A Theory of Justice says that the distribution of income and wealth within a society is just when laws and economic institutions are designed so as to maximally benefit the least advantaged members of that same society. This standard for domestic distributive justice is to apply worldwide, to determine just distributions in every society in the world. In this regard Rawls has an account of global distributive justice. But he does not have, and he does not endorse, a global distribution principle. The difference principle applies globally, within each society, but it is not global in reach.

Neither Political Liberalism nor The Law of Peoples retracts or alters this position. The primary focus of political liberalism is not ideal justice, but liberal legitimacy. It implies that laws regulating distributions in a democratic society can be legitimate, hence worthy of respect, even if they are not wholly just. Unlike the basic liberties and their priority, the difference principle is not required by liberal legitimacy; for legitimacy it suffices that a liberal society provide an adequate social minimum (adequate to free and equal persons’ realizing the moral powers and effectively exercising the equal basic liberties). The difference principle is one among several standards that pass the legitimacy test, all of which meet the criterion of reciprocity and the requirements of public reason. A society which protects the basic liberties and their priority, and affords equal opportunities and an adequate social minimum is

---

“reasonably just.” It is not “fully just” since liberal justice for Rawls still requires guaranteeing the fair value of the political liberties, fair equal opportunities and distributions according to the difference principle. But the argument for this strongly democratic position cannot be established solely on the basis of public reason.

It is a mistake to read *The Law of Peoples* as a retraction of Rawls’s position that the principles of justice are required in every society in the world. It is not the purpose of the Law of Peoples to say what is social justice. Instead, *The Law of Peoples* is an extension and supervenient upon political liberalism. It too has a limited aim: Given the justification of a liberal conception, such as justice as fairness, that applies to regulate the basic structure of society, the question arises, What principles are to govern the relations among different societies in the world? “The Law of Peoples proceeds from the international political world as we see it, and concerns what the foreign policy of a reasonably just liberal people should be.” (LP, p.83)

The foreign policy of a liberal people includes a duty of assistance, to meet the basic needs of “burdened peoples.” (LP, pp.38, 105-113) But it does not include a duty of distributive justice that applies to the world at large. (LP, pp. 113-120) Distributive justice for Rawls is socially, hence domestically established. Or rather, distributive justice exists globally when every society designs its institutions so as to maximally benefit the least advantaged members of their own society.

It might appear that the absence of a global distribution principle is an artefact of political liberalism. But Rawls implicitly endorses in *Theory* a “Law of Nations” similar to the later Law of Peoples. (Cf. TJ pp.331-334) So although the argument for the Law of Peoples may differ in some respects from that envisioned in *Theory*, the substantive principles of the Law of Peoples
apparently remain basically the same. There is no place for a global distribution principle in either book.

Here cosmopolitans criticize Rawls’s starting position, his beginning with principles of social justice, or justice among members of the same society, instead of justice among all the individuals in the world. For principles of social justice seem to preempt much of the territory that would be covered by a theory of global justice, especially a global distribution principle. Cosmopolitans will say: “But how can we decide distributive shares within a society until we first decide such global distribution questions as whether societies have exclusive rights to control the resources within their territory?” This question (purportedly) requires principles of global distributive justice.

Rawls thought that a world government is unrealistic and even undesirable; many of his critics now appear to agree (Pogge, Beitz, Tan, et.al.). I will argue later that the impracticality of a world state implies the unfeasibility of a global difference principle. But while Rawls regarded a world state and a global difference principle as unfeasible, he did not seem to regard as unfeasible a Society of Peoples, all of whom were liberal (however unlikely this may be). For on his account there is nothing about human nature or the fixed realities of social cooperation that would forestall a world of liberal societies. Even so, Rawls distinguishes between liberal basic liberties and human rights. Liberal basic liberties are required of a society for it to be “reasonably just.” Human rights are different: they are a “special class of urgent

\[2\] Among other reasons, Rawls regards the difference principle, not as an allocative principle, but as a public, political principle that applies to basic institutions: in the absence of a world government with jurisdiction to apply it, the difference principle neither has a legislative subject, a legal object, nor a political forum in which to serve as a basis for public deliberations and justification.
rights,” (PL, p. 79); urgent because they are “necessary to any system of social cooperation.”

(LP, p.68) Human rights, unlike liberal rights, are among the conditions of social cooperation. There is then a kind of minimal justice built into the idea of social cooperation. This suggests why human rights might have a distinctive role in Rawls’s account. For it is social cooperation, conceived in terms of basic social institutions and their basic structure, that provides Rawls with the starting point for considerations of justice (and in the case of distributive justice, the reference point).³

Now assume the most-ideal case, a world of liberal societies: so long as all liberal societies respect the human rights of their members, liberal peoples are not to interfere with one another’s domestic institutions. This is just the Law of Peoples liberal societies would agree to, and it remains true even if members of a liberal society act non-liberally to infringe some citizens’ liberal rights (e.g. a denial of freedom of certain kinds of speech, or a denial of voting rights to a minority). Instead other liberal peoples would have a duty to allow a liberal people to politically (re)establish liberal justice on their own.

Now, it is in part because decent hierarchical societies also respect the human rights of their members too, are non-aggressive, and pursue a common good conception of justice that advances in some way the good of all its members, that Rawls extends this standard of toleration among liberal societies to decent societies as well. For from a decent people that respects human rights and the remaining Law of Peoples, a liberal people has nothing to fear. The same

³ Why choose social cooperation as a starting point for justice, and not simply the basic needs of humanity as such (or the needs of free and equal persons)? It is largely due to the role of social cooperation in defining not just a person’s basic needs and future prospects, but also the centrality for Rawls of political cooperation in making social cooperation possible. (More on this later).
Law of Peoples that would apply in the fully ideal case of a world of liberal peoples ought also to apply in the less-than-ideal case of a world with liberal and non-liberal but decent peoples. This suggests that it is not because Rawls seeks initially to accommodate decent peoples, as a kind of *modus vivendi*, that he defines standards for toleration and noninterference in terms of respect for human (rather than liberal) rights. Nor, is it because Rawls finds decent hierarchical societies “morally on an equal footing” with liberal societies, (Pogge) for he does not—he says they are guilty of injustice. For the Law of Peoples is defined with regard to the ideal case of relations among well-ordered liberal peoples, without reference to decent peoples. This means that the Law of Peoples cannot be (as Pogge contends) a “stopgap model to be superceded, in a hoped for future era when nearly all societies will have become liberal,” for it is designed already to apply to this very case of a fully ideal world of liberal peoples. Rawls extends the same standards of non-interference to decent hierarchical peoples, apparently because they would also endorse the same law of peoples that liberal peoples do, and so can be counted on to respect human rights of all persons both within and outside their regime, and the rights of peoples as well.

For the cosmopolitan liberal, this is insufficient reason to tolerate nonliberal peoples, even if they are decent. Cosmopolitans believe that it is the duty of liberal peoples to enforce liberal rights over all the world. But Rawls does not regard it as the role of one people to establish standards of liberal justice in another society when they are decent. So long as a well-

---


5 Id. at p. 249.
ordered society, liberal or decent, respects human rights (the conditions necessary for social cooperation), and evidences concern for all its members by pursuing a common good conception of justice, and respects the Law of Peoples, its people should be permitted by other peoples to establish justice on their own, in the hopes that they will eventually make liberal institutions part of their political culture. Rawls endorses this position, not simply for the pragmatic reason he cites, namely that liberal institutions cannot take hold and stably endure without a peoples’ widespread support. He endorses it too because of the priority assigned to social and political cooperation, and to public justification, in his account of justice. It is, he suggests, *unreasonable* for liberal societies to enforce liberal liberties as a condition of cooperation with decent hierarchical societies—unreasonable to insist that decent societies be fully reasonable, if you will. (I return to this seeming paradox momentarily.)

This division of labor in establishing justice is a fundamental point in understanding Rawls’s account of toleration of decent peoples.° Justice for Rawls requires liberal justice, and it is the role and duty of governments to establish liberal justice among the people they represent. But it is not any government’s role to establish liberal justice for individuals over all the world. The kind of justice that governments are to establish over the world is the Law of Peoples. The principle of toleration then has what some see as a peculiar result in that it requires liberal people to enforce justice among their own people, but tolerate injustice in decent peoples so long as they respect human rights (narrowly defined) and advance a common good. Some (Pogge, Tan, et al.) see this as an “asymmetry” or inconsistency; for after all, on Rawls’s own account we all have a

° Rawls is clear on this point: “That law [of Peoples] apply to how peoples treat each other as peoples. How peoples treat each other and how they treat their own members are, it is important to recognize, two different things.”
natural duty of justice to establish just liberal and democratic institutions, and surely this duty must apply over all the world. And so we do; but the natural duty of justice is a duty for individuals, and not a duty for all institutions. As individual democratic citizens you and I have a duty to not discourage and perhaps even encourage unjust peoples to afford liberal rights to all their members—through discussion or by contribution to liberal advocacy organizations, for example. But it is not the role of our political representatives to do so; the duty of justice that applies to them is different. It is not a natural but an institutional duty, namely, to respect the law of peoples. This position may seem odd to those who think all persons and institutions have a duty to maximally if not directly promote good consequences (in this case, liberal rights and institutions). But I see no “asymmetry” or inconsistency about it—not any more than the rule that requires each family to attend to the nurturing, well-being, and education of its own members, and does not impose a duty on everyone to equally secure the same for children all over the world. It is part of Rawls’s view of the significance of the division of moral labor among persons and institutions.

To understand liberal toleration of and “due respect” for decent peoples, and other perplexities in Rawls’s Law of Peoples, it is essential to keep in mind that Rawls’s Law of Peoples is (like his principles of social justice) specified to apply in the first instance for the ideal case, among “well-ordered societies.” How the Law of Peoples is to be applied in our world, “with all its injustices,” is a separate issue. It is the nature of a well-ordered society that its members generally accept and have a sense of justice that motivates them to comply with the conception of justice that regulates society, and this is common knowledge. In well-ordered liberal societies, all reasonable citizens conceive of themselves as free and equal and they
publicly endorse one or another liberal conception of justice (all of which guarantee the basic liberties and their priority, equal opportunities, and a social minimum). In decent hierarchical societies, all endorse the non-liberal, common good conception of justice that regulates their society. Common good conceptions, by definition, promote a conception of the good of each member of society. This does not mean that the common good promoted is the same that we accept (a liberal and democratic conception, for most of us); nor does it mean that everybody in a well-ordered decent society accepts all its laws designed to promote their common good. (For example, some will object to restrictions on their freedom of speech). But still all do accept the common good conception that is appealed to publicly to justify those laws, even if they do not agree with all its interpretations and applications.

This stipulation is important in understanding Rawls since it stymies the point of a great many objections that contend that the Law of Peoples allows for all sorts of gross injustices. For example, it has been argued that the Law of Peoples allows for ethnic cleansing and a caste society with a class of “untouchables,” not to mention gross discrimination against minorities, mistreatment of women, failure to provide opportunities, and economic exploitation of the poor. These accusations are simply not true. To begin with, some of these injustices violate human rights (ethnic cleansing certainly), and can be sanctioned by other peoples. Moreover, as an empirical matter, the general acceptance of most any reasonable common good conception

---

7 See for example, Simon Caney, “Cosmopolitanism and the Law of Peoples,” The Journal of Political Philosophy, 10 (no.1, March 2002): 95-123, at p. 102, where he says: “Rawls’s schema, thus, allows racial discrimination, the political exclusion of ethnic minorities, the forcible removal of members of some ethnic communities (that is, ethnic cleansing), the reduction of some to just above subsistence whilst other members of that society luxuriate in opulent splendor, and the perpetuation of grossly unequal opportunities and political power.” None of these accusations are correct.
would guard against other injustices (for example, “untouchables” do not accept the mistreatment they must endure, at least not without “brainwashing,” itself a violation of a human right). But more important, the objection misconstrues the role of the Law of Peoples. It resembles a claim that Rawlsian distributive justice allows for lying and violations of freedom of speech, for after all these wrongs are not specifically prohibited by the difference principle. But like the difference principle, the Law of Peoples is but one part of a liberal conception of justice, and it has a specific function that covers but one domain of justice: relations among liberal peoples and among liberal and decent peoples. Nothing about the Law of Peoples implies that violation of liberal rights, or an absence of a democratic franchise, denial of equal opportunities, or economic exploitation are not unjust. On the contrary, these practices are unjust wherever they occur. “A decent hierarchical society...does not treat its own members reasonably or justly as free and equal citizens.” (LP, p.83) The Law of Peoples does not provide separate standards of justice for non-liberal societies that sanction these wrongs, even if they are decent. Instead it sets forth minimal standards of domestic justice that all peoples must meet if they are to avoid intervention and remain in good standing with other peoples. A society does not have to be fully or even reasonably just to avoid intervention and sanction, and to be tolerated by other peoples. So long as it is decent—respects human rights, meets basic needs, and enforces a widely accepted common good conception of justice—its domestic politics will not be interfered with by other peoples, and it will be allowed to establish liberal justice according to its own timetable. This is what critics of Rawls cannot bear to hear. For them, injustice by anyone is intolerable for anyone; so all persons, institutions and governments must have a duty to promote all requirements of justice and combat all injustices wherever they appear. The division of moral
labor implicit in Rawls’s institutional approach rejects this position.

The formulation of the Law of Peoples for the ideal case of well-ordered (liberal and decent) societies—where all reasonable persons endorse their societies’ public conception of justice—also clarifies why Rawls thinks it would be unreasonable to enforce liberal rights against decent hierarchical societies—unreasonable, that is, for liberal peoples to enforce the “fully reasonable” among peoples who are domestically unreasonable in denying liberal rights to themselves and their own people. The reasons for this seemingly peculiar position, and the importance Rawls attaches to self-determination of a people, are several. (1) The most discussed but probably least significant is Rawls’s purportedly “communitarian” avowal of the good for individuals of belonging to a culture and taking part in its public and civic life. (Cf. LP, p.61) More important is (2) the centrality Rawls assigns to social cooperation itself, through basic social institutions, and the self-determination of society’s basic structure through political means.⁸ (More on this below). But (3) Rawls’s account of liberal toleration of decent peoples is also connected with the idea of public reason and the centrality of public justification in Rawls’s account. If a well-ordered decent people generally endorses, and its members individually aspire to realize, a non-liberal common good conception of justice, then there is no basis in their public reason upon which to argue that they should accept a liberal political conception. For since “it lacks the liberal idea of citizenship” (LP, p.83), a decent society and its members do not conceive of themselves or their common good in terms of the freedom and equality of democratic citizens (the basis for public reasoning in the liberal case). There is then no shared

---

basis for justification between decent and liberal societies that extends beyond the Law of Peoples itself and its seminal ideas. If not, then there is no basis for reasoning with decent peoples, that they should abandon their non-liberal common good conception in favor of a liberal political view. Sanctions and coercive measures are then the only way to enforce liberalism among them. It is this that Rawls finds unreasonable, for it is a failure to show “due respect” for a people, their culture and their history, and their sincere affirmation of a common good. It undermines their self-respect as a people, “frustrate[s] their vitality,” (LP, p.62) and “may lead to great bitterness and resentment.” (LP p.61) The problem is not simply that there is no substantial likelihood that sanctions and coercive means will meet with success and instill a sense of liberal justice in nonliberal people (it may have the opposite effect). More problematic is the failure to provide a justification to decent peoples (who have a “moral nature”) in reasonable terms they can understand and accept; this imposes an unreasonable expectation, for it is a failure of mutual and hence “due” respect. For Rawls, where sanctions or coercive means are employed against reasonable persons–persons with a moral nature and a desire to do what is right and just-- respect for them as persons requires that the sanctioning agent provide a justification to them as reasonable persons with a moral nature--not simply a justification that is acceptable to reasonable persons who conceive of themselves as free and equal.9

To sum up, Rawls’s cosmopolitan critics have long contended that there is an ___________

9 The requirement of public justification and justification to others as reasonable persons explains, I believe, why Rawls sees toleration of decent peoples as an important virtue. Charles Beitz contends that this kind of toleration is simply a pre-theoretical intuition of Rawls’s, but I believe Rawls’s “intuition” has ample support in other considerations.

Some may respond that to be reasonable is just to be a liberal, but Rawls denies this. Decent people can be reasonable too, though not fully reasonable. Abraham Lincoln was reasonable, but rejected a universal franchise (women and blacks) and much that we would regard as protected by freedom of speech and other basic liberties.

11
inconsistency in his position regarding the scope of liberal justice. Though he proceeds from a commitment to equal respect for persons as individuals in his account of domestic justice, his Law of Peoples is “state-centric,” (Tan) or constructed upon a “morality of states.” (Beitz) “But if respect for persons as free and equal requires that they enjoy liberal rights, then people should have liberal rights without regard to national boundaries. Therefore, liberal justice should be established and enforced all over the world.”

I have suggested that Rawls can concede these claims but that the question still remains, Who should establish and enforce requirements of liberal justice upon a people? Rawls contends, not unreasonably, that only a people themselves should enforce liberal rights among themselves, upon their development of a liberal sense of justice and acceptance of liberal principles as part of their political culture. In no way does this imply that Rawls wavers in his commitment to liberal justice. While toleration for decent peoples implies that they are to be afforded due respect and equal standing in the Society of Peoples, it does not mean that decent peoples are “morally on an equal footing” (Pogge) with liberal societies. The idea of toleration does not imply that one embraces all that another stands for; on the contrary, it implies that one believes that are wrong in some important respect. (Scanlon) A decent hierarchical society is wrong about justice, for it “does not treat its own members reasonably or justly as free and equal citizens.” (LP, p.83) But this does not mean that it is the role of liberal peoples to make others free and equal, or even to insist that they must be as a condition of cooperation and respect as an equal people.
II. A Global Distribution Principle?

(A) Even if it seems reasonable that liberal peoples should tolerate decent peoples, and leave them to establish and enforce liberal basic liberties on their own, Rawls’s division of institutional labor may seem less reasonable when used to defend the domestic scope of the difference principle. For whereas ideally the same liberal rights should be domestically established throughout all the world, the most-ideal feasible case of domestic enforcement of the difference principle (or any domestic distribution principle) by every society would mean that citizens similarly situated in different societies will have markedly different economic powers and entitlements to income and wealth. Critics say: “Why should the least advantaged people born into poorer societies have different life prospects than the least advantaged people born into wealthier societies? For if, as Rawls contends in arguing for the difference principle, the social class and natural talents one is born with are arbitrary from a moral point of view (TJ sect.12), so too must be the country where a person happens to be born. Even if we accept Rawls’s argument that liberal rights and entitlements should be domestically, not globally, enforced by a people among themselves, this does not establish Rawls’s claim that the scope of the difference principle is itself domestic rather than global. Why shouldn’t a people have the duty to structure their economic relations to maximize the position of the least advantaged people, not in their own society, but in the world at large?”

Some of Rawls’s most sympathetic and informed critics have long argued that the difference principle should apply globally rather than domestically, (Beitz, Pogge, Tan, Barry, even Scanlon, etc.) and that it would be chosen in a global original position. I will argue that, in the absence of a world state, a global legal system, and global property, the suggestion makes
little sense. The spontaneous response here by Rawls’s critics may be that, if not the difference principle, then some other global distribution principle should apply, to fairly distribute natural resources and the products of industry. I address this more general objection first, before turning to the difference principle in the next section.

(B) Let’s begin with a common objection, raised by many (Pogge, Beitz, Tan, etc.), namely, Why don’t the representatives of peoples in the original position agree to the difference principle, or at least some global distribution principle from their original position? If they reasoned according to the maximin criterion of choice that Rawls uses in the domestic original position, it would seem that they should. And even if they did not employ maximin, but (because of the veil of ignorance) “were equally concerned with rich and poor peoples’ interests alike,” they should agree to some global (re)distribution principle (such as a global resource tax, as suggested by Beitz and Pogge).

Rawls made clear in later works (already implicit in Theory) that the maximin rule of choice is not sufficient to argue for the difference principle, and by implication any other principle of distributive justice. The reason is that reasoning from maximin is rational for parties in the original position only if there is but one alternative for choice presented that is acceptable if the worst transpires. This condition applies when the only alternatives are justice as fairness and utilitarianism or many other teleological conceptions. But where the alternative


11 See Rawls, Justice as Fairness: A Restatement, pp.94-95; see also Theory, sections 26 on the special conditions for the maximin rule of choice.
to justice as fairness is a “mixed conception” in which basic liberties and a social minimum are assured, maximin cannot be used, for then a social minimum makes the least advantaged position tolerable. The argument Rawls instead provides for choice of the difference principle rests on a strong conception of reciprocity and stability for the right reasons.\textsuperscript{12} But (as I argue in the next section) this argument will not succeed in the case of the original position among peoples, since peoples are not engaged in social cooperation, which for Rawls is needed for the robust conception of reciprocity used to argue for the difference principle.

But this does not respond to critics’ larger question; namely, If not the difference principle, why don’t the representatives of peoples agree to at least some global principle of distributive justice? To many it appears that Rawls simply asserts that they do not, and stipulates instead that they argue over different interpretations of the Law of Peoples he sets forth. (\textit{LP} pp.41-42, 86)

(C) There is more than meets the eye here. For Rawls’s argument assumes that distributive justice presupposes social cooperation, in part because social cooperation involves political cooperation and the capacity of a people to politically determine their social and economic fates.\textsuperscript{13} This is not an artefact of political liberalism, but is the same position implicit in \textit{A Theory of Justice}. While some of the reasons for the domestic centering of distributive justice

\textsuperscript{12} See \textit{Justice as Fairness}, Sects. 36-37.

\textsuperscript{13} Pogge appears to recognize this aspect of Rawls’s account—“his assumption that peoples would be masters of their own fate”—but he pronounces it “quite false.” “A society’s economic position arises from the interplay of national and global factors.” (“Rawls on International Justice,” p. 253) While this may be true to some degree no matter how ideal the world, clearly Rawls assumes a people has greater control over its economic affairs and property system than Pogge admits; Rawls certainly does not assume, as Pogge does, that in the absence of a global redistribution principle, affluent nations will inevitably exploit the less affluent. More on this topic below.
may change with political liberalism and the requirements of public reason, the basic idea remains the same. Namely,

(1) For Rawls, distributive justice is not an allocation problem, to divide up and redistribute for consumption purposes a product that is already produced by some external unrelated process. Distribution of product, though important, is a secondary issue, dependent upon the social process of production. Primarily distributive justice poses the general problem of fairly designing the system of basic legal institutions and social norms that make production, exchange, distribution, and consumption possible, among free and equal persons. The focus on basic institutions is needed to make distribution a matter of pure procedural justice. Why this is important ultimately goes to Rawls’s reasons for focusing on the basic structure in the first place. (More on this later.)

(2) The system of property norms and economic relations are social and legal institutions and are conventionally (not naturally) established. They can be designed in many ways. How the institution of property and the economic system should be designed is the first subject of distributive justice.

(3) Distributive justice is then, in the first instance, a feature of basic social institutions, including the legal system of property, contract, and other legal conditions for economic production, exchange, and consumption;

(4) Basic social institutions and legal norms that make economic production, exchange, and use and consumption possible are political products, one of the primary subjects of political governance. It is not just fiscal policies, taxation, public goods and welfare policies that are involved here; more basically it is political decisions about the myriad property rules and
economic institutions that make these policies, and economic and social cooperation as well, possible. A primary role for a principle of distributive justice is to provide standards (ideally to democratic citizens and their representatives) for designing, assessing, and publicly justifying the many legal and economic institutions that structure daily life. Since these basic institutions are social and political it should follow that:

(5) Distributive justice is social and political. If so, then in the absence of a world state, there can be no global basic structure on a par with the basic structure of society. Indeed, there is nothing in global relations anywhere near to being comparable to a society’s basic political, legal, property, and other economic institutions, and the basic structure into which there are arranged. Of course, there is global cooperation and there are some global institutions, but these are not basic institutions. Rather, global political, legal, and economic arrangements are secondary institutions and practices: they are largely the product of agreements among peoples and are supervenient upon the multiplicity of basic social institutions constituting the basic structures of many different societies.

(6) Consequently the only feasible global basic structure that can exist is also secondary and supervenient: It is nothing more than “the basic structure of the Society of Peoples,” and its governing principles are the Law of Peoples.

The crucial point then is that Rawls transforms the problem of distributive justice from an allocation question into a question of the political design of basic social (economic and legal) 

---

14 The extent and powers of global institutions are greatly exaggerated in my view by Rawls’s cosmopolitan critics. For example, the so-called “international property law” that exists is trivial in its extent, and it is simply the result of treaties, and is attuned to and builds on domestic property laws. It is not the product of an international legal body recognized as having original legislative powers and legal jurisdiction independent of treaties among peoples.
institutions. Modern property systems, and contractual and commercial norms consists of innumerable laws (in the U.S. literally millions of legislative acts, judicial rulings, administrative regulations, etc.) that provide basic structure and content to property and economic activity, including norms regarding the productive control, the use and consumption, and transfer and disposal of economic goods and other possessions. It is not just that global norms pale by comparison, but that they are secondary and supervenient on these and other basic social institutions. An example of what I mean by the “secondary” nature of global norms and institutions is when firms contract for goods and labor on the international market, but their contracts, property rights, powers, duties and liabilities are specified and enforced according to the laws of one or another society. It is the national specification of property systems, commercial instruments, corporate and securities law, etc.–of the myriad rights, powers, duties, liabilities, and so on that make them up-- that is crucial here, not their legal enforcement. (The fact that coercive enforcement of laws by a state is needed plays no role in justifying the domestic focus of distributive justice.) One role of commercial treaties is to decide which nation’s law applies and which legal system has jurisdiction in the event of legal disputes over performance, property claims, etc.. Of course, there may be trade and other agreements among governments specifying original norms, and procedures for making norms, that are independent of any particular people’s legal system. But these original global norms too are supervenient upon peoples’ existing property, economic, and political systems—the basic social institutions that structure and regulate their everyday life. Moreover, whatever jurisdiction global regulators and courts have, they have been granted and continue to enjoy only by virtue of the political acts of different peoples.
For Rawls then distributive justice presupposes social and political cooperation, since distributive principles apply to structure basic institutions and these are socially and politically specified, sustained, and enforced. Social and political cooperation, not global cooperation, provide the myriad laws and norms that define peoples’ expectations and structure and govern their everyday life. This is not to deny that production and consumption in one country affects peoples’ lives and prospects in another, or that countries are economically dependent upon each others’ trade or consumption patterns. Rawls’s argument for social rather than global distributive justice does not rely upon a false assumption of autarky. But trade alone or causal influences of consumption patterns do not amount to social cooperation. When Rawls says that one reason for focusing on the basic structure is that it profoundly affects peoples’ future prospects, he does not envision that any norm, or natural or artificial event, that affects people comes within the purview of the basic structure so as to extend the boundaries of distributive justice.

(D) Rawls’s critics confidently refer to “global economic institutions” and a “global basic structure,” as if Rawls had simply ignored the fact, clear to all, that basic global institutions and all-pervasive global norms exist. I contend that the economic and political relations they mention (which are few and far between) are secondary, not basic, institutions. They are secondary in that they are based upon the property, contract, and commercial laws of one or another people’s political society, and arise as a result of treaties and agreements between

---

15 Much has been made of Rawls’s theoretical assumption that the parties in the original position are to assume a “closed society.” The sole purpose of this assumption is to carry through with the contractarian idea of strains of commitment, which require that everyone must live with their choices. To achieve this it is necessary to foreclose options of emigration in the event that one is dissatisfied with the consequences for oneself of the principles of justice once the veil of ignorance is lifted. Without this assumption, contractarian arguments cannot work.
nations. There is no global basic structure because there are not basic global institutions—no world state, no independent global legal order, no global property system, no independent global contract law, negotiable instruments law, securities law, and so on. The rules and institutions that make global economic cooperation possible are national, and they apply internationally only due to agreements among peoples.

The one significant practice or norm Rawls’s critics allude to which might at first appearance be regarded as a basic global institution is peoples’ recognition that nations have “ownership” or control of the land and natural resources in the territories they occupy. Pogge, Tan and others rely on this example as justifying a need for a global distribution principle to regulate this practice, and decide how global resources are to be distributed. But it is a mistake to regard this norm as a basic institution, on a par with the institution of property. For control and jurisdiction over a territory by a people is *sui generis*: it is the condition of the possibility of the existence of a people and their exercising political jurisdiction. As such it is not a kind of property; for among other reasons, it does not have the incidences of property: it is not legally specified and enforced, nor is alienable or exchangeable, but is held in trust in perpetuity for the benefit of a people. But more importantly, rather than being a kind of property, a people’s control of a territory is the condition for the existence of the legal institution of property and other basic social institutions. Another reason it is mistaken to regard territorial control as property is that peoples can and have controlled territories without a need for any sort of norms of cooperation or even recognition by other peoples at all. Indeed this has been true of many countries for most of history; they have existed in a Hobbesian state of war. The point is not that there is anything just about this situation—on the contrary it has been sustained by aggression and injustice for most of
history—but that, unlike property and other basic social institutions, a peoples’ control of a territory is not necessarily cooperative or in any way institutional. It is then misleading to call a people’s control of a territory and recognition of others’ boundaries “property,” a “basic institution” or part of a “global basic structure,” simply in hopes of showing an inconsistency in Rawls and smuggling in a global principle of distributive justice. There are surely global norms of respect for another people’s territory—indeed this is part of the Law of Peoples. But there are no global basic institutions, because there is no global polity. And in so far as there is a “global basic structure,” it can be nothing more than the basic structure of the Society of Peoples, which is to be regulated by the Law of Peoples.

Rawls’s rejection of a global distribution principle is partly supported by his claim that a world government and comprehensive global legal system is not feasible. “But why should this empirical fact, or any empirical fact for that matter, deter us from trying to discover principles for the ideal case?” One answer is that, if principles of justice are not responsive to human nature and other fixed facts about human society, then their demands will go unrealized, for these principles then impose duties that people in the normal course of life cannot live up to. It might be replied: “But these facts can be taken care of at the level of the application of moral principles, and should not be allowed to influence the formulation of the most basic moral principles for the ideal case.” But for Rawls, the ideal case is not the utopian case; rather it is a well-ordered society, where public principles of justice that can be generally accepted (given the limits of human nature) govern basic institutions and subsequently social and political relations. Public principles are those that can serve as a basis for practical reasoning and public justification. If a world government is not feasible, then, given the aim of finding principles of justice that can
serve as a basis for public justification, we are constrained from formulating principles that could only be publicly and effectively applied by a governing body of a world state, were one to exist. We are required rather to formulate principles that can be publicly applied and appealed to by practically feasible governing bodies. In the “world as we see it,” (LP, p.83) separate and independent peoples represented by governing states are, and will continue to be, the basis for social cooperation. Rawls need not deny that other governing institutions are possible that may someday replace the independent nation-state. But in the absence of an outline of what these institutions are and how they interrelate and are to remain stable in perpetuity, it is futile to seek public principles of justice that apply to and which are to be applied by them.

Rawls’s critics often rely upon the fact of gross inequality and world poverty to argue for a global distribution principle (see Pogge, Tan (2), pp.34-35, etc.) World poverty is certainly a problem of justice, for it is largely due to the great injustice that currently exists in many people’s governments and in world economic relations. But on Rawls’s account it is an injustice that is to be addressed by the duty of assistance, by preventing the unfair exploitation of a people’s resources by other nations and international business, and by requiring corrupt governments to respect human rights and satisfy the basic needs and promote the good of their members. A global distribution principle is not needed to address the problem of severe global poverty, and indeed is an inappropriate remedy. For distributive justice applies among peoples whether or not they are poor. If some day all the peoples of the world had adequate income and wealth to enable their members to pursue their chosen way of life, global principles of distributive justice would still apply. This suggests that there must be some other argument for global principles of distributive justice. This is one reason, perhaps, that Rawls’s cosmopolitan critics find it
necessary to insist that there is global cooperation and a global basic structure on a par with social cooperation and the basic structure of society. They too appear to regard cooperation, at least of some kind and to some degree, as a condition of distributive justice.\(^{16}\)

Contrary to claims by some critics (Pogge et. al.) Rawls’s duty of assistance is not a charitable duty. Rather it is a duty of justice that well-ordered peoples owe to burdened peoples existing under unfavorable circumstances. It is as much a duty of justice as is the domestic duty to save for future generations. Similar to, and even prior to, the just savings principle, the duty of assistance to burdened peoples, to meet their basic needs, is to be satisfied before providing the least advantaged in one’s own society with their distributive shares under the difference principle. The precedence given to the duty of assistance indicates the priority Rawls gives to meeting basic human needs and human rights worldwide over providing distributive justice to the members of one’s own society.

(G) Many assertions of a global distribution principle appear to be based in a kind of egalitarianism that Rawls simply rejects. This is the kind of egalitarianism which says that equality (of resources, or of welfare, or perhaps of capabilities) is good for its own sake. Now taken strictly the idea that equality of resources is good for its own sake implies that, even if people equally endowed voluntarily decide to use their resources in ways that create great inequalities—suppose you save your earnings and I spend mine drinking expensive wines—there are considerations that speak in favor of restoring equal distribution—hence transferring part of

\(^{16}\) Some critics even seem to suggest that where mutually beneficial cooperation does not yet exist, we have a duty to cooperate with distant peoples, and bring them into global cooperative arrangements. See Beitz; Similarly K.C. Tan says in response to increasing globalization of the economy that we have a duty to create global institutions that global principles of distributive justice will apply to. Tan (2) at p. 34)
your savings to me so I can buy still more expensive wine. Most egalitarians, understandably, do not endorse this position. They claim, not that equal distributions per se are intrinsically good, but that what is desirable are equal distributions in so far as they are not the product of people’s free and informed choices (under appropriate conditions). The egalitarian position here is then one that seeks to equalize the products of fortune—“luck egalitarianism” as it has been called. So long as the relevant products of fortune have been equalized or neutralized (e.g., people have been compensated for misfortune), then inequalities in resources, welfare, capabilities—whatever the relevant good—are warranted, assuming they are based in people’s free and informed choices.

I suspect that luck egalitarianism drives many cosmopolitan and other calls for a global distribution principle. Whether or not this is so, luck egalitarianism is not Rawls’s position (in spite of widespread belief to the contrary). In fact he rejects both aspects of the view. (A) To begin with, justice does not require that we equalize or even neutralize the products of brute fortune (whether the products of social or natural endowments or just brute bad luck). Instead, social justice requires that society use these inevitable inequalities of chance so as to maximally benefit the least advantaged members of society. Moreover, (b) justice does not require that, once the products of fortune have been equalized, that just any distribution that results from people’s free choices is justified either. As Rawls says (in criticizing libertarianism): there is no guarantee that a series of free and informed decisions will result in a just distribution. This is true, even if we do (periodically) equalize people’s starting positions to take into account brute bad luck (which ordinary libertarianism does not do, but “equal libertarianism” seeks to do). Some people are going to make life decisions that leave them poorly situated, either irresponsibly because of imprudence, or because of social, political, and market developments (e.g. farriers in
the early part of the 20th century; or in the 1990's untenured political scientists specializing in Soviet-American relations). These choices are not a matter of indifference to distributive justice, and if people end up impoverished, society has a duty to respond.

Rawls then rejects the position that equal income and wealth are good for their own sake. (LP, cf. pp. 114-115) Equal respect for persons, equal basic liberties, equality of fair opportunities, equal worth of political rights and liberties—these equalities are good for their own sake, but not the equal distribution of income and wealth, or of welfare or opportunities for welfare, or of capabilities for functioning. For equality of these things for their own sake would require, other things being equal, making some worse off in these regards without improving anyone else’s situation. What would be the good or the point in that?

(H) Thomas Pogge contends that, in the matter of global distributive justice, Rawls’s Law of Peoples is subject to “libertarian rule-making” among peoples, where economic distributions among peoples are determined by negotiated treaties and trade agreements. “The economic order of Rawls’ utopia, then, is shaped by free bargaining, and thus reflects and thereby continuously enhances the advantaged position of the wealthier societies.” “What is missing is a principle that assesses the global economic order in terms of its distributive effects in the way Rawls’s own difference principle assesses the domestic economic order.”17

The references to “libertarian rule-making” and so on can be misleading. Trade agreements between peoples are not “free bargains” between self-interested economic agents, but political agreements among peoples’ representatives, each of whom has “due respect” for one another as an equal people. One has to be careful not to confuse agreements between peoples or

societies with bargains between individual economic agents, and draw the conclusion that, because economic relations between individuals in separate societies is regulated by trade agreements between their governments, final distributions to these and other individuals are also (therefore) determined by “free bargaining” and “libertarian rule making.” In “Rawls’ utopia” (Pogge) final distributions to individuals are not determined by libertarian free bargaining, but should in all cases to be determined by the difference principle. This is not altered by the fact that trade relations between peoples is decided by trade agreements among their governments, or that economic relations between economic agents in different societies may also be the result of free bargaining (subject to whatever constraints are imposed on them by international law or agreements between their peoples). For whatever individuals gain via international commerce is always subject to regulation/redistribution according to the difference principle, as it is applied within their own society.

If so, then what must be bothersome to Pogge is that the collective wealth controlled by some peoples enables their political representatives to impose on peoples who are collectively less wealthy, terms of trade that unfairly take advantage of their bargaining power. Of course this happens all the time in the world as we know it, where corporations exercise undue influence over their governments. But why should we expect the same political corruption to be the rule in Rawls’s well-ordered Society of Peoples? Pogge and others just assume that, because Rawls does not have a global distribution principle, then it must be the case that relations between more and less advantaged peoples will be exploitive of the less affluent.\footnote{See for example, Pogge, “Rawls on International Justice,” p. 251} This assumption is unwarranted in Rawls’s ideal case of well-ordered societies who are members of the Society of Peoples.
Again, Pogge says in ‘Priorities of Global Justice,’” “Like the existing global economic order, that of Rawls’s Society of Peoples is then shaped by free bargaining.” (p. 16).

Consequently,

“Rawls’s account of international justice renders all but invisible the question of whether the global economic order we currently impose is harming the poor by creating a headwind against economic development in the poorest and is therefore unjust.” (P.17) Underlying this is the idea that nothing in Rawls’s Law of Peoples prevents the current practice by “affluent and powerful societies” in imposing “a skewed global economic order that hampers the economic growth of poor societies and further weakens their bargaining power.” (Pp.16-17) Among the unjust exploitive practices Pogge says characterizing the current global economic order and which cause global poverty are (1) corporations’s bribery payments to corrupt officials in undeveloped nations, which are tolerated by those corporations’ home governments; (2) the “international resource privilege” which allows corrupt officials to sell off a poor nation’s resources to corporations in rich nations, thereby ransacking poor countries’ wealth; and (3) international borrowing by corrupt governments to support their corrupt regimes, which saddle poor nations with debts that endure long after corrupt governments have been replaced. Pogge clearly suggests that there is nothing in Rawls’s Law of Peoples that would prevent these and other exploitive practices which only contribute to the increasing level of poverty among the worst off in the world.

Pogge’s account of the extent of severe world poverty, the huge discrepancies in wealth between nations, and the very modest sacrifices that richer nations would need, but refuse, to make to help alleviate the worst global poverty, are sobering. But his arguments against Rawls
are misguided. To begin with, as Pogge recognizes, Rawls’s duty of assistance, requiring that richer peoples contribute to meet impoverished people’s basic needs, imposes stringent duties upon nations to alleviate the miseries of the status quo. But more to the point, Rawls recognizes the many injustices of the current global situation that Pogge points to, and he clearly rejects them. Indeed, he even says: “If a global principle of distributive justice for the Law of Peoples is meant to apply to our world at it is with its extreme injustices, crippling poverty, and inequalities, its appeal is understandable.” (LP, p. 117) This can be understood to imply that, as a transitional principle to establishing a well-ordered Society of Peoples, Rawls would support some sort of global distribution principle—if not the difference principle, then some other redistributive principle. (More on this momentarily.) But with respect to Pogge’s arguments, the corrupt governments Pogge cites are outlaw regimes; for even if they do respect human rights of their members (which is doubtful since they do not provide means of subsistence, LP, p.65), still they exploit their people and do not pursue anything resembling a common good conception of justice. As outlaws, they have no claim to be tolerated under the Law of Peoples, much less bargained with, and it would be wrong for well-ordered peoples to do anything to perpetuate them. On Rawls’s account, developed countries are not simply authorized, but would have a duty to prohibit their corporations from participation in exploitation of a burdened people. For surely if a government can sanction outlaw governments for abuse of their people and even intervene, it can also prevent its own domestic corporations from aiding and abetting outlaw governments’ exploitation of their people.

The problem with Pogge’s contention that the Law of Peoples does nothing to alleviate current global injustice is that, like so many criticisms of Rawls, it ignores the fact that the law of
peoples is drawn up for the ideal case of well-ordered societies and peoples. As Rawls maintains in the case of social justice, the transition principles that apply to the non-ideal case to bring about a well-ordered society often must go beyond the principles of justice, and by implication beyond the Law of Peoples, to establish remedial conditions that would not be appropriate in a well-ordered society. So just as Rawls might have supported as a provisional measure preferential treatment of minorities, though it infringes fair equality of opportunity, in order to remedy generations of pernicious discrimination against their class, so too, as Rawls’s statement above suggests, he could have supported as a temporary measure a global distribution principle, to rectify the history of exploitation, expropriation, and gross violation of human rights endured by burdened peoples around the world. But the important point is that such a global principle would be remedial, not permanent, for the reasons Rawls suggests: What are these reasons?

(J) Namely, that in well-ordered Society of Peoples, among Peoples each of whom are themselves internally well-ordered and pursue a common good conception that (because they are “well-ordered”) all of their members accept, there would be no cut-off point for transfers from more advantaged to less advantaged nations, even when the least advantaged are well-to-do. Rawls gives two examples (LP, pp.117-118): one is where a people in Society B freely chooses to remain “pastoral and leisurely” rather than industrialize; the other where Society B “because of its prevailing religious and social values, freely held by its women, does not reduce the rate of population growth and it remains rather high.” In both cases he says it would be “inappropriate” to redistribute wealth to B from a wealthier Society A that had deliberately undertaken industrial development or controlled its population in order to increase its wealth.

If it is held that, even though each person in Society B freely endorses the population
policies leading to a lesser standard of living, nonetheless there still should be a redistribution of wealth from Society A to B, then some sort of luck egalitarianism must be driving the position. Indeed, it may be that we then go even beyond luck egalitarianism to a position that says that, in matters of distributive justice, not only are people not to be held responsible for the luck affecting their future prospects (namely the relative diminished state of wealth and development in the society they are born into), but they are not even to be held responsible for the consequences of their preferences when in line with their society’s decisions. For in Rawls’s example, all members of Society B prefer to live in their Society with its increasing population and the cultural advantages this provides for them, to living in Society A with its restrained population policies and the greater wealth it enjoys. It is under these conditions, Rawls says, that it would be “inappropriate” to transfer wealth from A to B. To insist on the contrary that it is nonetheless fair seems to be a difficult if not untenable position.

It might be countered here that, in the absence of liberal institutions, people’s choices in support of society B’s common good conception and its resulting population policies cannot be truly voluntary. But that too is a difficult position to argue. (It implies, for example, that few individuals historically have made voluntary decisions). If the bar for voluntary responsible choice is raised that high, why stop there? After all, most people even in liberal societies do not engage in the critical reflection that liberal liberties allow, but follow convention or their peers. Why are their choices any more voluntary than the decisions of people in non-liberal decent societies who accept the commonly held view? This suggests that the direction of the objection inclines toward the position that full autonomy is a condition of voluntariness and responsibility—another difficult position to maintain.
Finally, nothing about Rawls’s examples strictly implies that Society B is not fairly wealthy or even a liberal society to begin with. It’s highly unlikely, of course, that in a liberal society all will endorse traditional population policies and the comprehensive doctrines behind them. But the force of Rawls’s example does not depend on the assumption that Society B is non-liberal. The question rather is, whether or not they live in a liberal or non-liberal decent society, and even if Society B is moderately wealthy, should there be a redistribution from Society A to B when all reasonable and rational inhabitants of B endorse the pastoral and population policies in place, or at least the social conception of justice and the conception of the good that led to their adoption? A negative response to that example is sufficient, it seems, to show that a global principle of distribution is not appropriate for the ideal case. And that is just Rawls’s argument. What that ideal case implies for our current situation, “with all its injustices,” is a separate issue, but it does speak against the cosmopolitan position favoring a global distributive principle in all cases.

(L) Finally, Cosmopolitans often contend that such Kantian ideas as “equal respect and concern for persons” (Tan), “respect for human dignity,” and “respect to humanity as such” (Nussbaum, FLC pp.13, 15) require a global distribution principle. Offhand it is hard to see why this must be so. Kant himself, though reputed by some to be a cosmopolitan (O’Neill), regarded national boundaries as morally significant and did not endorse a global distribution principle. Why is it not sufficient to show respect for persons as such, that we respect and enforce others’ human rights and take measures to make them effective? Why is Rawls’s duty of assistance requiring that peoples meet one another’s basic needs not adequate to this task? It begs the question to simply assert that those who do not endorse an egalitarian global distribution principle do not “take equality between persons as such to be of concern.” Given that so many current liberal
conceptions of domestic distributive justice are already based in or elucidate a conception of respect for persons (e.g. Rawls, Dworkin, Nagel, Ackerman, etc.), it is hard to know what to make of bald assertions that respect for persons implies a global distribution principle. At least we should be provided, for purposes of comparison, with an alternative systematic conception supporting a global distribution principle; and this we do not have yet. Cosmopolitan theory is as yet extremely under-theorized. It needs to get beyond the stage at which it seeks to show (futilely I believe) that Rawls’s own ideas commit him to a global distribution principle.

Finally, it is also said that views which reject a global distribution principle take the state, not the individual, as the basic moral unit. (Beitz; cf. Tan, Pp.35-38) But if as I’ve claimed on Rawls’s account that each state has a duty to domestically establish the difference principle, and each state has a duty to provide assistance to burdened peoples so that they can meet the basic needs of all their members, how is it that Rawls’s refusal to establish a global distribution principle implies that states, rather than individuals, are taken as the basic units for moral consideration? It cannot be because Rawls simply refuses to give liberal states the authority to require other peoples (liberal or decent) to domestically enforce the difference principle, or any other distribution principle.¹⁹ For that is simply a matter of the moral division of labor for Rawls, not an Hegelian endorsement of the state as a basic unit of moral consideration.

III. Problems with Globalizing the Difference Principle

¹⁹ Tan does recognize that accounts of social justice like Rawls’s do not have to be “statecentric.” “Methodological statism” he says holds that states are the units for distributive justice since this is the best way to insure equality between individuals globally. But he dismisses this approach since existing states have not gone in a more egalitarian direction, but rather inequalities have only increased. The problem here is that Tan’s appeal to the status quo, like Pogge’s, are not effective arguments against Rawls’s approach, which is ideal theory.
I cannot pretend in the confines of this paper to have fully vindicated Rawls’s position against a global distribution principle, or replied to the many powerful criticisms by Rawls’s cosmopolitan critics. For example, it is not easy to respond in such short order to Thomas Pogge’s argument that the parties to Rawls’s original position representing Peoples would choose a 1% global resources tax to benefit less advantaged peoples. To respond that Rawls sets up the original positions among liberal Peoples and among decent Peoples respectively in such a way that this question does not come up for consideration seems an unsatisfactory answer --though I believe this is true and is at least the beginning of the right answer. I think the main reason Pogge’s 1% (or more) global resource tax seems so intuitively attractive is due to both the severe poverty that so many people suffer, and to the many injustices that developed nations have and continue to impose upon poorer peoples. Wealthy peoples have much to answer for in the moral court of global public reason, and much damage to repair. In this regard, a resource tax may well be an appropriate means to help pay for the duty of assistance to burdened peoples, or to provide compensation or reparations for historical injustices advantaged peoples have done to disadvantaged peoples (ransacking their natural resources, supporting corrupt dictators, inciting or waging wars on their territories, enslaving their people, etc.) Perhaps a better test of Pogge’s proposal is to ask whether such a global resource tax would be appropriate under ideal conditions, in a well-ordered Society of Peoples, where all reparations have been paid, and all Peoples were fairly well-to-do. Or, would a permanent global distribution principle, or a global resource tax, be appropriate in the most ideal circumstances of a global Society of well-ordered liberal Peoples, all of whom domestically satisfy the difference principle? This most-ideal case goes beyond Rawls’s examples, discussed above, and in this case it seems even more inappropriate to enforce
a global distribution principle or even resource tax to supplement or replace each liberal society’s enforcement of the difference principle. No doubt many will think otherwise.

Even if a fuller case against a global distribution principle (or global resource tax) cannot be made here, I do think suggestions for a global difference principle can be dispatched. Beitz, Pogge, Barry, Tan, and many others have long advocated a global difference principle. But I believe that once we consider the kind of principle that the difference principle is, and what would be needed to globalize it, the proposal is not feasible, if it makes sense at all. So I will argue in this concluding section.

(B) What is often envisioned in arguments for a global difference principle is a reallocation of wealth, from wealthier to poorer societies, perhaps regularly at the end of a fixed term, and perhaps in a lump sum payment (though the reallocation of wealth need not be so simply conceived). Here we might imagine that allocations are made periodically, upon determination of the amount that is needed to make the globally least advantaged as well off as they can be, without jeopardizing global productive output.

The problem with this lump sum allocation model is that it is not Rawls’s difference principle. For, as we’ve seen, the difference principle does not apply to simply allocate existing sums of wealth without regard to how or by whom they are produced and their expectations. (Cf. TJ, pp. 64, 88) That is not its proper role. Rather it applies in the first instance to structure basic legal and economic institutions that enable individuals to exercise control over economic resources, as well as transfer and consume them. First and foremost among these basic institutions, of course, is the system of property, as specified by the complex system of rules regulating rights of acquisition, possession, use, control, transfer, and disposal of things, and
duties and liabilities attendant thereunto. Then there are other basic legal and economic institutions to which the difference principle applies—the law of contracts, negotiable instruments and other commercial documents, securities laws, corporate law, patents and copyrights, and the many other areas of legal design that makes a productive economy possible. Now the crucial point here is that the difference principle is not self-applying but is a political principle: it requires legislative, judicial, and executive agency and judgment for its application, interpretation, and enforcement. There is no invisible hand that gives rise to the myriad complexities of the basic institutions of property, contract law, commercial instruments, and so on. If political design of these and other basic economic and legal institutions is primarily what the difference principle is all about, and if distributions to particular individuals is to be left up to pure procedural justice once this design of the basic economic structure is in place, then there must exist political authority with legal jurisdiction, and political agents to fill these functions and positions. So in addition to complex economic practices and a legal system of property, commercial instruments, securities, etc., the difference principle requires for its application political authority with the normal powers of governments.

At the global level, there is no global political authority to apply the difference principle; nor is there a global legal system or global system of property to apply it to. So a global difference principle would be without both agency and object—no legal person to implement it, and no legal system to which it is applicable. In this regard, one can see why advocates of a global difference principle might conceive of it as an allocative principle. Their allocative model of the “global difference principle” is not a political principle that political agents need apply to any basic institutions or basic structure. Such a principle is not the difference principle, but is
something quite different.

(C) There may be several other ways to apply the difference principle globally than simply as a (re)allocative principle and still preserve some semblance of it as a political principle that applies to a basic structure. Consider “global difference principle #2,” which is the more modest proposal that, in the ideal case, the governments of the many different peoples of the world severally should apply the difference principle, in structuring their own basic institutions, with an eye towards advancing the position of the least advantaged, not in their own society, but in the world at large. This is a peculiar proposal, given the inevitable lack of coordination among the world’s governments in severally applying the difference principle in this way, and given also each society’s inability to directly influence the practices and laws of peoples where the world’s least advantaged reside. Any effort to apply the difference principle in this way seems guaranteed to leave them worse off than if governments followed some other policy.

The cosmopolitan proponent of the global difference principle may say. “What is important is not what principle governments directly apply, but the end result of making the least advantaged as well off as they can be. So governments should not directly appeal to the global difference principle, since obviously its direct application severally by many peoples will not have the intended effect. They should observe a method of indirection, applying whatever policies make their own economy prosperous. Whatever principles or combination of principles they severally follow that maximally benefit the world’s least advantaged is the best.” Let’s call this indirect position “global difference principle #3.” It is compatible with a global economy where each nation applies Rawls’s domestic difference principle, just as he advocates, to maximally benefit the least advantaged in their own society. (Then too, it is potentially
compatible with any number and combination of economic principles and policies observed by nations.)

It may well be that the domestic application of the difference principle in every society in the world would have the effect of maximally benefitting both the least advantaged in each society (by comparison with other domestic principles) and also at the same time the least advantaged in the world. The best way to maximally benefit the world’s poorest would then be for each people to focus on its own members and maximize the position of the poorest in their own societies. This would be an interesting coincidence, indeed ironical perhaps from both the cosmopolitan and Rawls’s points of view. But why would we call this eventuality the “application” of a “global difference principle” when no such global principle is directly applied by anyone? What we have instead is the application of Rawls’s domestic difference principle in every society worldwide, with the coincidental effect of maximally benefitting the world’s least advantaged. But since this effect is coincidental, and “global difference principle #3” is not publicly known or applied in any legislative or other public deliberations, it is not a public political principle of justice. Since it does not effectively guide anyone’s reasoning or deliberations, it is not clear why we should call it a “principle” at all. To emphasize this point, what if (contrary to evidence) the best way to maximally benefit the world’s poorest at the moment just happened to be that each nation observe the classical liberal laissez-faire policies advocated by the IMF and current U.S. policy. Would we then say that each nation was applying the global difference principle? Whatever the case, not being a public political principle, global difference principle #3 also has little to do with Rawls’s difference principle.

Finally, “global difference principle #4”: It has been suggested (by Pogge) that the
difference principle should apply, not to all economic institutions worldwide, or to the total product of all world economies, but to global institutions (lending policies, trade agreements, etc.) and the marginal product that is the result of economic cooperation among peoples. (One example, assuming that annually 15-17% of the U.S. wealth stems from global trade, this percentage of our GNP should somehow be applied to maximally benefit the world’s least advantaged.) But of course, this is not the difference principle either, for it does not apply the difference principle broadly to structure all economic institutions and property relations, but either uses it simply to allocate the marginal product of global economic cooperation (“to each so as to maximize the welfare or share of the least advantaged”); or it applies the difference principle narrowly to structure certain specific procedures (e.g. loan policies should be arranged to maximally benefit the poorest nations.) It is questionable whether or how much this piecemeal application of the difference principle will actually improve the situation of the worst off in the world all things considered, not to mention make them as well off as they can be. (Granted, this would seem to be an empirical issue.) In any case, this piecemeal difference principle, since it applies to but a marginal portion of the world’s wealth, seems little more than an afterthought to Rawls’s position. It abandons the basic cosmopolitan position that distributive justice should be globally, not domestically, determined.

(D) I have argued that, in the absence of basic global institutions--a world state, a world legal system with comprehensive jurisdiction, a unified global property system, and so on--a “global difference principle” (particularly one that simply reallocates to the world’s poorest, after the fact, existing sums of produced wealth) is not even a shadow of its domestic self. But there are even more formidable disanalogies between Rawls’s domestic difference principle and a global
difference principle. To begin with, Rawls’s arguments for the difference principle rely upon a robust idea of social cooperation and of reciprocity among the members of a democratic society. “Democratic Equality” (TJ, sect. 13) and a “property owning democracy” (TJ sect. 42) are the labels he uses for the economic system structured by the difference principle and fair equality of opportunity. Democratic social and political cooperation does not exist at the global level, and never will. The natural question regarding a global difference principle then is: Even if we agree that there is some kind of global distribution principle, why should it be the difference principle? Outside the confines of a democratic society, Rawls’s arguments for the difference principle do not travel well when considered from the perspective of a global original position. But if the argument from democratic reciprocity cannot be relied on, what then could be the argument for a global difference principle?

More to the point, Rawls envisions the difference principle to structure property institutions so as to encourage (when conjoined with fair equality of opportunities) widespread ownership and control of the means of production, either in a “property-owning democracy” or a liberal socialist economy.

“The intent is not simply to assist those who lose out through accident or misfortune (although that must be done), but rather to put all citizens in a position to manage their own affairs on a footing of a suitable degree of social and political cooperation. . . . The least advantaged are not, if all goes well, the unfortunate and unlucky—objects 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. (Restatement, p.139)
Like J.S. Mill, Rawls believed that for workers to have only the real option of a wage relationship with capitalist employers undermines individuals’ freedom and independence, blunts their characters and imaginations, diminishes mutual respect among income classes, and leads to the eventual loss of self-respect among working people. For this and other reasons Rawls was attracted by such ideas as a “share economy” (where workers have part ownership of private capital), workers’ cooperatives, public provision of capital to encourage workers in becoming independent economic agents or to start up small businesses, and other measures for the widespread distribution of control of means of production.\(^\text{20}\)

Since it does not apply to any substantial basic structure to shape property and other economic relations, and is not conjoined with a principle of fair equal opportunities, the allocative model of the global difference principle can do little to further these aims. This is not to say that the difference principle, when applied domestically, does not also have an allocative role (primarily in the form of living subsidies for workers who earn too little for economic independence). But the difference principle (1) is not an instrument for alleviating poverty or misfortune (though it does incidentally do that); nor (2) is its purpose to assist those with special needs or handicaps, or (3) compensate the unfortunate for bad luck, natural inequalities and other accidents of fortune. Regarding poverty, (1) any number of principles, domestic and global, can provide a decent social or global minimum and serve the role of poverty alleviation. There is no need to appeal to a dysfunctional “global difference principle” for that purpose. Rawls’s duty of assistance to meet basic needs is already sufficient to serve that role.

As for (2) assisting those with handicaps or special needs, in the domestic case Rawls

\(^{20}\) See for example, *Restatement*, p.176, where Rawls endorses Mill’s idea of worker-owned cooperatives as part of a property-owning democracy.
envisions other principles to be decided at the legislative stage to serve this role, based in considerations of assistance and mutual aid similar to those leading to the global duty of assistance. (Cf. The natural duty of mutual aid.) Here objections by Sen, Nussbaum and others—that Rawls misdefines the least advantaged and does not take into account the needs of the handicapped in his account of distributive justice—simply misconceive the role of the difference principle in structuring production relations and property systems among free and equal democratic citizens. To oversimplify perhaps, the difference principle focuses initially on the side of production, not consumption. It is because of Rawls’s focus on cooperation in the production of wealth among members of a democratic society that he is able to insist upon reciprocity in its final distribution, as specified by the difference principle. As a principle of reciprocity, the difference principle is not suited to deal with problems of meeting people’s special needs. We could always spend more upon those who are especially handicapped, and to apply the difference principle to their circumstances would severely limit if not eliminate the share that goes to the economically least advantaged (those at the minimum wage) and who make a contribution to production.

Finally, regarding (3), Rawls says, “the difference principle is not of course the principle of redress; it does not require society to try to even out handicaps as if all were expected to compete on a fair basis in the same race.” (TJ, p. 86 rev.) Rawls implies that “luck egalitarianism” by itself, taken as a complete conception of distributive justice, is implausible, for it does not take into account measures needed to advance the common good, or to improve standards of living on average or for the less advantaged. “It is plausible as most such principles
are as a prima facie principle.” (Id.)

The general point then is that Rawls does not regard distributive justice in an alleviatory manner; rather he transforms the issue from a narrow question of allocation of a fixed product of wealth to address a larger set of issues. Distributive justice is made part of the larger question about how to fairly structure economic and property relations among productive, socially cooperative agents, who regard themselves as free and equal, and each of whom does his or her fair share in creating the social product. Rawls in effect incorporates the question of distributive justice into the tradition of Mill and Marx, where the primary focus is on how to fairly structure production relations in a way that affirms the dignity, freedom, and equality of socially productive agents. The robust conception of reciprocity implicit in the difference principle is a response to this general issue. It is not the proper response to the problem of global poverty, or to other alleviatory issues mentioned (meeting handicaps and special needs, redressing misfortune, etc.) These are specific problems to address in non-ideal theory, by reference to moral duties of assistance, mutual aid, and so on, and are to be determined by citizens’ democratic deliberations, on the basis of their knowledge of available resources once demands of distributive justice are in place and satisfied. These alleviatory problems of non-ideal theory raise separate issues than the question of ideal theory of determining appropriate standards for just distributions among socially productive democratic citizens who are cooperative members of a

---


22 Cf.Rawls’s claim: “We reject the idea of allocative justice as incompatible with the fundamental idea by which justice as fairness is organized: the idea of society as a fair system of social cooperation over time. *Citizens are seen as cooperating to produce the social resources on which their claims are made.*” *(Justice as Fairness*, p.50)
well-ordered society.

IV. Conclusion

There may be other reasons why Rawls provides distributive justice with a social, rather than a global, reference point. I have not sought to connect the social bases of distributive justice with Rawls’s all-too-brief remarks regarding the good of participation in the civic and public life of one’s culture. (PL, p.61) The question of the importance of national culture to an individual’s good and his or her “identity” has been discussed in detail by others. (Kymlicka, D. Miller, etc.) My own view is that this is not of that much importance to Rawls’s account of social justice and the social grounding of distributive justice. Instead I have argued that the main reasons for Rawls’s social grounding of distributive justice are political and institutional— they concern the social conditions of the possibility of the creation, distribution, and enjoyment of income and wealth, particularly in a democratic society. That is to say, distributive justice is not a simple question of allocating a fix sum of wealth according to some division principle and without regard to how it is created. Nor is it a problem of alleviating poverty, handicaps, or brute bad luck. These are surely problems of justice, and must be addressed by any society, democratic or otherwise, and in some cases addressed internationally by the Society of Peoples. But they are not problems of distributive justice, as Rawls conceives it.

Instead distributive justice is a question of (1) social cooperation (2) among free and equal persons. (1) This means (as discussed in Section II), first, that distributive justice ultimately concerns the design and maintenance of basic social institutions that make social cooperation possible. Primary among these institutions are those required for the production, transfer, and
consumption of income and wealth. The design and sustaining of these basic economic and legal institutions (property, economic norms and relations, etc.) is a problem for political cooperation. Basic political institutions, including the constitution and the legal system it supports, are domestic, not global, institutions.

(2) If it still be asked why domestic political structuring of the basic institutions that make social and economic cooperation possible should imply that these institutions be designed so that they distribute income and wealth domestically rather than globally, the response must be (as alluded to in Section III): Just as distributive justice is not a matter of equalizing the effects of chance domestically, it is not a matter of globally equalizing the accident of what society a person is born into. Rather it involves the task of providing reasonable terms of social cooperation among free and equal persons, on a basis of reciprocity and mutual respect. Free and equal persons are conceived as socially productive and politically cooperative citizens, each of whom does their fair part in contributing to economic and political life. It is not reasonable, and there is no reciprocity involved in structuring social and political relations among democratic citizens so as meet the requirements of a global distribution principle. It is this idea of social cooperation among free and equal persons on a basis of reciprocity and mutual respect that supplies the argument for the difference principle, which is the appropriate global standard for distributive justice that internally applies within each society in the world.