of some are arbitrarily privileged while the interests of others go for naught" (Rawls, 1993, p. 51). If Rawls is not disingenuous and does not hide any moral preconditions for justice at all, then more needs to be said about why justice should be entirely amoral. The cosmopolitan approach remains preferable. Where the state matters for the cosmopolitan it is for practical reasons and perhaps connects to a metaphysical requirement — for example the state is uniquely capable of constructing systems to grant or deny freedom for humans within its border — but the state need not be built into a description of what justice actually is in these cases. After all, the state could be only one platform that leads to violations of freedom; it seems that the freedom for equal persons is the important thing to saying what justice is and not the package it arrives in.

In the next section I will show that according to Rawls justice is a strictly political concept and not at all moral for a number of reasons that are riddled with controversial

metaphysical assumptions, something he was explicitly trying to avoid when it came to moral metaphysical assumptions.

3. Political Realism

Many of Rawls's cosmopolitan dissenters criticize him for 'smuggling in' natural laws. This is what was just explored in the previous two sections. Rawls appears to rely heavily on the principles of the equal moral worth of persons and tolerance and fairness, but claims that they are the principles available to the political tradition in question and not natural laws that constitute the demands of justice therefore they do not need to be sought for all persons. If Rawls indeed smuggles in these concepts as natural laws into his conception of justice then the critiques of Pogge, Beitz, and Nussbaum are enough to render the political liberal position held by Rawls as incorrect and a cosmopolitan approach built around justice for all humans correct, with states being quite relevant to only the implementation of justice. Perhaps justice would not be the same thing as what Rawls proposed for the domestic state, but it certainly would not be a concept grounded in tradition, it would be grounded in humanity. Despite taking careful rhetorical steps to avoid metaphysical assumptions when it came to morality (Rawls, 1985) and ensuring this cosmopolitan line of criticism was dealt with, Rawls inadvertently 'smuggles in' grand metaphysical assumptions that are at least as controversial and unresolved as the moral ones: metaphysical assumptions about human nature. These assumptions mirror the school of thought in international relations known as political realism. These assumptions also can explain why Rawls thinks of justice as properly political and not at all about morality.

The basis for political realism is a certain idea about human nature and a resulting picture of the nature of the global order. Realism was influenced heavily by Thomas Hobbes' (1660) famous ideas laid out in *Leviathan*. Hobbes (1660) portrays humans as

naturally bound by “a perpetual and restless desire of power after power, that ceases only in death” (XI 2). This human condition leads humans to enter into social contracts in the form of states to protect themselves from each other. Since states only represent an avenue for individual humans to fulfill desires for power, self preservation, and self interest, the state itself can only function in the same way. In fact, Hobbes believes that states themselves ascend to the state of nature that humans find themselves in prior to the state. Hobbes (1660) says that states act to “enlarge their dominions upon all pretences of danger and fear of invasion or assistance that may be given to invaders, [and] endeavour as much as they can, to subdue and weaken their neighbors” (XIX 4). In such a world and in resembling the human state of nature, states may only be considered competitors.

For one thing, Rawls’s original position exercise indicates a distinct connection to this conception of the person. In the original position, participants do not know what their lot in life would look like in society in order to remove the self interest of persons (Rawls, 1971). The exercise essentially works because the capacity for self interest of participants is forced to be a tool for empathy. Of course, that means that Rawls thinks that they cannot get there on their own. Why not conduct the experiment between altruistic people rather than self interested ones? Is self interest the only available human disposition? In the second original position between states, the same thing occurs where states do not know certain things about their states so that they may, in their own best interest, make rules to govern between themselves (Rawls, 1993). This assumes that they need to imagine what is in it for them and their own security in order to comply. In both original positions, participants agree because they get something out of it.

In truth, Rawls's conception of the person is much more nuanced than Hobbes's cynical sketch and resembles the Kantian conception of the person more closely, to include the capacity for reason and a self-legislating will (Nussbaum, 2006, pp. 64-67). Yet the implication stands that humans have an inescapable tendency for self interest in spite of or in contrast to that wider view of human nature. Correspondingly, the state is conceived of as the naturally occurring thing that protects us from our self-interest. States appear to be similarly incapable of acting in a capacity other than self interest. Modern political realists have maintained these central assumptions about human nature extending to states and then to the global order. As part of the realist doctrine, morality is not a primary concern for the international sphere. Essentially, since states are naturally self interested and in competition with each other in the global order, states opting for moral focus will be corrected out of the system if they do not first and foremost secure their political standing in the global contest. (Morgenthau, 1973). E. H. Carr (2001) is a fundamental figure in articulating the constraints on what the international system could accomplish according to realism. He suggested that as a result of an inherently self-interested human nature "morality can only be relative, not universal" (p. 19) and could only ever be utilized by states "to justify and maintain their dominant position" (p. 75).

Rawls certainly seems to be concerned with the same pitfalls of moralizing international relations by proposing a conception of international justice intentionally meant to be devoid of morality. Value pluralism is a central reason Rawls gives that prevents morality from informing just state action. Broadly, the idea of value pluralism suggests that value systems in different cultures and countries will not be able to find common ground in a single value system and "doubt the plausibility of a unified theory

of value” (Meijers & Vandamme, 2019, p. 320). Rawls considers pluralism in the domestic sphere to be reasonable pluralism but for the international sphere Rawls seems to make “the plausible assumption that the greater the intended scope of a principle of justice, the more extensive people's differences are likely to be” (Voice, 2004, p. 16). The extent that this idea connects to realism’s metaphysical assumptions requires more analysis. It is fair to say, however, that the belief that there are no common *human* values or that the convergence of values is impossible requires taking a clear stance on unsettled questions. For example Martha Nussbaum (2006) puts forward an approach to global values that, while not grounded in a comprehensive moral doctrine, is meant to reflect an existing overlapping consensus of all persons in the world and explicitly thought of as maintaining tolerance of unique value systems (p. 78).

Another infamous hallmark of the realist approach to international relations is the idea that states are a natural entity. Similar to the global order Hobbes describes, the state has a real and constant ontological status because it is born out of the natural process of association between self interested persons. Realists have remarked that the permanence of human nature is reflected in the political construction of states (Buzan, 1996, p. 50). Critics of Rawls have wondered why he takes the state as a given entity in his theory. Martha Nussbaum (2006) comments that completely centering a theory of international justice around states as fixed and closed to external influence is not helpful “even as an idealizing device” because “it takes us so far from the real world that the key problems of that world cannot be well framed” (p. 235). Nussbaum (2006) further wonders: “Why might people want the state, rather than corporations or international agencies, to supply much of the basic structure for their lives? By simply taking the state as a fixed starting

point. Rawls precludes any illuminating answer to this question” (p. 237). Drawing the connection to realism may go a long way to clarify why Rawls takes such a seemingly simplified approach to counting what structures are relevant to global justice. Realists have long argued that all of the international system can be boiled down to state power and competition among states (Wenar, 2008).

Realists articulate what they see as the nature of the global order as informed by the nature of human beings and Rawls’s conception of international justice seems to follow very closely from this particular and cynical conception of the global order. Critically, Rawls’s theory seems to follow realist assumptions to one of their most important conclusions which is that politics is necessarily the primary concern, above morality. Those entities that sacrifice any of their power meant to be used for political competition between states in favor of moral action are bound to be weeded out before we can call them something that has ontological status in the global order. The various parallels to realist ideas are clear enough but the specific links are not the point. The point is that Rawls’s conception of justice relies on certain fixed conceptions of human nature in some distinct ways. Specifically at issue here, Rawls can not get to a place where basic moral truths — which he admits exist via his ‘soundest of moral doctrines’ statement — inform international justice in any way because of these constraints of human nature in the international order.

4. Critical Theory

That there are intrinsic truths about global relations grounded in a particular conception of human nature as realists have put forward is not a sound foundation for Rawls to build his supposedly metaphysically-devoid theory of international justice. A better conception of global relations accepts that the functioning of states and the world order are subject to great change based on actual historical phenomenon as opposed to being subject to continual reproduction of the same 'natural' realities assumed by realists. Social and historical facts and events may have the tendency to change the way the system operates rather than conform to unchanging rules like value pluralism or a self interested baseline of human nature. Extensive and wide-reaching empirical work in social sciences including sociology and psychology perhaps magnify this neglected nuance the most thoroughly but the view that can refute the realist fixity of the global order and human nature most clearly for our purposes is critical theory.

Critical theorists make an important distinction between problem theory and critical theory. Problem theory serves to understand the world at a more fundamental level in order to understand how to operate within it and how to ultimately solve problems. Problem theory has the great strength of launching from a perspective seen as generally valid in order to focus attention on understanding pressing questions at hand. Problem theory may go a long way to breakdown underlying trends in social structures and provide a much wider perspective on how institutions and power centers tend to behave and interact. On the other hand, critical theory seeks to call into question the very assumptions that problem theories are based on and ask why those assumptions are made, if those assumptions should be amended for better understanding, or if something about

the world as it currently is that leads to those assumptions could actually be changed.

(Cox, 1986, p. 129)

Problem theory itself is meant to take a step back from the world and does indeed transcend its own vantage point to some extent but there are always power structures and certain ‘realities’ that need to be present from the start in order for it to be useful. For example, a problem theorist may genuinely put forward a sophisticated framework for how states interact without privileging certain positions and avoiding making any prescriptions about how states should operate. These types of exercises can be extremely revealing. As trivial as it may seem, however, this theorist still starts with states. Critical theorists may say that there are states but that there need not be if something else would be better. Or a critical theorist may say that our modern system does not include anything scholars have traditionally called ‘states’ so our international relations theorists should stop assuming that they exist in that once conceived form. Without realizing it, problem theorists, focusing the utmost attention on being devoid of certain prescriptions of action, prescribe maintenance to their baseline assumptions. Problem theory is “methodologically value-free insofar as it treats the variables it considers as objects (as the chemist treats molecules or the physicist forces and motion); but it is value-bound by virtue of the fact that it implicitly accepts the prevailing order as its own framework” (Cox, 1986, p. 130). Critical theory is not unconcerned with facts about the real world, it tries to “transcend the existing order” and is meant to “clarify [the] range of possible alternatives” in service of being more fully attuned to the real world and the project of creating a better world (Cox, 1986, p. 130). A critical theory approach is *fundamentally realistic* compared to the approach of problem theorists.

Robert Cox (1986) is a leading voice in applying the critical theory approach to international relations. In attempting to venerate critical theory's tendency to open the accepted truisms of the world to a more honest and comprehensive 'range of alternatives,' Cox mentions eras of imperialism and hegemony including *pax britannica* and *pax americana*. Each era reveals the varying yet evident importance of social forces, ideas, and the structures of production in creating causal accounts of phenomenon in the global order. The realist description of these and every period in world history cites state material power and interest as the only relevant factor and attempts to boil down each other phenomenon to the one phenomenon of states material power and interest. Competing Marxist conceptions of what drives global orders may be equally problematic in their assumption of class conflict and the social relationships of production being the one defining factor for global order, just as it is the defining factor on other levels of social organization. (pp. 138-144)

Realism indeed might call itself a critical theory because its aim is to define the range of alternatives on a transcendent level. That it defines the range of alternatives narrowly does not make it automatically count as problem theory. What makes realism count as problem theory is that, even as it transcends a number of assumptions about the world order, it maintains the key assumptions of human nature and the fixity of the world order based on those assumptions. States and the global order are naturally governed by certain specific principles. There can only be a state of constant competition and anarchy only capable of producing peace or prosperity through common interest. Cox (1986) notes that "the notion of substance at the level of human nature is presented as a rationality assumed to be common to the competing actors who appraise the stakes at

issue, the alternative strategies, and the respective payoffs in a similar manner” (pp. 131-132). While many modern realists have a much more nuanced and often less cynical view of the global order than theorists such as Hobbes or Machiavelli, there remains a distinct lack of imagination to conceive of the world order as a thing that does something other than maintain itself, something that can and does actually change dramatically.

Rawls appears to be in line with realists as a problem theorist. Political realists at least deserve some credit because their assumptions are put forward from a much more fundamental starting point, human nature, where Rawls appears to dig to a much more shallow level to put forward the essence of justice while still making a number of metaphysical assumptions along the way. Rawls takes value pluralism as a given. Rawls takes the self interest of states as a given. Rawls takes the primary role of states as a given. And based on the clear collaterals to realism, it appears he takes for granted human nature and the global order’s frustrating fixity as realists do. By taking these things for granted Rawls is led to believe that justice must not be something for equal people and something that is devoid of morality in the same way that realists might. The largest and clearest driver of Rawls’s commitment to removing moral preconditions from justice is value pluralism. With the framework of critical theory, the possibilities of change in the prevailing order are opened up. Even if at present there are fundamental incompatibilities in value systems, critical theorists would not take that fact for granted as Rawls does. It could be subject to great change and not necessarily require authoritarian action if the full range of tools of social change are considered. Justice is of course something that should be sought out but apparently creating value consensus so the very soundest and narrowest of moral principles are accepted by all persons is not one such avenue for seeking justice.

Conclusion

Neapolitan Giambattista Vico said human nature and institutions should not be thought of as unchanging substances but rather as continuing creation of new forms. “Where neorealism stresses continuity, Vichian perspective stresses change” (Cox, 1986, p. 132). The substances or essences of man cannot be understood as prior to history according to this approach which was an early form of critical theorizing. Even if it is not accepted that human nature is a changeable substance based on real historical circumstances, at minimum Rawls has not done enough to articulate why he appears to stand where he does on this highly unsettled metaphysical spectrum. The worst thing I could do is rest the cosmopolitan position on a certain conception of human nature. But think about what Rawls does. Rawls takes careful steps to say that justice does not require saying what is good for all persons — in other words, to describe justice one need not say that tolerance, agency, freedom, happiness, autonomy, fairness, or anything good is something that all persons should have or even that all people are equal — because of certain social facts that he does not appear to be fully willing to defend (like some realists are) and facts that might even turn out to be quite malleable when viewed in a more nuanced way.

Rawls would rather live in a world where we cannot say that women excluded from government according to a comprehensive religious doctrine is unjust, than a world where we can say that it is possible for political leaders to become altruistic or a world where we can conceive of all persons beginning to share a set of basic values. Even if the prevailing order makes those things impossible, why is it that the prevailing order is not subject to change? It appears very clear that Rawls favors certain moral metaphysical

principles like fairness for all persons and respect for persons' self legislating wills and he does elsewhere say there are sound moral doctrines. If Rawls wants to accept that persons are morally equal and that they are deserving of certain very basic things like fairness, he should start to accept the traditional ideology of realism and other fixed assumptions he builds his theory on do not describe the world as it can be and maybe not even as it is.

All of the discussion about Rawls's connection to realism and his entirely amoral theory is based on granting him his assertion that no moral metaphysical assumptions were preconditions of justice (no moral laws were 'smuggled in'). But consider this basic idea: all humans deserve equal consideration and they are entitled to have autonomy over their lives and the social structures that control them on as equal a basis as is practically possible. This idea both seems to fit squarely with what Rawls prescribes for everyone everywhere and is an idea that is grounded in natural laws and morality. So even if the connections to the raw and cynical *realpolitik* of realism in the preceding sections seemed to be well off from what Rawls prescribed for international justice, the connections are only made in recognizing Rawls's own claim to propose a theory with absolutely no precondition of morality. That is exactly what realism does. It seems exceedingly likely that Rawls does smuggle in natural laws and the connections to realism are unfair. In those cases, however, the theory would need to be built back up from the standpoint of equal persons and what they should have (primary goods), not based on paradigmatic or traditional maxims.

One more point from Robert Cox ties together the stakes of Rawls's inadequate account of the essence of justice in the global arena. Robert Cox (1986) speaks to the 'proselyting function' of realism:

[Neo-realism] is 'value-free' in its exclusion of moral goals (wherein it sees the weakness of liberal internationalism) and in its reduction of problems to their physical power relations. This non-normative quality is, however, only superficial. There is a latent normative element which derives from the assumptions of neo-realist theory: security within the postulated inter-state system depends upon each of the major actors understanding this system in the same way, that is to say, upon each of them adoption neo-realist rationality as a guide to action. Neo-realist theory derives from its foundations the prediction that the actions, from their experiences with the system, will tend to think in the way. To the neo-realist theorist, this proselytizing function (wherein lies the normative role of neo-realism) is particularly urgent in states which have attained power in excess of that required to balance rivals, since such states may be tempted to discard the rationality of neo-realism and try to impose their own moral sense of order, particularly if, as in the case of the United States, cultural tradition has encouraged more optimistic and realistic alternative views of the nature of man, the state, and world order. (p. 132)

Enlightenment thinking introduced to the world a better way of respecting individuals.

Secularization and technology that made literacy accessible led people to conceive of their governments and coercive social structures as not inevitable. Persons could ascend to recognize their identities and individuality in radically new ways and the world could be a better place as a result (Fukuyama, 2019, p. 37-73, Anderson, 1994, p. 89-95; Smith, 1994, p. 113-121). As technology shrinks the world and activism, dialogue, and social consciousness become more accessible in 2020 I think it is fair to wonder: did realism's rise and influence throughout the twentieth century become a self fulfilling prophecy stunting the accelerating progress toward a better world? Is our current world order inevitable? Is the radical pluralism that we see inevitable? If the evidence suggests that states act out of self interest and values fail to converge as a result even in the modern world order, then how can we be sure that the west's commitment to realist doctrine did

not inadvertently create that framework. Creating a better world might take some kind of global order that is entirely unknown to us currently but the suggestion that all the tools to create a better world have been available all along is naive. Can Rawls's idea have a similar effect? His theory of justice seems to provide a modern defense for the old frameworks for contract theory in the domestic state and *realpolitik* in the international realm. There may be better alternatives available that can still be called realistic. Step one is recognizing the equal moral worth of all persons.

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