"Political Justice, Reciprocity and the Law of Peoples"

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This paper intends to measure the consequences of Rawls’ transition from a comprehensive to a political conception of justice on the Law of Peoples. It starts by exploring the epistemological underpinnings of this transition to show that the spirit of reciprocity integral to the initial, comprehensive conception of justice as fairness survives Rawls’ new, political conception of justice. Any such conception, insofar as it is meant to regulate a society conceived as a fair system of cooperation among equals, necessarily incorporates the idea of reciprocity and the Law of Peoples, conceived as a political conception of justice setting fair terms of cooperation among peoples, should therefore fulfill the requirements of reciprocity. The main task of this paper is to identify these requirements and determine the extent to which the Law of Peoples respects them.

This task can only be carried out through an analysis of the idea of fair social cooperation among equals, which the idea of reciprocity is meant to specify. By contrast with social cooperation in modern welfare states, which is aimed at maintaining all citizens above a certain threshold of well-being and to protect them from life’s trials, social cooperation in justice as fairness is intended at putting all citizens in a position to participate in the social process “on a footing of mutual respect under appropriately equal conditions.”¹ This divergence as to the proper aim of social cooperation leads to different conceptions of justice, whose role is precisely to regulate the arrangements making social cooperation so conceived both possible and workable. The point might be more clearly put by adopting the citizens’ point of view. When citizens engage in social cooperation, they are aware that they submit themselves and their properties to certain arrangements and that the nature of these arrangements is determined by a certain conception of justice. Now, if we are to maintain a certain degree of involvement from citizens, there must be a connection between how they conceive of social cooperation in general and the nature of social arrangements as regulated by the conception of justice. As Rawls puts it, “the arrangements required by the difference principle are part of, and not foreign to, the conception of fair social cooperation in justice as fairness.”² The proper role of a conception of justice is to establish this necessary connection between a certain normative conception of the social cooperation and the arrangements in force in society.

The last part of this paper brings to light the three fundamental requirements that the Law of Peoples must necessarily fulfill qua political conception of justice: securing human rights, meeting basic needs, and limiting social inequalities. As we will see, this list does not perfectly match with the

² JF, 52.
content of the Law of Peoples as described by Rawls, which only meets the first two of these requirements through the duty of assistance. It might therefore be necessary to revise the Law of Peoples and incorporate within it another principle directly more directly intended at regulating social inequalities.

1. Practical justification and political objectivity

Before undertaking to justify a certain conception of justice, one has to take a position on the question of whether political justification should be thought of as an epistemological or a practical problem. In *Theory of Justice*, Rawls remains committed to the epistemological approach which consists in defining the objectivity of political principles in terms of rational truth. Although he departs from rational intuitionism and does not refer objectivity to an independent order of values, his constructivist account still reduces objectivity to the expression of rational truth, that of a rational agent suitably specified. Only in *Political Liberalism* does Rawls finally abandon the epistemological approach in favour of a new, practical account in which objectivity no more sanctions the truth of a specific comprehensive view, but rather the capacity of certain principles to gain support from reasonable agents holding diverging comprehensive doctrines. Objectivity, in this account, is supported by an overlapping consensus of comprehensive views over a shared conception of social cooperation recognized by all as reasonable. This new, practical analysis of objectivity, which lies at the heart of Rawls’ political constructivism, can be described as setting the notion of truth aside to draw instead on the idea of *reasonableness* as the only suitable criterion to fix the objectivity of political principles.\(^3\) As Rawls himself puts it, “to say that a political conviction is objective is to say that there are reasons, specified by a reasonable and mutually recognizable political conception […], sufficient to convince all reasonable persons that it is reasonable.”\(^4\)

This new rendering of objectivity has deep consequences on the nature and scope of political justification. The idea of reasonableness, as opposed to the concept of truth, does not provide an ultimate criterion but only a public foundation for the justification of political principles. The substitution of truth with reasonableness implies, in other words, that instead of thinking of the principles of justice as true *in themselves*, we have to conceive them as “the principles most reasonable for us, given our conception of persons as free and equal, and full cooperating members of a democratic society.”\(^5\) Political justification is no longer objective in the sense of holding absolutely, in all circumstances; its scope is henceforth limited to people holding the same basic conceptions of the person and society. If such limitation can be easily endorsed in the context of our

\(^3\) *PL*, 89-125. See also *CP*, 356.
\(^4\) *PL*, 119.
\(^5\) *CP*, 340 (My emphasis).
western societies, where people grow up within a relatively homogeneous democratic public culture, it does not easily fit a broader framework, such as the Society of Peoples, in which public political cultures greatly vary from one society to another. Although they did not clearly identify the evolution in Rawls’ conception of objectivity as the underlying source of these difficulties, some scholars have thus questioned the capacity of political liberalism to accommodate a global pluralism conceived as more radical than its domestic counterpart.⁶

Rawls’ answer would be that the degree of pluralism within the Society of Peoples is irrelevant. All that matters is that nonliberal societies share with us at least certain basic conceptions that could be used as a new public basis of justification. Now, though most of the citizens of these nonliberal societies do not share with us the same conception of the citizen specifying the idea of reasonableness, some of them share with us the same notion of a people as a non aggressive entity endowed with a common good conception of justice likely to protect human rights and ensure its members participation in political decision-making. This common conception of a people is enough, according to Rawls, to give rise to a new standard of justification summarized in the idea of decency. This new standard, conceived of as a normative idea “of the same kind as reasonableness,”⁷ is not to replace the idea of the reasonable which remains the point of departure of the two-stage procedure. Decency only provides a standard for (i) discriminating among nonliberal societies those which should be considered as equals in the construction of the Society of Peoples and those which are not respectable partners and (ii) outlining a conception of justice which, “though distant from liberal conceptions, still has features which give to societies so regulated the decent moral status required for them to be members in good standing of a reasonable Society of Peoples.”⁸ But what exactly, critiques might ask, does the idea of decency entail?

Just as for reasonableness, there is no abstract definition of decency as such. These two ideas remain unspecified until they are related to a certain conception of the person. As Rawls puts it, “we give [these ideas] meaning by how we use [them],”⁹ that is by explaining what it means for a person to be reasonable or decent. A crucial stage of political constructivism therefore consists in identifying within the considered public political culture the familiar conception of the person that might serve to specify the idea constituting the new criterion of objectivity of political principles.¹⁰ In the domestic case, Rawls identifies within the public political culture of western democratic societies a

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⁷ LP, 67.
⁸ LP, 68.
⁹ LP, 67.
¹⁰ JF, 5-6; PL, 13-14.
common conception of the citizen as willing to accept the consequences of the burdens of judgment and to abide by fair terms of social cooperation among equals. These two features taken together specify the idea of the reasonable by explaining what it means for a citizen to be reasonable. But, as some scholars have rightly pointed out, the set of documents which form the basis of the global public political culture does not contain a comparable conception of the citizen as prepared to engage in social cooperation with all other individuals around the world. There exists, of course, international charters and treaties which do include a conception of the citizen as free and equal (the Universal Declaration of Human Rights is the most obvious example), but these texts only resort to this conception for fixing the limits of state coercion. They do not make it an element of a global political culture in which all individuals around the world would stand in a political relationship giving rise to reciprocal duties of justice. As Leif Wenar, for example, puts it, “there is simply no robust global public political culture which emphasizes that citizens of different countries ought to relate fairly to one another as free and equal within a single scheme of cooperation.” Rawls therefore have good reason to reject the cosmopolitan approach taking individuals as the basic units for thinking about global justice. If he wants to follow his own practical approach to justification, he has to rely on the only conception of the person integral to the global public political culture, that is the conception of peoples as free and equal.

2. Justice as reciprocity

The question immediately arises, however, whether the new standard of decency specified by this conception of peoples can be accepted by liberal peoples as an ideal basis not only for (i) identifying respectable partners, but also for (ii) elaborating with them a common Law of Peoples governing the political relations between societies. Put another way, the question is to know what would motivate liberal peoples to sacrifice some of the political values they endorse internally, such as the respect of individual liberty, when it comes to elaborate an international law in common with other nonliberal societies. Rawls’ answer lies in the idea of reciprocity supposed to drive the political behaviour of liberal peoples in the Society of Peoples as it drives the behaviour of reasonable citizens in liberal societies. Just as reasonable citizens are capable of agreeing on a domestic conception of justice which does not directly follow from their respective comprehensive doctrines, liberal peoples are prepared to agree with nonliberal decent peoples on a conception of international justice which does

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11 *PL*, 94.


not necessarily encompasses all the liberal values, but which has the great merit of respecting the status of decent peoples as free and equal members of the Society of Peoples.

This analogy between the domestic and international use of the idea of reciprocity needs, however, to be carefully considered. In *Political Liberalism*, Rawls has shown how, in a democratic society, citizens holding diverging comprehensive doctrines can reach a stable consensus on a single conception of justice through the idea of public reason. What he suggests, in *The Law of Peoples*, is that “similarly,” in the Society of Peoples, peoples holding diverging political conceptions of justice can reach a stable consensus on a set of even more fundamental political principles through a different but analogous idea of public reason. These two ideas of public reason are different in that they draw on a different basis of justification or rationale – *reasonableness* in the one case, *decency* in the other. But they are analogous in that they embody the same idea of *reciprocity* defined as the willingness to draw on a common rationale to elaborate a conception of justice stable for the right reasons.

It might appear puzzling that Rawls appeals to the idea of reciprocity as expressed in public reason to explain why liberal peoples would have to sacrifice some of their political values while extending justice as fairness beyond the national borders. In the domestic context, the idea of reciprocity contributed to the full realization of liberal justice by allowing that a stable consensus be found on liberal principles of justice. Here, it enables on the contrary the limitation of this ideal by recommending that the specifically liberal expectations be lowered in order to accommodate the political beliefs of nonliberal but decent peoples. This apparent casting against type of the idea of reciprocity leads some critics to suggest that, by contrast with justice as fairness, in which the concern for justice clearly prevails over the concern for stability, the conception of justice presented in *The Law of Peoples* would place the concern for peace and stability above the concern for justice. This inversion of priority, between the two concerns that Rawls himself identifies as proper to any conception of justice, would mark a fundamental discontinuity in his work and justify that we distinguish between his domestic theory, focusing on the realization of liberal justice, and his global theory, concerned in the first place with peace and stability of the world’s political order.

While Rawls himself does little to clarify his position on this matter, Wenar considers the hypothesis of an inversion of priority plausible as it would reflect a long-term evolution of Rawls’ thought already at work in *Political Liberalism*, where a growing concern for stability turns what was initially a

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14 *LP*, 59.
15 *LP*, 19.
16 Rawls considers that a conception of justice has both the political role of achieving a just political order and the social role of guaranteeing the stability of this order over time (J. Rawls, *Collected Papers*, 305).
theory of justice into a theory of political legitimacy. In extending his theory of justice to the global scale, Rawls would have remained deeply concerned with stability and developed what would be better described as a global theory of political legitimacy. This interpretation has undeniable appeal as it seems to restore a certain logical continuity between Rawls’ work on domestic justice and his later work on global justice. It is likely, however, that Rawls himself would have rejected it as it turns *The Law of Peoples* into a theory of international political legitimacy having finally little to say about global justice. Even if it is undeniable that *The Law of Peoples* says more about legitimacy than it does about justice, it should not be lost sight of that Rawls’ interest in legitimacy is itself mainly instrumental. Legitimacy, in his mind, is primarily a prerequisite to the instauration of justice, which remains his fundamental concern. This is an aspect Wenar tends to obscure when accounting for Rawls’ concept of legitimacy simply as “a primitive concept of normative recognition.”

Though this account is faithful to Rawls’ formal definition of legitimacy as a concept whose role is “to authorize an appropriate procedure for making decisions when […] disagreements in political life make unanimity impossible,” it does not make room for Rawls’ immediate warning that such a procedural account of legitimacy cannot stand independently of a *substantial* account of justice. Wenar’s interpretation carries, in other words, what Rawls himself identified as the “common oversight […] that procedural legitimacy […] tries for less and can stand on its own without substantive justice: it cannot.”

A good way to understand the reasons of this oversight and to clarify the relationship between justice and legitimacy is to further discuss the apparently uncontroversial reading of *Political Liberalism* as focusing on legitimacy rather than justice. Rawls himself makes clear that his primary aim in this book is to remedy the inconsistencies in the account of stability provided in *Theory of Justice*. As he explains, he had not fully appreciated at that time that democratic societies are characterized by the fact of reasonable pluralism, that is by the coexistence among citizens of incompatible but reasonable comprehensive doctrines. *Political Liberalism* thus really is an attempt to limit the negative effects of this pluralism on political stability by making justice as fairness a freestanding view rather than a part of a particular, therefore disputable comprehensive doctrine. What it means for justice as fairness to be made freestanding is that it no longer gains its validity from resting on a strong liberal philosophical doctrine. It is instead supported by a stable overlapping

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18 L. Wenar, 100.
19 PL, 428.
20 PL, 425.
21 PL, xv-xviii.
consensus of diverging comprehensive doctrines made possible by the new practical rendering of objectivity mentioned above: as soon as citizens agree that the objectivity of political principles has to be grounded in the reasonableness of a shared conception of social cooperation rather than in the truth of a particular comprehensive doctrine, their holding diverging comprehensive doctrines is no longer an obstacle for reaching a stable consensus on a single conception of justice. This conception just needs to be one that it is reasonable for every citizen to endorse in light of their common reasonableness of free and equal citizens. It needs to be, in other words, a conception of justice which protects their basic political and civil liberties – what Rawls calls “constitutional essentials.”

Through this political redefinition, Rawls makes a general statement about the kind of conception of justice likely to bring stability in societies characterized by the fact of reasonable pluralism. He offers, in other words, a theory of political legitimacy specifically designed for democratic societies, a theory which holds that only free-standing conceptions of justice defending constitutional essentials are legitimate – the set of these conceptions he calls “political liberalism.” But this focus on legitimacy and the elaboration of political liberalism do not necessarily imply retreat from the distinctively egalitarian ideal of justice as fairness. Indeed, the idea of legitimacy is distinct from the idea of justice, since its purpose is only to serve as a standard for identifying a proper decision-making procedure when unanimity among citizens is impossible. But legitimacy nonetheless remains related to justice in that it aims at ensuring the stability of just societies. The idea of a society that would be legitimate but unjust is in this sense inconsistent since, “at some point, the injustice of the outcomes of a legitimate democratic procedure corrupts its legitimacy.”

All this suggests that Rawls’ effort to secure stability in the Society of Peoples is in fact intended to pave the way for the instauration of justice rather than directed at the minimal aim of preserving world peace. Rawls himself thus introduces the Law of Peoples as “an extension of an idea of justice similar to justice as fairness,” not as an extension of an idea of legitimacy similar to political liberalism. He also insists that the Law of Peoples is not only concerned with international stability, but with both “justice and stability of Society of Peoples.” This clearly shows that, in his mind, The Law of Peoples is not – or not only – a theory of global legitimacy, but rather an attempt to lay a sound foundation for a substantive theory of global justice. Of course, the fact that Rawls conceived of his theory as such does not tell us anything about the success or failure of his venture. We still have to show that Rawls’ intention translated into a theory that makes room for genuine duties of

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23 PL, 427-429.
24 LP, 3.
25 LP, 120.
global distributive justice. The following section is thus dedicated to showing that even though Rawls himself did not fully develop this aspect of his theory, for reasons we do not intend to analyse here,\textsuperscript{26} the Law of Peoples \textit{does} carry his original conception of justice as reciprocity among equals, a conception which lies at the heart of his domestic account of justice as fairness and could also potentially provide the basis of a full-fledged theory of global justice.

3. Peoples rather than states

In the previous section, I have suggested that Rawls’ decision to take peoples rather than citizens as the basic unit of his theory of global justice makes sense in the light of his new, practical approach to political justification. A question remains, however, that has been so far deliberately set aside: why peoples rather than nations-states? After all, it is nation-states, not peoples, which are the traditional actors of international politics and the global public political culture on which Rawls proposes to draw more easily speaks of free and equals nation-states than of free an equal peoples. There must be a strong reason why Rawls rejects the familiar notion of nation-state, a reason which also explains why, contrary to what it may seem, such a move does not contradict his methodological commitment to international public political culture. A first point to note in this respect is that Rawls describes peoples as enjoying the same institutional and cultural features traditionally attributed to nation-states: both peoples and states consist in a political authority legitimately exerted within the limits of a well-defined territory over citizens bounded by ties of common sympathies.\textsuperscript{27} Peoples and states therefore are one and the same. What differentiates them is only their mode of reasoning when it comes to dealing with other societies. While nation-states, as traditionally defined in international politics, exclusively focus on the rational pursuit of their own interests at the risk of provoking conflicts and possibly wars with other societies, peoples, as defined by Rawls, balance this rational concern with reasonable considerations about peace and stability. This difference alone, between purely rational and reasonable attitudes, justifies in Rawls’ mind that we distinguish between peoples and nation-states and that we prefer the former to the latter as basic unit of a contractualist theory of global justice.\textsuperscript{28}

The reasonable tendency of peoples to balance their rational interests with a reasonable concern for stability translates into two specific dispositions. First, they are willing to offer other peoples terms of political and social cooperation that they sincerely believe these peoples might reasonably accept.\textsuperscript{29} Second, they are willing to honor these terms even in circumstances in which violating them would benefit their rational interests. It is easy to recognize in these two dispositions constitutive of

\textsuperscript{26} On these reasons, see T. Pogge, \textit{Realizing Rawls} (London: Cornell University Press, 1989), 1-14.
\textsuperscript{27} LP, 23-30.
\textsuperscript{28} LP, 28.
\textsuperscript{29} LP, 35.
peoples’ reasonable tendency the capacity for reciprocity distinctive of Rawls’ conception of justice as fairness. That Rawls insists to take peoples so defined rather than nation-states as primary unit of his international original position already suggests that he moves towards a type of cooperation similar to the domestic conception of justice as fairness, where reasonable parties, starting from the benchmark of equal division, apply their sense of reciprocity to arrive at the principle of difference. This, however, has to be confirmed by a thorough analysis of Rawls’ argument for cooperation among peoples.

4. Cooperation among peoples

In paragraph 3.3 of The Law of Peoples, Rawls draws on the Rousseauian notion of amour-propre to introduce the idea of “a people’s proper self-respect of themselves as a people.” This idea of self-respect plays a significant role in his argument for cooperation among peoples by initiating the dialectic of mutual respect that forms its necessary basis. Since liberal and decent peoples respect themselves as equal, they expect other peoples to show them proper respect; and since they expect other peoples to show them respect, they are prepared to grant them the same respect in return. This basis of mutual respect is essential for peoples to be able to fully engage in cooperation while being sure that other peoples acknowledging the terms of cooperation do so in good faith, “without resentment or humiliation.” Contrary to what the reference to Rousseau’s moral concept of amour-propre might suggest, the respect at stake here is therefore not properly speaking respect for a people’s status as an equal moral entity. Rather, it is respect for a people’s capacity to fully participate in a society conceived of as a fair system of cooperation. Peoples respect each other as equal not because they would all be endowed with a pre-existing moral character, but in that they all possess the minimum capacities necessary to become fully cooperating members of the Society of Peoples.

This line of argument may appear to contradict Rawls’ oft-repeated statement that peoples have “a definite moral nature.” Yet, Rawls does not make through this statement a claim about what peoples are in themselves. Instead, he speaks about what they are considered to be in the Society of Peoples conceived of as a fair system of cooperation. He expresses the point of view that prevails within the Society of Peoples, in which peoples are what they think of themselves independently of what they are in reality. Rawls made this point more clearly in the domestic case, when explaining that, as a result of the adoption of political constructivism, citizens are considered to be such as they

30 JF, 122-124.
31 PL, 302-303.
32 LP, 23, 25, 44, 62.
think of themselves in society rather than such as they actually are.\textsuperscript{33} Similarly, in the Society of Peoples, peoples are taken to be such as they think of themselves, that is as free and equals cooperating members. This is an important consequence of political constructivism that persons in general are always conceived in this way, as participating members in a society conceived of as a system of cooperation and “not merely as human beings apart from any normative conception.”\textsuperscript{34} Whether the person is embodied by a citizen domestically or by a people internationally does not change anything with respect to his new fundamental determination as a \emph{fully cooperating member of society}.

The question of interest to us is whether this modification has an impact on the very nature of justice as carried out in justice as fairness. As we saw in section 3, Rawls himself justifies the introduction of the political conception of justice as necessary to remedy the unsatisfactory account of stability provided in \textit{Theory of Justice}. He insists that this move only concerns the issue of stability without affecting the rest of his account of justice as fairness. The new political definition of the person as a free and equal citizen recaptures the same basic features that entered in the metaphysical definition of the person and there is consequently no alteration in the description and the outcome of the original position. But this apparent \emph{status quo} in reality masks an underlying change as justice now hinges upon a conception of the citizen which is itself dependent upon a certain conception of society as a fair system of cooperation. Indeed the way in which partners think of themselves in a given scheme of cooperation depends upon the way they conceive of the cooperative scheme.\textsuperscript{35} In a society conceived of as a fair system of cooperation, citizens think of themselves as free and equal cooperating members. Would the conception of society be different, citizens would think of themselves differently.

These considerations lead us to question the origins of Rawls’ conception of society. Aaron James has recently suggested that Rawls’ setting of the original position would be dependent upon a prior interpretation of existing social practices.\textsuperscript{36} Only after having interpreted the nature and point of a given practice would Rawls be able to design a suitable original position intended at spelling out the most appropriate principles to regulate the practice in question. In this account, the conception of society as a fair system of cooperation would be a concept grounded empirically rather than a purely \emph{a priori} normative idea. This interpretation of Rawls’ method revives a number of difficult and already long-debated questions about the metaethical status of political constructivism. If Rawls

\textsuperscript{33} PL, 29-35. See also JF, 23.
\textsuperscript{34} JF, 58.
\textsuperscript{35} LP, 34.
\textsuperscript{36} A. James, “Constructing Justice for Existing Practices: Rawls and the \textit{Status Quo},” \textit{Philosophy & Public Affairs}, 33/3 (2005), 281-316.
starts with an interpretation of existing social practices, does it mean, as James suggests, that the original position has “no authority as such”\(^{37}\) in granting normativity to principles of justice? This would threaten the very meaning of political constructivism as a metaethically neutral approach accounting for the normativity of the principles of justice independently from any reference to transcendental idealism. These are genuinely interesting questions which cannot, however, be treated at length in this paper.\(^{38}\) Here, we will take the conception of society as normative without questioning the sources of this normativity, as this would have no direct bearing on our conclusions. For now, it is more urgent to investigate the relationship between the conception of the society and the conception of the person.

We saw in section 1 that Rawls rejects the traditional approach to justification which consists in grounding the objectivity of the principles of justice in the truth of a specific comprehensive doctrine. This is why he undertakes to uncover a new basis of justification by scouring the public political culture of liberal societies for the familiar ideas that shape the understanding that political thinkers, judges and everyday citizens have of their institutions.\(^{39}\) Among these familiar ideas, the conception of society as a fair system of cooperation takes on special importance because it can be used to systematically connect all the other basic ideas.\(^{40}\) As part of this function, the idea of society always comes first in the order of exposition and is said to be the “central organizing idea” of justice as fairness. The idea of the citizen, by contrast, is just a “companion idea”\(^{41}\) that might appear to the inattentive reader to be subordinated to the idea of society. This misleading impression is increased by Rawls’ tendency to speak as if the features of the citizen were deduced from an analysis of the idea of society.\(^{42}\) In *Justice as Fairness*, however, Rawls specifies that none of the basic ideas following the idea of society in the order of exposition can be said to stem, properly speaking, from this central organizing idea. As he makes clear, the spelling out of the central organizing idea of society as a fair system of cooperation is “not a deductive argument. The steps starting with that idea and proceeding to the next are not said to follow from, or to be derived from, it.”\(^{43}\) It is rather by connecting the idea of society with the other basic ideas, which are already determinate conceptions, that we can make it more determinate.

The idea of the citizen is therefore a specification of the idea of the person as *citizen* in the same way as the conception of a people, in *The Law of Peoples*, is a specification of the idea of the person as *a*.

\(^{37}\) A. James, 282.
\(^{38}\) This question is treated at length in my PhD dissertation.
\(^{39}\) *JF*, 5-6; *PL*, 13-14.
\(^{40}\) *PL*, 9.
\(^{41}\) *JF*, 5.
\(^{42}\) See for instance *JF*, 17.
\(^{43}\) *JoF*, 25 (My emphasis).
people. These two determinate conceptions are like two embodiments of the person whose respective features are drawn on two specific public political cultures rather than derived from a basic idea of society that remains in both cases the same. The conception of the citizen as free and equal is drawn on the domestic public political culture of liberal societies and the conception of a people as a non-aggressive entity honouring human rights and respecting the fundamental right of its citizens to participate in political decision-making is drawn on the international public political culture. Rawls’ insistence on the dependence of these two conceptions upon particular public political cultures is understandable, since it carries the very meaning of the political redefinition of justice as fairness – the rejection of the notion of truth as an adequate criterion for fixing the objectivity of political principles. This insistence can be misleading, however, if it does not come along with a clear distinction between two sets of features attached to the person: the contingent features of the different embodiments of the person, which are indeed drawn from specific public political cultures, and the necessary features of the person, that are well and truly derived from the conception of society. I would like to focus here on this second set of necessary features which characterizes the person irrespective of her particular cultural embodiments.

Remember that, at the fundamental level, the person is defined as a fully cooperating member of a society conceived of as a fair system of cooperation – what I called earlier its fundamental determination. To regard the person as a fully cooperating member of a society so conceived is to take her to be fully capable of engaging in that society. The person must therefore be defined, at a fundamental level, as possessing at least the two basic features which make this engagement possible:

- First, every participant in a society conceived of as a fair system of cooperation must have a reason for engaging in cooperation in the first place; she must know what she is trying to achieve through her participation in the cooperative scheme. She must have, in other words, the capacity of forming, pursuing and possibly revising a personal conception of the good.

- Second, every participant in a society conceived of as a fair system of cooperation must have the capacity to understand, apply and act from the principles of justice that specify the terms of social cooperation as fair. This is what Rawls calls a capacity for a sense of justice.

These two capacities or “moral powers,” without which one cannot fully participate in a society conceived of as fair system of cooperation, define what Rawls calls the “moral nature” or “moral personality” of the person. For a person to have a moral nature thus does not mean to be endowed with an essence of the kind usually associated with the Kantian moral ideal of personhood, but rather

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44 JF, 19; A TJ, 11-22.
to conceive of oneself as having to the required level the two capacities necessary for becoming a fully cooperating member of society. It is crucial that such moral nature is not grounded in essence, in the sense that the person is not considered as having a certain moral status just because she is. The moral nature in question has a reality only insofar as the person is recognized by others as having certain capacities. This is why Rawls sometimes prefers to speak about a “moral personality” than a “moral nature,” this expression better showing the process by which the person realizes her moral status by actualizing her capacities and by having these capacities recognized by others.

The crucial point for our discussion is that what makes others competent in recognizing moral status in a person is their possessing the same moral powers. It means that the moral status in question is always already a status of moral equality in the sense that to recognize someone as being endowed with a moral status is to recognize this person as equal in terms of capacities. As Rawls himself puts it, citizens mutually recognize and respect themselves as equals “in that they are all regarded as having to the essential minimum degree the moral powers necessary to engage in social cooperation over a complete life and to take part in society as equal citizens. Having these two powers to this degree we take as the basis of equality among citizens as persons.”45 It becomes clear from these considerations that the characterization of the person as equal is not drawn from a particular public political culture, but that it is derived from the basic normative idea of society as a fair system of cooperation. This is an important clarification that comes fully into play when related to what has been said earlier in this section about the foundation of Rawls’ argument for cooperation among peoples.

We have seen that peoples’ respect of themselves as equals – the dialectic of mutual respect – is the necessary condition for initiating cooperation. If this mutual respect is derived from Rawls’ normative conception of society as a fair system of cooperation, then the elements of a conception of justice as reciprocity among equals are present in Rawls’ theory prior to and irrespective from any specification by a particular public political culture. As long as a society is conceived of as a fair system of cooperation, as the case with the Society of Peoples, it is at least formally open to justice as reciprocity. This conclusion confirms our intuition that, insofar it is intended to regulate a Society of Peoples conceived as a fair system of cooperation among equals, the Law of Peoples should incorporate a spirit of reciprocity. The following section is an attempt at determining the extent to which this spirit of reciprocity can be said to be integral to the idea of society as a fair scheme of cooperation.

6. Reciprocity in social cooperation

45 JF, 20.
The idea of reciprocity can be traced back to the fundamental intuition that social cooperation among equals can only be for mutual advantage. This intuition was already central in Rawls’ inaugural definition of society, in *A Theory as Fairness*, as “a cooperative venture for mutual advantage.” The fair terms of cooperation regulating society specify an idea of reciprocity according to which “all those who are engaged in cooperation and who do their part as the rules and procedure require, are to benefit in an appropriate way as asserted in an appropriate benchmark.” In Rawls’ mind, however, the idea of reciprocity specified by the fair terms of cooperation conveys *something more* than the mere idea of mutual advantage. In a society understood simply as social coordination for mutual advantage, citizens acknowledge the value of coordination as an effective means to pursue their personal conception of the good and consequently acknowledge the principle of fair distribution of the social product between all participating members. In a society defined as a fair system of cooperation, by contrast, citizens value social cooperation *for its own sake* and not merely as a means to achieve their personal conception of the good. Rawls identifies this difference in attitude as specifically *reasonable*: a person is reasonable when she believes in the intrinsic value of a social world regulated by the idea of reciprocity and is therefore willing to cooperate with others on fair terms that all can acknowledge. We touch here the deepest meaning of the idea of reciprocity as specifying the political relationship among citizens as one of “civic friendship.”

To better comprehend this idea of reciprocity, which lies at the heart of Rawls’ conception of justice as fairness, a distinction can be drawn between the *criterion* of reciprocity, as expressed in public reason, and the *idea* of reciprocity, as specifying at a deeper level the nature of the political relation among citizens in a democratic society. The *criterion* of reciprocity provides the basis for democratic political legitimacy by stating that the exercise of political power is proper only when all citizens are prepared to offer in support of their political actions reasons that they reasonably think others might also reasonably consider acceptable. The *idea* of reciprocity, by contrast, refers to the tendency of persons to see an intrinsic value in affirming together, on common grounds, a common conception of justice. The *criteria* and the *idea* of reciprocity obviously refer in persons to one and the same disposition, but as being respectively applied to the issue of stability and to the more fundamental question of the essence of justice. What the idea of reciprocity tells us is that the essence of justice lies less in the content of the principles of justice, which might vary depending on

46 *TJ*, 4.
47 *PL*, 16 and 300.
48 *PL*, xlix and 253; *LP*, 137 and 155.
49 Rawls himself does not explicitly *draw* this distinction, but he seems to make a differentiated use of these two expressions. Compare for instance *PL*, 16-22, where Rawls refers to the *idea* of reciprocity as specifying the basic terms of social cooperation and *PL*, li, where he refers to the *criterion* of reciprocity as expressed in public reason.
the considered public political culture, than in everyone’s inclination to accept these principles because they know that others accept them too. As Charles Larmore rightly summarized, the specificity of justice as reciprocity is that we endorse it “not for the different reasons we may each discover, and not simply for reasons we happen to share, but instead for reasons that count for us because we can affirm them together.”

Against the contention that Rawls, in *The Law of Peoples*, would only be concerned with stability, I have tried to show in the last two sections that his conception of justice as reciprocity among equals underlies the Law of Peoples in the same way as it underlies the difference principle in his domestic theory. The question that now naturally comes up is to know why, if the Law of Peoples is truly underlined by a spirit of justice as reciprocity, it does not include a principle of distributive justice on the model of the difference principle but only a duty of assistance whose status remains ambiguous. Answering this question supposes to first clarify the status of the duty of assistance. In the next two sections, I prepare the ground for this clarification by discussing Rawls’ specific conception of distributive justice and its three specific requirements – securing human rights, meeting basic needs, and limiting social inequalities. Only with these clarifications in mind will we be in a position to provide an appropriate interpretation of the duty of assistance and discuss the place of reciprocity within it.

7. The three requirements of political justice

In *Political Liberalism*, Rawls insists that political liberalism is not a comprehensive conception of justice, but a freestanding view whose content is expressed in terms of ideas implicit in the public political culture of society. We have seen that this contrast, between political and comprehensive conceptions of justice, plays a crucial role in helping to solve the problem of political instability which arises from the inclusion of the fact of reasonable pluralism within the circumstances of justice. In this section, I would like to set this question aside and draw another distinction between political and general rather than political and comprehensive conceptions. A political conception of distributive justice concerns itself with the repartition of the social product between the fully cooperating members of society, whereas a traditional, general conception responds to the problem of the allocation of wealth among individuals recognized as morally equal independently of their being part of a given society. The problem with this last conception is that it does not suit the normative idea of a society conceived as a fair system of cooperation among equals. To accommodate this idea, Rawls has to rely on a political conception of distributive justice that distinguishes the product of social cooperation from other resources and addresses the specifically political problem of the fair

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51 *JF*, 50-53.
distribution of this product among free and equals members. In such conception, distributive justice
does not classically aim at ensuring equal treatment among individuals of equal moral worth, but
rather at preserving the sense of the political project of a society defined as a cooperative venture
for mutual advantage. The role of distributive justice, in this conception, is only to identify “the
principles most appropriate to specify the fair terms of social cooperation between citizens regarded
as free and equal.”

This departure from the traditional conception of distributive justice is not characteristic of Political
Liberalism. In Theory of Justice, justice as fairness is already political in that sense and the root of
Rawls’ fundamental disagreement with cosmopolitans, in The Law of Peoples, also lies in their being
committed to the traditional conception of distributive justice. Whereas cosmopolitans consider that
justice arises from the recognition of the fundamental moral equality of individuals, Rawls holds that
justice proceeds from reciprocity among the free and equal cooperating members of society. In the
one case, the essence of justice lies in the moral imperative to improve the condition of individuals
who are worse off than others; in the other, justice gives expression to the political imperative to
support those among the free and equal members of our society who are affected by the deep
structural inequalities generated by a common basic structure.

To each of these conceptions corresponds a specific class of poor. Whereas cosmopolitan justice is
directed at every individual who happen to be worse off than others, political justice is only
concerned with those among our political partners who are victims of the deep socio-economic
inequalities created by the imposition of a common basic structure. In Rawls’ words,

“The least advantaged are not [...] the unfortunate and unlucky – object of our charity and compassion,
much less our pity – but those to whom reciprocity is owed as a matter of political justice among those
who are free and equal citizens along with everyone else.”

The least advantaged so defined are not to be identified in terms of relative wealth, but in terms of
repartition of primary goods. They are those citizens who are unjustly deprived of the means to
realize themselves as fully cooperating members of society, means to which they are however
legitimately entitled as a matter of basic reciprocity among equals. Remember that citizens are equal
in that they all possess a capacity for a conception of the good and a sense of justice. They realize
themselves as fully cooperating members of society when they fully exert these two basic moral
powers, that is when they are given the means to pursue their own conception of the good within
the limits fixed by the public conception of justice they reasonably endorse. Accordingly, primary

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52 JF, 79 and 39.
53 JF, 139.
54 PL, 178-190; JF, 57-61.
goods are not defined as what it is rational for persons to desire in order to promote their plan of life, but rather as what persons need to realize themselves as fully cooperating members of society – they are “what free and equal persons [...] need as citizens.”

Along with the idea of the person, the concept of primary goods has been subjected to modifications with the political redefinition of justice as fairness. In *Theory of Justice*, primary goods are referred to a comprehensive account of justice and defined as these items free and equal persons need as citizens of a society regulated by a comprehensive liberal conception of justice. The objective character of these items entirely relies on their being in line with a liberal conception of justice regarded as true. As soon as reasonable pluralism is introduced, however, and the epistemological conception of objectivity rejected in favour of the political one, the account of primary goods has to be modified to fit within a public political conception of justice which alone can provide a basis of justification for an overlapping consensus. From *Political Liberalism* onward, primary goods are thus defined in relation to this public conception which includes a shared political understanding of what counts as an appropriate conception of the good and provides the criterion for discriminating between permissible and impermissible conceptions of the good.

Given the necessity of achieving an overlapping consensus on the list of primary goods, one might think that the best way to elaborate this list is to consider the whole array of conceptions of the good present within society and estimate a sort of average of the goods required to realize these conceptions. This, however, would not adequately fit the purpose of political liberalism which does not aim at establishing a fair balance between every citizen’s conception of the good and a list of primary goods, but rather at giving every citizen the capacity to carry out her own plan of life within the limits set by the public political conception of justice. Instead of looking for an average, the proper method therefore consists in compiling the list of primary goods from an analysis of the basic idea of the person as free and equal and the idea of society as a fair system of cooperation. Primary goods are those goods that persons need to be fully cooperating members of society conceived as a fair system of cooperation.

Let’s turn first to the idea of the person. In the same way as a conception of the person is necessary, in the domestic case, to identify the adequate list of primary goods, a conception of peoples is required to elaborate this list in the context of the Society of Peoples. Peoples, unlike citizens, do not seek to advance a particular conception of the good, but only a political conception of justice. The question of primary goods, in the context of the Society of Peoples, can therefore be rephrased as

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55 *JF*, 60.
56 See for example *TJ*, 347-350.
57 *PL*, 188.
follows: what do peoples need to achieve and sustain their political conception of justice? It is obvious that at least some of the primary goods listed by Rawls in *Political Liberalism*, as that which citizens of liberal democratic societies need as citizens, will be of no use to such end. It is for example the case of freedom of movement or free choice of occupation within the basic structure. As a first approximation, it seems that this benchmark list boils down to three, namely (i) the basic rights and liberties necessary for the exercise of the two moral powers of free and equal peoples; (ii) the sufficient resources to preserve their political conception of justice and the political institutions necessary to carry it out; and (iii) the social bases of self-respect which make social cooperation possible. An analysis of the idea of society as a fair system of cooperation, as specified by the idea of well-ordered society, will help specify this list further.

In *Political Liberalism* and *The Law of Peoples*, Rawls sets forth the characteristics of well-ordered liberal peoples and well-ordered decent peoples respectively, but he does not explicitly state the conditions that a society has to fulfil to qualify as *well-ordered*. From these two accounts, it can however be inferred that a well-ordered society is one whose citizens fulfil the two basic conditions of *morality* and *reciprocity*, which means that they have an effective sense of justice which enables them to understand and apply the publicly recognized principles of justice, and that they accept and know that all other citizens accept the same principles of justice. A well-ordered society is also one whose basic structure is regulated by a conception of justice whose principles and their justification are publicly known and which satisfies the following four essential conditions:

i. It ensures a structure of government in which every citizen is allowed to play a meaningful role in political decision-making, be it as a free and equal citizen endowed with a constitutionally protected right to vote or as a member of a group suitably represented in the consultation hierarchy;

ii. It secures citizens’ basic human rights and the basic political rights which allow them to play a meaningful role in political decision-making;

iii. It incorporates a specification of a social minimum providing for the citizens’ basic needs estimated in primary goods; and

iv. It limits unjustified social and economic inequalities in line with the spirit of reciprocity inherent in the standard of reasonableness and thereby secures the social bases of self-respect.

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58 *PL*, 181.
Crucial for our discussion are the last two conditions concerning matters of basic justice. These conditions are often conflated as they both contribute to ensuring the person’s capacity to exert her rights as a fully cooperating member of society. The first is the respect of a certain threshold of social well-being defined in terms of primary goods – what Rawls sometimes calls a social minimum. This social minimum not only provides the person with the necessary means to effectively carry out her plan of life; it also substantiates the political rights formally recognized by the second essential condition. It is the acknowledgement that “below a certain level of material and social well-being, and of training and education, people simply cannot take part in society as citizens.” Note that the fulfillment of this requirement does not only depend on its being appropriately defined in the public political conception of justice. Even if their political conception of justice includes a formal definition of the social minimum, well-ordered societies are not entirely protected against the risk of being unable to maintain it in certain non-favorable circumstances. Rawls thus specifies that provisions must be included in the Law of Peoples in addition to the eight main principles to ensure that even “in times of famine and drought […] in all reasonable liberal (and decent) societies people’s basic needs are met.

The second condition is the requirement to limit the growth of social inequalities between citizens as a condition of the preservation of the social bases of self-respect. As Rawls makes clear, this requirement does not express specifically egalitarian values, but contributes to guarantee the basic rights of citizenship by preventing the deterioration of self-respect. Self-respect in this context does not refer to the general psychological disposition of persons toward themselves, but more specifically to “those aspects of basic institutions normally essential if citizens are to have a lively sense of their worth as persons and to be able to advance their ends with self-confidence.” The most crucial of those institutional aspects is the public recognition that everyone endorses the difference principle viewed as “itself a form of reciprocity.” The necessity of this public recognition can be interpreted in relation to the fundamental meaning of the idea of reciprocity identified in section 6 as specifying the political relationship among citizens. As we have seen, citizens of a society conceived as a fair system of cooperation firmly hold that all those who actively participate in a scheme of cooperation are owed a fair share in return as specified by the difference principle or any other liberal or decent principle of distributive justice. When social inequalities grow beyond what the principle of justice in question seems to allow, the least advantage tend to believe that these two

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60 PL, 228-229.
61 PL, 166; see also LP, 65, n.1.
62 LP, 38.
63 JF, 59.
64 JF, 60.
basic rules are not respected and lose the lively sense of their worth as equal participating members of society.

We have identified two fundamental requirements that any political conception of justice must respect. In addition to providing persons with a suitably specified social minimum, a political conception must prevent inequalities from growing to the extent that they threaten the persons’ sense of their worth as fully cooperating members of society. These requirements are respected by all well-ordered peoples insofar as their basic structure is regulated by a public political conception of justice. If the Society of Peoples is also to be conceived as well-ordered, the Law of Peoples must therefore incorporate these requirements. In what follows, we will see that if the Law of Peoples takes the provision of a social minimum into account through the duty of assistance and the special provisions added to its eight main principles, it fails to make room for the requirement regarding the limitation of the scope of social inequalities.

Before turning to this question, however, we still have to discuss a third, even more fundamental requirement, which remains implicit in a context of domestic cooperation but emerges as decisive in the context of the Society of Peoples, where social cooperation is not a given. It is the requirement of respecting and protecting human rights, conceived as the conditio sine qua non of social cooperation. Discussing this fundamental requirement is crucial because our analysis in this paper is entirely based on the assumption that Rawls’ theory of justice consists in the analytic development of the normative content of the idea of society as a fair system of social cooperation. If the basic enabling conditions of social cooperation are not met between peoples, then our discussion is vain and the Law of People cannot be conceived as expressing a political conception of justice.

8. Human rights as the basic condition of social cooperation

Rawls introduces human rights as a subset of the rights possessed by all citizens in liberal and decent societies. In his view, human rights notably include the right to subsistence and security, the right to freedom of religion and thought, and the right to personal property and formal equality. This list does not depart in any substantive way from the list traditionally put forward by the main advocates of human rights. The originality of Rawls’ account lies elsewhere, once again at the level of justification. In contrast to naturalistic or philosophical views, Rawls does not claim that human rights belong to persons in virtue of their common humanity. He does not try to derive human rights from a religious or philosophical conception of human nature and does not understand their distinctiveness.

65 LP, 81.
66 LP, 65.
as lying in their protecting key features possessed by all human beings \textit{qua} human beings.\footnote{For an approach of this kind, see A. Gewirth, \textit{Human Rights: Essays on Justification and Applications} (Chicago: Chicago University Press, 1982); J. Griffin, \textit{On Human Rights} (Oxford, Oxford University Press, 2008).} This would make human rights a comprehensive doctrine that at least some decent hierarchical peoples might reject as distinctively liberal.

Rawls does not rely on the idea of a cross-cultural agreement either. His view is not that despite the broader moral disagreement which inevitably prevails among individuals of different cultures, there exists a core of moral standards – human rights – upon which we do all agree. The difficulty with this conception is that either one accepts to restrict the list of human rights and conceive of them as the lowest common denominator of morality,\footnote{M. Walzer, \textit{Thick and Thin: Moral Argument at Home and Abroad} (Notre Dame: University of Notre Dame Press, 1994), 9-10.} or one has to suppose a “progressive convergence” of the main philosophical and spiritual worldviews on a more extended list.\footnote{Ch. Taylor, “Conditions of an Unforced Consensus on Human Rights”, in \textit{The East Asian Challenge for Human Rights}, J. R. Bauer and D. Bell (eds.), (New York: Cambridge University Press, 1999); J. Cohen, 2008.} Such convergence would require that the proponents of each worldview reinterpret their own tradition to put it in line with the extended list. Of course, the advocates of convergence insists that such reinterpretation is not to be seen as a compromise to the practical needs of cross-cultural agreement, but rather as an effort necessary to bring the different worldviews in conformity with the “fundamental truths about the human person that modern ‘cultural and political experience’ had made manifest.”\footnote{J. Cohen, “Minimalism About Human Rights: The Most We Can Hope For?”, \textit{Journal of Political Philosophy}, 12/2 (2004), 201-202.} The difficulty remains, however, to define the criterion to be used to identify these truths without being dragged back to the charge of cultural imperialism.

In order to avoid these difficulties, Rawls conceives of human rights as a political doctrine constructed for certain political purposes, a doctrine whose content is determined according to the political function it is meant to fulfil within the Society of Peoples. At this point the question once again might arise of whether this function is to be determined purely \textit{a priori} or rather from an interpretation of the human rights regime as we find it in today’s global politics. Joseph Raz and Charles Beitz have suggested that Rawls’ account of human rights is heavily practice-dependent and that his description of the function of human rights is derived from an interpretation of the practice of human rights in global politics.\footnote{J. Raz, “Human Rights without Foundations” (unpublished paper); Ch. Beitz, \textit{The Idea of Human Rights} (Princeton: Princeton University Press, 2011), §15-16.} What is certain is that Rawls does not assume the existence of a fundamental layer of rights whose content could be discovered independently of a consideration of the proper role of human rights in normative theorizing. In setting his account of human rights, he does not seek to describe what is actually common to all moral or political codes, but wonders...
instead what the proper functional role of human rights is in a Society of Peoples conceived as a fair system of cooperation.

In *Theory of Justice*, he suggests that even if people disagree about the content of the principles of justice, they might nevertheless agree about the role these principles play in moral and political thought. In this case they hold diverging conception of justice, but share the same concept of justice. According to this concept, the role of justice is to specify the way in which the basic structure of society to determine the division of advantages from social cooperation. Different conceptions of justice represent different points of view on how this division should take place, but these conceptions do not put the role of justice (i.e. its concept) into question. Similarly, in the Society of Peoples, people may disagree about the content of human rights while agreeing about the role these rights are to play in the sphere of global politics. This role, as defined by Rawls, is mainly to provide the standard for discriminating between members in good standing of the Society of Peoples and states which might be subjected to forceful intervention. But beyond this role specific to the Society of Peoples, human rights play an even more basic role everywhere they are respected, namely that of specifying the basic conditions of political and social cooperation in general. As Rawls puts it,

“What have come to be called human rights are recognized as necessary conditions of any system of social cooperation. When they are regularly violated, we have command by force, a slave system, and no cooperation of any kind.”

The respect of human rights thus constitutes a third condition which, if we are to define the prerequisite of a society conceived as a fair system of cooperation, must be added up to the two requirements identified in the previous section. A society conceived as a system of fair cooperation, as specified by the idea of well-ordered society, is one whose basic structure is regulated by a conception of justice which secures citizens’ human rights even before providing them with a social minimum and limiting social inequalities. These three conditions are like three consecutive steps in the implementation of any such society, three steps which make social cooperation possible, actual and perennial. Firstly, the respect and protection of human rights constitute the basic enabling condition of social cooperation; secondly, the provision of basic needs ensures that all participants in the cooperative scheme can realize themselves as fully cooperating members; and thirdly, the maintaining of a certain level of social equality allows to preserve the social bases of self-respect essential to the pursuance of cooperation over time. These three requirements identified, it is now time to turn to the content of the Law of Peoples, and more specifically to the duty of assistance, in order to determine whether it properly incorporate them.

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72 *TJ*, 4-5.
73 *LP*, 68.
9. The duty of assistance as a principle of political transition

The duty of assistance aims to help societies burdened by unfavourable conditions to reach the level of primary goods necessary for becoming decent hierarchical societies. At first sight, this duty might seem to carry a traditional idea of redistributive justice insofar as it is financed by a General Resource Dividend collected from each society. But contrary to a global egalitarian principle, the duty of assistance is not aimed directly at reducing global poverty. It fulfils the strictly political function to help burdened society to become members in good standing of the Society of Peoples and excludes as such two classes of poor: those living in outlaw societies which are not, by definition, likely to join the Society of Peoples, and those living in societies whose political culture is such as to sustain a decent political order but which are not necessarily wealthy. This explains why the duty of assistance does not take the expected form of a humanitarian aid, but rather consists in the provision of the productive means necessary for facilitating the political transition toward a decent political order. As such, it can take diverse forms such as that of a technical assistance in designing institutions, a transfer of know-how, or a transfer of technological resources.

A last feature of the duty of assistance on which Rawls insists is that qua principle of political transition, it stops applying as soon as benefiting societies reach the required level of wealth and welfare. The duty of assistance is a principle of political transition which, as such, has both a specific target and a cut-off point. It aims at making burdened society politically autonomous and stops applying as soon as this aim is reached. This definition of the duty of assistance as not being directed at the global poor, but only at the needy members of peoples politically engaged with us in the common political project of a well-ordered society of free and equal peoples, is in line with Rawls conception of justice as political, not general. The difference principle is not an instrument for alleviating poverty or compensating the unfortunate effects of bad luck on individuals. Rather, it is a lever used to raise burdened societies to the minimal level of decency necessary to become members in good standing of the Society of Peoples.

This brief characterization of the duty of assistance, as a principle of political transition, needs to be distinguished from another account found in the literature. Many scholars suggests that the duty of assistance is not a genuine principle of distributive justice because it is only aimed at providing a minimal threshold of basic needs and does not specify any requirement regarding inequalities above

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74 LP, 118-119.
75 LP, 106.
76 LP, 106.
It is true that the duty of assistance does not concern itself with inequalities, but it is misleading to suggest that it would be intended at providing a social minimum. Its proper aim is rather to help burdened societies make the transition to a well-ordered regime. Meeting basic goods is only indirectly covered by the duty of assistance as a prerequisite to the realization of this aim. It is therefore misleading to characterize the duty of assistance as a humanitarian principle.

This being said, the question of the priority rule between duties of justice and the duty of assistance is certainly a contentious one. Some argue that the duty of assistance is to come into force only after questions of distribution have been settled and property rights have defined lawful ownership of resources. On this account, the duty of assistance would be a humanitarian principle aimed at the relief of absolute deprivation rather than at the achievement of an egalitarian distribution of goods. Others rely on the analogy suggested by Rawls himself between the duty of just savings and the duty of assistance to maintain that the duty of assistance is to apply before the domestic principles of justice are implemented and distributive shares allocated. On this interpretation, the duty of assistance is not properly speaking humanitarian but is not a principle of distributive justice either. It is rather a constraint bearing on citizens of well-ordered societies to take the necessity of furthering just institutions into account when determining the requirements of domestic justice.

These considerations lead us to a second point of contention over the proper ground of the duty of assistance. If not a humanitarian duty, the duty of assistance cannot be said to strictly belong to the sphere of ethics and to rest on values such as charity or compassion. Another ground must be brought to light which establishes this duty in the political sphere and contributes to explain how it can place constraints on principles of justice. Caleb Young recently suggested that the duty of assistance, just as the duty of just savings, is grounded in the natural duty of justice to further just institutions. As defined by Rawls in *Theory of Justice*, this duty shared by all individuals recommends to support existing just institutions and to further just arrangements not yet established when it can be done without excessive cost to oneself. This duty regarding political actions is itself grounded in the consciousness of every individual that he has, qua moral person, an even more basic moral duty “to remove any injustices, beginning with the most grievous as identified

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80 C. Young, 20-25.
81 TJ, 99.
by the extent of deviation from perfect justice.”

This basic moral duty belongs to the sphere of individual ethics and is meant to guide the conduct of individuals in all aspects of their life. But it has as such specific implications regarding the actions of individuals in political matters, both in ideal or non-ideal circumstances. When acting as a citizen of a well-ordered society, the basic moral duty translates into the requirement to comply with and actively participate in the existing scheme of social and political cooperation. When facing unjust practices or institutions, it demands to work toward “the establishment of just arrangements […] at least when this can be done with little cost to ourselves.”

It is this non-ideal version of the basic duty of justice, as recommending to contribute to the furtherance of just institutional arrangements, which Young identifies as the proper ground of the duty of assistance. It might in turn take two distinct forms depending on whether existing just institutions need to be extended in time or in space.

In *Theory of Justice*, Rawls addresses the question of the preservation of justice as fairness in time, from one generation of citizens to another. He denies that the duty of citizens to realize justice as fairness here and now should be considered in isolation from the well-considered interest of future generations. As he puts it, “the appropriate expectation in applying the difference principle is that of the long-term prospects of the least favored extending over future generations.” The principle of just savings is designed to meet this requirement. It is described by Rawls as a tacit agreement between generations to “carry their fair share of the burden of realizing and preserving a just society.”

In concrete terms, this principle assigns an appropriate rate of savings to society at each stage of its development: the more advanced the stage, the higher the rate of savings. This linear progression in the rate of savings is not infinite, however. Because it has an aim – to realize and preserve just institutions in time – the principle of just savings also has a clear cut-off point. It stops applying as soon as a just basic structure is firmly established and the basic rights and liberties of citizens effectively realized. At this point, a society no longer needs to generate savings as a just basic structure is supposed to secure by itself the material bases of its own preservation. Note that the principle of just savings is adopted by the parties in the original position after the principles of justice are chosen and that it is defined in relation to them. It means that the principle of just savings is not conceived as self-standing, but rather as a constraint bearing on the principles of justice and their implementation. In *Theory of Justice*, the principle of difference is thus defined from the standpoint of the least advantaged in each generation and its complete statement includes the principle of just savings as a necessary constraint.

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82 TJ, 246.
83 TJ, 334.
84 TJ, 252 (My emphasis).
85 TJ, 257.
86 TJ, 255.
After the extension of justice as fairness in time, Rawls faces the problem of the extension of the Law of Peoples in space. By definition, the Society of well-ordered Peoples belongs to ideal theory and is supposed to operate in isolation from non-ideal circumstances, but it also offers a plausible case for a duty to further just institutions insofar as it has burdened societies at its edge. The duty of assistance, understood as a duty owed by well-ordered peoples to burdened societies, could be interpreted as a spatial analogue of the principle of just savings. Both duties have a target and a cut-off point. While the duty of just savings is aimed at creating the conditions for preserving justice as fairness over time and stops applying as soon as these conditions are met, the duty of assistance is intended at creating the conditions of for extending the Law of Peoples over space and stops applying as soon as these conditions are met.

This interpretation of the duty of assistance as a second non-ideal manifestation of the natural duty of justice has to face two related difficulties. The first is to explain why well-ordered societies owe a duty of assistance to burdened societies which are not even represented in the original position. If none of the parties are in charge of promoting their interests, how could they possibly agree on a principle explicitly doing so – let alone a principle which would constrain the interests of the individuals actually represented to the benefit of those non-represented ones? This difficulty is not proper to the duty of assistance. Both the duty of assistance and the duty of just savings are to benefit agents who are not a priori recognized as equals and who are not a priori represented in the original position. A possible answer lies in the unhistorical character of the original position and what Rawls calls the “present-time of entry interpretation.” According to this disposition, one can enter the original position “at any moment simply by conducting our moral reasoning about first principles in accordance with the stipulated procedural constraints.”

Thus, a duty to future generations or a duty to burdened societies which play a priori not part in ideal theory might be justified simply on the reasonable assumption that these agents are potentially able to conduct the procedure of moral reasoning represented by the original position – they are not recognized as actually but as potentially equal.

This leads us to a second difficulty. Why would well-ordered societies owe this duty to burdened societies only and not to outlaw states? Burdened societies and outlaw states both belong to non-ideal theory. What fundamentally distinguishes them is their respective attitude toward the Law of Peoples. Whereas outlaws states simply refuse to comply with the Law, burdened societies are willing but prevented to do so by unfavourable economic or historical circumstances. This

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87 *PL*, 274.
88 This strategy is suggested by Rawls in *JF*, 159-160.
89 *LP*, 43, n.53.
90 *LP*, 90.
willingness of burdened societies to abide by the Law is integral to the notion of reasonableness as defined by Rawls. Of course, burdened societies are not fully reasonable since they do not have a decent hierarchical order with a common good idea of justice protecting human rights. But these societies can be said at least to carry the seeds of reasonableness through their willingness to abide by the terms of a reasonable Law of Peoples. One might negatively define their status by saying that burdened societies, though not fully reasonable or decent, are not unreasonable or not indecent. This negative definition echoes Rawls’ remark, in Political Liberalism, that a given doctrine cannot be said “unreasonable” just because someone affirms it unreasonably in particular circumstances. A reasonable doctrine is “one that can [potentially] be affirmed in a reasonable way.” Similarly, a society under unfavorable circumstances may affirm a decent doctrine in a non-decent way, for example incompletely or in an underdeveloped fashion. This does not make the doctrine as such non-decent. A decent doctrine is one that can, under favorable circumstances, be affirmed in a decent way. This manner of situating decency in the potentiality rather than the actuality of its expression undeniably brings burdened societies closer to well-ordered societies on the background of their common aspiration to a reasonable political order. It also explains why the interests of burdened societies can be taken into account in the original position. Contrary to outlaw states, which refuse by definition to abide by the Law of Peoples and voluntarily exclude themselves from the political project of an international society of well-ordered peoples, burdened societies are willing to abide by the Law of Peoples and thereby counts as prospective members of the community of well-ordered societies.

The interpretation of the duty of assistance as being grounded in the natural duty of justice therefore seems to resist its most immediate objections. One might further support this interpretation by pointing out that although Rawls does not explicitly refer to the natural duty of justice in his account of the duty of assistance, the constant parallels he draws between his domestic and international theories are enough to suppose that well-ordered peoples are motivated in their endorsement of the duty of assistance either by a corporate analogue of the non-ideal duty of justice, or by the recognition that they are the institutionalized instruments of their members who all seeks to fulfill the non-ideal duty of justice. This interpretation also seems to find indirect textual support in Theory of Justice, where Rawls points out that “one aim of the law of nations is to assure the recognition of these [natural] duties in the conduct of states.” But all these elements ultimately fail to provide a decisive argument in favor of the proposed reading. For the mere fact that Rawls conceives of the duty of assistance as an analogue to the duty of just savings does not necessarily

91 PL, 60, n. 14.
93 TJ, 99.
imply that they have the same grounding. To draw this conclusion is to neglect that the natural duty of justice, notably absent from The Law of Peoples, Political Liberalism and Justice as Fairness, does not survive the political redefinition of justice as fairness.

The principles of natural duty, just as the principles of justice, are the outcome of a hypothetical agreement in the original position. The only difference is that the principles of natural duty apply to individuals instead of institutions and “do not presuppose an act of consent, express or tacit, or indeed any voluntary act, in order to apply.” 94 Contrary to the principles of justice, the natural duties of justice are therefore non-institutional duties pertaining to the sphere of individual morality even when the action they recommend takes place in the political field, like in the case of the derived duty to further just institutions. They do not answer the question of the most appropriate principles to regulate our political actions, but the question of the principles which should regulate the conduct of individuals qua moral persons. As such, they are entirely dependent upon a certain conception of the person – in this instance, the conception of the person as reasonable. It is part of the idea of a reasonable person to be subject to the basic natural duty of furthering justice. The conception of the person encompasses an egalitarian ethos which leads the parties to endorse the difference principle when asked to rationally assess the different principles of justice.

Now the normative potential of the idea of the person is greatly impoverished by the political redefinition of justice as fairness. In Theory of Justice, justice as fairness is based on a comprehensive conception of the person as being totally disencumbered. The natural duties grounded in this conception have “no necessary connection with institutions or social practices; their content is not, in general, defined by the rules of these arrangements.” 95 By contrast, political liberalism is a freestanding view which rests on a conception of the citizen integral to the public political culture of western democratic societies and the Law of Peoples, which is an extension of the idea of political liberalism, rests on a conception of the peoples integral to the international public political culture. Citizens and peoples, on this account, are not animated by a specific egalitarian ethos and do not share the moral consciousness of a natural duty of justice that would be owed to all other moral beings. They only share in common the consciousness of a political duty of civility owed exclusively to those whose are engaged with them in social cooperation – the duty to appeal to public reasons when conducting discussions about political matters. 96 The scope of this political duty is obviously more limited than the scope of the natural duty of justice integral to justice as fairness. The political duty of civility regards the question of political legitimacy only, namely the necessity that the exercise of coercive political power in general be justifiable to all citizens in terms of public reasons.

94 TJ, 99.
95 TJ, 98.
96 PL, 226; JF, 117-118.
On no account can the requirement to further *just* institutions, let alone the further duty to assist burdened societies, be derived from it. Another ground must therefore be brought to light which allows for anchoring the duty of assistance in the framework of political liberalism.

10. The duty of reciprocity as a proper ground of the duty of assistance

In this last section, I try to outline a possible ground for a duty of assistance understood as a strictly political duty of reciprocity inherent in any conception of society as a fair system of cooperation among equals. To that end, I rely on Rawls’ analytic construction of the concept of justice in “Justice as Reciprocity.” This paper, which has been written in the summer of 1959, cannot be regarded as central to Rawls’ theory and it would be hazardous to formulate a definite judgement about its influence on the final form of justice as fairness. It nevertheless offers an early statement of some of the basic intuitions further developed in *Theory of Justice*. The fact that Rawls accepted its publication in 1971, the very same year as his *magnum opus*, attests that its content at least is not substantively in disagreement with his considered views. The main difference between the two works rather lies in the methodological approach used to justify the content of justice as fairness. Whereas *Theory of Justice* unfolds within the social contract tradition and tries to bring it to a higher level of abstraction, “Justice as Reciprocity” proposes an analytic construction of the concept of justice in the context of a coercive practice in which participants are not given the choice whether to cooperate or not.

This latter approach, at odd with the social contract doctrine, does not start from a state of nature, but from a pre-existing social practice whose design is subject to disagreement among participants. It contains, however, the same elements which are also at stake in the description of the original position in *Theory of Justice*. Rawls insists, in particular, that even though the allegiance of participants to the social practice in question is entirely dependent upon the prospect of their own advantage, it does not prevent them from developing a certain sense of justice. This claim anticipates the assumption of mutual disinterest characterizing the behaviour of the parties in the original position, an assumption presented by Rawls as “an interpretation of the Kantian notion of moral autonomy.” Just as the parties in the original position, the participants in the practice have no rational inclination to promote the happiness of others, but are nonetheless able to acknowledge, in accordance with the notion of moral autonomy, the requirement to act only on maxims that everyone involved could rationally endorse for themselves. This idea, common to both approaches, that justice is to arise out of respect for the rational status of the other members of society rather than from a natural concern for their well-being, might provide a proper ground to the duty of

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97 See S. Freeman, “Editor’s Preface”, in *CP*, x.
assistance politically redefined. For it to be the case, it is however necessary to make sure that this idea is purely formal and not ultimately grounded in some comprehensive conception of the person, as the reference to the Kantian conception of moral autonomy suggests.

Rawls maintains that, in the context of a social practice, justice is likely to arise from the propensity of participants to respect what he calls the constraint of having a morality. The main of these constraints is respect for reciprocity understood as a natural aversion for unjustified differences of treatment between individuals formally considered as free and equal. Interestingly, this natural aversion for unjustified differences of treatment among equals is not grounded in a comprehensive conception of the person regarded as being endowed with a certain moral nature, but rather in the very idea of respect for the rational constraints imposed on individuals by morality. It is because individuals, as part of their being rational, are introduced to the consciousness that the only legitimate determining principles of the will are rational in nature that they can only feel aversion toward rationally unjustified differences of treatment among equally rational beings. One can easily recognize in this argument the same structure as the Kantian categorical imperative, which recommends acting only on maxims that one can also will that they should become universal laws regulating the conduct of all rational beings. Rawls’ argument is more precisely based on an acknowledgement of the notion of reciprocity integral to the categorical imperative, which does not simply require from individuals that they submit their subjective maxims to universal principles, but also that they make these maxims rationally universal by making them acknowledgeable by every rational being from his own point of view.

In Kant’s account, the requirement of reciprocity among the members of the community of all rational beings follow from the famous distinction between the relative worth ascribed to objects and the respect due to rational beings’ absolute worth. By contrast with objects in general, which have a certain worth for human beings insofar as they can serve as means to satisfy their needs, rational beings stand out by their very nature as ends in themselves – that is, as beings which cannot be regarded only as means, but must always at the same time be regarded as ends. The claim which lies at the basis of this distinction is not an anthropological claim about the nature of human beings, but rather an epistemological claim about the nature of rationality itself, namely the claim that “Rational nature exists as end in itself.” As Allen Wood rightfully puts it, this claim is “in one way still formal,” insofar as it exclusively concerns the nature of rationality itself, but “in another way the

99 “Justice as Reciprocity”, in CP, 199-201.
101 Gr, IV: 429.
most substantive value thesis on which Kantian ethics rests,” insofar as it lies at the very basis of the
categorical imperative with its requirement of universalization of subjective maxims, a requirement
which, though formal in nature, is responsible for the endorsement of certain substantive principles
rather than others.\textsuperscript{102}

The only anthropological claim in Kant’s argument is that human beings \textit{regard themselves as}
 rational, for only insofar as they do so can they represent themselves as ends in themselves.\textsuperscript{103} But
such is the minimal assumption on which the very possibility of any rational discourse about human
affairs is based. If human beings did not regard themselves as rational, they would not hold forth
rationally on themselves and their political or moral activities. Now, Rawls’ argument is nothing more
than a reconstruction of the concept of justice out of an analysis of this basic understanding of
rationality: because rational nature is an end in itself, he argues, rational beings must always regard
their peers not only as means but always at the same time as ends in themselves. In the context of a
coercive practice in which rational beings have to adjudicate conflicting claims, this does not
necessarily imply to reject every difference in treatment which would not be rationally justified, for
this principle would certainly weigh too heavily on individuals, but at least to reject any inequality of
which it has been rationally proved that it does not serve any common purpose. As Rawls makes
clear, “the notion of rationality, if it is to play a part in the analysis of justice, should allow […] that a
rational man will resent or will be dejected by differences of condition between himself and others
only where there is an accompanying explanation.” This justifies, in Rawls’s view, to regard
\textit{reciprocity} suitably specified as a “trait of character” “include[d] […] in the notion of rationality for
the purpose of analysing the concept of justice.”\textsuperscript{104} It is part of being rational to experiment the
moral constraint of recognizing the duty of reciprocity toward those free and equal individuals with
whom we are engaged in a common practice. The duty of reciprocity thus plays an essential part in
determining what is just: principles can be regarded as just if and only if every individual involved in
the practice they are intended to regulate “could be reasonably expected to acknowledge and freely
accept [them] before one another.”\textsuperscript{105}

A last point of concern before accepting this account of the duty of reciprocity as a proper ground for
a political redefinition of the duty of assistance might be the definition of the criterion of reasonable
public acknowledgement – the definition of what the constraints of having a morality should lead
individuals to acknowledge before one another. I content that Rawls’ account of the constraints of

\begin{itemize}
  \item A. Wood, “What is Kantian Ethics?”, in Kant, \textit{Groundwork for the Metaphysics of Morals} (London: Yale
University Press, 2002), 164.
  \item \textit{Kant, Conjectural Beginning of Human History}, VIII: 114; \textit{Kant, Anthropology in a Pragmatic Respect}, VII: 127-
130.
  \item \textit{CP}, 199.
  \item \textit{CP}, 192.
\end{itemize}
having a morality parallels Kant’s account of the experience of moral obligation and implicitly relies on the same distinction between perfectly and imperfectly rational will. To say that people have to *willingly* face the constraints of morality is tantamount to saying that people are endowed with an imperfectly rational will, *i.e.* a will at the same time pathologically affected by sensible motives and capable of determination by a *priori* principles. In both cases, the rational judgements of individuals about their particular interests are weighted against the outcome of a procedure of ideal reflection representing the constraints of practical reason – the categorical imperative in one case, the original position in the other. The proper sphere of morality lies in this space between the rational pursuit of self-interest, as informed by the subjective conditions of the sensible world, and the respect of an *a priori* moral command, as determined by the objective conditions of practical reason. As Rawls puts it, “a man whose [considered] judgements always coincided with his interests could be suspected of having no morality at all.” Such a man would be like a God whose will, insensitive to subjective conditions, immediately recognizes all objectively necessary actions as objectively necessary, thereby expressing a relation of *necessity* to the moral law instead of the relation of *necessitation* characteristic of human, imperfectly rational will. For a finite individual, to experience the constraints of having a morality is to be somehow forced to submit his subjective maxims of self-interest to the rationally specified law.

It is crucial for the remainder of our discussion that behind the Rawlsian idea of respect for the constraints of morality ultimately stands a conception of the person as capable of an *a priori* determination of the will – a conception of the person as consciously submitting herself to pure, *a priori* morality. Accordingly, the proper ground of a global duty to limit the scope of social inequalities is to be found in a constructivist justification of justice accounting for moral necessitation in terms of respect for a procedure of ideal reflection representing the formal constraints of practical reason. Admittedly, this is not the path followed by Rawls himself. Though it remains unclear, in “Justice as Reciprocity”, whether he conceives of the so-called *aversion* to unjustified unequal treatment as a purely formal incentive or rather as a sensible inclination drawn from pathological determining grounds of choice, he explicitly rejects, in his subsequent work, the possibility of an *a priori* foundation of duties of justice. His relation to the crucial question of whether justice in general, and global justice in particular, should be grounded *a priori* is, however, more complex than a quick analysis can reveal. It is necessary to further investigate the reasons of Rawls’ reluctance to endorse a purely *a priori* form of constructivism as well as his principled reservations against transcendental idealism and pure formalism. Insofar as this question has already been partly treated

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107 CP, 202.
108 TJ, 221-227; PL, 89-130.
in the literature, this work will exclusively focus on those neglected aspects likely to help us develop our own constructivist approach to global justice from purely *a priori* grounds. I hope to show that there exists an alternative constructivist approach which remains purely *a priori*, insofar as it admits of no empirical ground of determination, while easing the specific worries expressed by Rawls, insofar as it unfolds within the bounds of a revised version of the Kantian doctrine of rational faith.