

THE INTERNAL-RAWLSIAN UNSUSTAINABILITY OF RAWLS'S DUTY OF ASSISTANCE

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ABSTRACT

Philosophers interested in John Rawls's international political theorizing have paid considerable attention to the duty of assistance as a key notion of his Law of Peoples. However, in focusing on contentious-theoretical and practical implications of this duty, they have not thoroughly examined the more immediate question of whether this duty is sustainable from the perspective of Rawls's Law of Peoples itself. The thesis of the present article is that Rawls's duty of assistance is internally unsustainable, as it cannot be adequately justified from within his Law of Peoples. A threefold argument is developed. First, Rawls's own explanation of the duty of assistance within the Law of Peoples is unclear and confusing. Second, others' 'Rawlsian' ideal-theoretical and non-ideal-theoretical attempts to justify the duty of assistance probably inevitably fail. Third, Rawls's Law of Peoples leads to skepticism about the duty of assistance's applicability to the non-ideal world. The article concludes that at most a principle of corrective justice in ideal theory combined with a right of assistance and an ad hoc duty of corrective justice in non-ideal theory is maintainable within the Law of Peoples.

KEYWORDS

Duty of assistance, global justice, John Rawls, law of peoples.

1. INTRODUCTION

Contemporary international political theory has surely confirmed John Rawls's diagnosis that the eighth principle of his Law of Peoples 'is especially controversial' (Rawls 1999: 37 n. 43). This principle, which Rawls (1999: 84-85) valued highly (cf. Reidy 2007: 199-201), states that '[p]eoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime' (Rawls 1999: 37). Whereas his earliest set of international principles matched international law's core elements (Rawls

[1971] 1999: 331-335), '[t]he duty of assistance is Rawls's greatest divergence from...today's international law' (Wenar 2017). This 'progressive' duty seems to require rich countries to address global poverty much more actively and financially support poor states far more generously than they have done so far (Beitz 2000: 672, 694; Neufeld 2011: 29; Wenar 2017).

The controversy about Rawls's duty has mostly involved various 'non-immediate' issues: more indirect issues that affect the moral-theoretical framework underlying the duty and more outward ones that concern the duty's practical value. The key indirect issue has concerned Rawls's choice for a second, international original position of peoples separate from his first, domestic original position of individual persons, with an international duty of assistance as a result (Rawls 1999, [1971] 1999). 'Cosmopolitans' have insisted on a single persons-populated global original position and, consequently, a global, not just domestic, egalitarian principle of distributive justice as more Rawlsian-liberal in a politically-economically globalized world (Beitz [1979] 1999; Pogge 1989, cf. 2004: 261; Moellendorf 2002). Rawls (1999: 82-83, 115-120), however, has resolutely opposed this alteration of his theory, regarding a single global original position as basically intolerant towards non-liberal political collectivities - which, like liberal peoples, could (and, in case of 'decent' societies, do) have independent moral value - and the consequent, more radical principle of global (re)distribution as unjustly egalitarian. Moreover, other philosophers have defended the Rawlsian-ness of Rawls's choice for a two-level original position structure and subsequent rejection of a global principle of distributive justice against the cosmopolitans by also pointing to the continued absence of a global cooperative society or global liberal-democratic people (Reidy 2004, 2007; Kamminga 2006; Martin 2015; cf. Opeskin 1996). Indeed, a so controversial, if not discredited, cosmopolitan original position would take us outside the Law of Peoples as a 'realistically utopian' Rawlsian theory (cf. Williams 2014). It offers insufficient reason for believing that Rawls's duty of assistance may not be tenable.

The more outward issues surrounding Rawls's duty of assistance - with cosmopolitans and various others as Rawls-critics - have involved the sufficiency or demandingness as well as the feasibility and effectiveness of the duty in tackling global inequality, poverty, and climate change, the extent of societies' self-responsibility, the fulfilment of human rights within societies, and the appropriateness of striving for societies' political-cultural and institutional democratization (cf. Beitz 2000: 689-694; Armstrong 2009; Kenahan 2015; Brown 2015: 184-204; Maffettone 2017). Such debates make real sense only if it may be assumed that Rawls's duty of assistance is somehow justifiable within his Law of Peoples itself. However, while Rawls, who made a decades-long

journey towards the duty of assistance, acknowledges that the duty's nature is controversial and concedes that the basis for it is less firm than the other seven principles of his international theory (Neufeld 2011: 27), remarkably little scholarly attention has been given to this more immediate issue of the duty of assistance's tenability within his Law of Peoples (though see Beitz 2000: 688-689; Pogge 2004: 260-261; Williams 2011: 71-74, 81-89, 2014: 336-337). The cosmopolitan original position argument being dubious does not settle the matter, because that offers merely indirect support: it cannot say whether subsequent, more direct arguments for the duty of assistance are plausible. Thus, a fuller analysis of the internal-Rawlsian basis of the duty of assistance, more so than has been provided so far (as should become clearer below), is called for.

In this article, my thesis is that Rawls's duty of assistance principle is internally unsustainable, since it cannot be adequately justified from within his Law of Peoples.¹ Indeed, I suggest that the very addition of a duty of assistance has been a hasty, intuitive expression of Rawls's desire to rescue the Law of Peoples as international translation of his domestic theory of justice by trying to pacify his early cosmopolitan critics who were surely right to identify the moral relevance of the enormous scale of global poverty (Beitz [1979] 1999; Pogge 1994).

I will develop a threefold argument for my thesis. First, Rawls's own explanation of the duty of assistance within the Law of Peoples is unclear and confusing overall. Eager to show that his own theory thus does include a suitable response to global misery, Rawls's prime concern seems to have been merely to safeguard his two-level political theory against cosmopolitan criticism. Second, the 'Rawlsian' ideal-theoretical and non-ideal-theoretical attempts of other philosophers to justify the duty of assistance have not been, and probably could not have been, successful. Third, Rawls's Law of Peoples results into skepticism about the duty of assistance's applicability to the non-ideal world. The article concludes that, instead of a duty of assistance, at most a principle of corrective justice in ideal theory combined with a right of assistance and an ad hoc duty of corrective justice in non-ideal theory is justifiable within the Law of Peoples. If my argument will be correct, those who share the intuition that some

¹ If successful, my argument would hold even more strongly against more egalitarian principles of justice defended on internal-Rawlsian grounds (cf. Pogge 1994; Moellendorf 2002: 13) and applied globally. But such distributive principles seem implausible anyway: while the persons of Rawls's domestic original position need economic cooperation to safeguard their basic interests, the (self-sufficient) peoples of his international original position do not (cf. Reidy 2007: 211-212).

duty of foreign assistance exists in our world of massive poverty will have to seek elsewhere for a rational-theoretical underpinning.

2. RAWLS'S OWN DEFECTIVE EXPLANATION OF THE DUTY OF ASSISTANCE

My first argument is that Rawls's own explicit explanation of the duty of assistance within the Law of Peoples is unclear and confusing overall. My reconstruction of the duty of assistance will suggest that protecting his two-level liberal theory against cosmopolitanism has mattered more to Rawls than showing the duty to be a natural implication of his Law of Peoples.

In his 1993 article on the Law of Peoples, Rawls (1993: 46) does not include the duty of assistance as a principle of ideal theory, thus limiting his set of principles that should guide conduct among peoples to seven. Now the notion of 'duties of assistance' is already there (Rawls 1993: 47; cf. Rawls 1999: 38), and so is the claim that the representatives of decent (tolerable) peoples 'care about the benefits of trade and assistance between peoples in time of need' (1993: 53-54; cf. 1999: 69). Yet Rawls (1993: 62-64) presents the duty of assistance only as part of non-ideal theory, stating that 'the goal specified by non-ideal theory for the case of unfavorable conditions [is that] eventually each society now burdened by unfavorable conditions is to be raised to, or assisted towards, conditions that make a well-ordered society possible' (Rawls 1993: 62). Against cosmopolitan critics, he defends peoples' duty to assist:

Even though no liberal principle of distributive justice would be adopted for dealing with unfavorable conditions, that certainly does not mean that the well-ordered and wealthier societies have no duties and obligations to societies burdened by such conditions. For the ideal conception of the society of peoples that well-ordered societies affirm directs that all societies are in due course to reach, or to be assisted to, the conditions that make a well-ordered society possible (Rawls 1993: 63, cf. 64 n. 51).

However, while it is clear that, for Rawls, 'the basis of the duty of assistance is not some liberal principle of distributive justice', what remains less clear is why 'the ideal conception of the society of peoples itself as consisting of well-ordered societies' (1993: 63) requires nothing less than a *duty*. Thus, in the 1993 version, the duty of assistance, apart from not being elevated to a Law of Peoples principle, is not given a satisfactory, direct explanation.

In his 1999, final version of the Law of Peoples, Rawls continues to treat the duty of assistance as the kind of non-ideal theory that tackles unfavorable conditions, stating early on:

[W]e must ask how far liberal or decent peoples owe a duty of assistance to [burdened] societies so that the latter may establish their own reasonably just or decent institutions. The aim of the Law of Peoples would be fully achieved when all societies have been able to establish either a liberal or a decent regime (Rawls 1999: 5).

Rawls now also introduces the duty of assistance as ideal theory's eighth principle. To requote: 'Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime' (Rawls 1999: 37).

However, Rawls's new, remarkable principle is confusing, if not worse, because it suggests that 'peoples' can be burdened (although the word 'burdened' is not included) and should then be assisted (cf. 1999: 85), whereas his overall international theory holds peoples to *have* just or decent regimes and *be* non-burdened. In fact, Rawls (1999: 37 n. 43, 43, 105-120) again chooses to discuss the duty of assistance mostly in the part on non-ideal theory, as he emphasizes that 'the "duty of assistance" applies only to the duty that liberal and decent peoples have to assist *burdened* societies' (Rawls 1999: 43 n. 53, emphasis in original).² Now in mentioning 'peoples' rather than 'societies' in his eighth principle Rawls probably means what he writes, even if confusingly so, because he is discussing ideal theory. Yet, while it is natural to think that Rawlsian peoples should assist one another in need (Pogge 2004: 260) and will accept provisions for this (Rawls 1999: 38), it remains odd to phrase this in terms of a duty of assistance, when that duty is primarily meant towards burdened societies.

Rawls reintroduces the duty of assistance in his ideal-theoretical treatment of 'cooperative organizations'. First he explains these organizations, which include only (liberal or decent) peoples (Rawls 1999: 25), by stating that the peoples-representing 'parties will formulate [additional] guidelines for setting up cooperative organizations and agree to standards of fairness for trade as well as certain provisions for mutual assistance' (Rawls 1999: 42, cf. 115). Next he postulates three such organizations: one directed at fair trade, another occupied with cooperative banking, and a third to safeguard global peace and security (Rawls 1999: 42). Then Rawls defends the 'corrective' role of the duty of assistance for these ideal organizations, notably fair trade ones: 'Should these organizations have unjustified distributive effects between peoples, these would have to be corrected, and taken into account by the duty of assistance' (1999: 43, cf. 115 and 19, 36, 38, 41, 46, 84, 86, cf. 70, 112-113).

² To speak of Rawlsian 'burdened peoples' as some theorists do (e.g., Wenar 2017), is to employ a misnomer never used by Rawls himself yet one for which he is somewhat to blame.

However, Rawls's use of the duty of assistance as a principle for cooperative organizations of peoples is confusing besides presumably intentional again. It seems intentional, for if he felt that the duty applied to *burdened societies* only, he would not explicitly rely on it for the purpose of compensating disadvantaged *peoples* in case of 'unjustified distributive effects' from cooperation (Rawls 1999: 43, 115). Apparently, what Rawls (1999: 43) holds is that 'all well-ordered peoples must refrain from acting, whether individually or through their voluntary associations, in ways certainly or likely to disable any people from...remaining well-ordered' (Reidy 2004: 314). Nevertheless, for two reasons at least, it remains puzzling why Rawls (1999: 43) invokes the duty of assistance in this context.

First, it is unclear why, as Rawls suggests, 'correction' should occur only when cooperation results in peoples facing the threat of relapsing into burdened-ness. Apparently, only such effects could count as 'unjustified', since invoking the duty of assistance would make no sense if this is not what Rawls means. Yet it is not obvious why less undesirable effects of cooperation would need no correction. Indeed, Rawls fails to clarify the baseline for indicating 'unjustified distributive effects' (Beitz 2005: 21 n. 21; Pogge 2004: 282).

Second, more seriously still, Rawls here mixes up the duty of assistance with a duty of corrective justice. Not only are these two very different principles, but also is the latter more appropriate here, and within ideal theory more generally, than the former, which could probably better have been saved (if at all) for non-ideal theory only (like in the 1993 account). Thus, Rawls overloads his duty of assistance by including 'correction' besides 'assistance'. Whereas the duty of assistance seems a 'positive' duty (helping others because of their being in independent need) and is clearly understood this way by Rawls (1993, 1999) elsewhere in the Law of Peoples, corrective justice is 'negative' duty-generated for assuming a relationship in need of rectification for harm done (cf. Opeskin 1996; Pogge 2004). While Rawls conflates the two as applied here, he nowhere defends the duty of assistance in terms of rectification. Obviously, he does not wish to restrict the scope of the duty of assistance to the Society of Peoples with its organizations, since then it could have no relevance for conduct towards 'outside' societies.

In the part on non-ideal theory, Rawls fleshes out his duty of assistance, but treating it, as earlier, as a duty owed to burdened societies only:

Burdened societies...lack the political and cultural traditions, the human capital and know-how, and, often, the material and technological resources needed to be well-ordered. The long-term goal of (relatively) well-ordered societies should be to bring burdened societies, like outlaw states, into the Society of well-ordered

Peoples. Well-ordered peoples have a *duty* to assist burdened societies...Only burdened societies need help (Rawls 1999: 106, emphasis in original).

The duty of assistance, Rawls holds, has three guidelines. First, since a well-ordered society need not be wealthy (Rawls 1999: 106), analogous to the domestic 'duty of just savings',

the aim is to realize and preserve just (or decent) institutions, and not simply to increase, much less to maximize indefinitely, the average level of wealth, or the wealth of any society or any particular class in society. In these respects the duty of assistance and the duty of just savings express the same underlying idea (Rawls 1999: 107)

Second, whereas well-orderedness depends on political culture rather than natural factors, 'there is no recipe, certainly no easy recipe, for well-ordered peoples to help a burdened society to change its political and social culture' (Rawls 1999: 108). The difference is made by virtues such as probity, industriousness, innovativeness, cooperative talents, and also by controlled population policy, attentiveness to human rights, and creation of gender equality (Rawls 1999: 108-111).³ Thus, 'throwing funds' will not work (Rawls 1999: 110).

Third, 'its aim [being] to help burdened societies to be able to manage their own affairs reasonably and rationally and eventually to become members of the Society of well-ordered Peoples' (Rawls 1999: 111, cf. 111-115), as a principle of 'transition' like the just savings duty the duty of assistance has a 'target' and a 'cutoff point' - much more obviously so than cosmopolitan principles of egalitarian distributive justice (Rawls 1999: 106, 117-120):

The...duty of assistance...is a principle of *transition*, [like] the principle of real saving over time in domestic society...[R]eal saving is meant to lay the foundation for a just basic structure of society, at which point it may cease. In the society of the Law of Peoples the duty of assistance holds until all societies have achieved just liberal or decent basic institutions. Both the duty of real saving and the duty of assistance are defined by a *target* beyond which they no longer hold...[The latter] has also...a cutoff point, since for each burdened society the principle ceases to apply once the target is reached (Rawls 1999: 118-119, emphases in original).

However, Rawls again fails to offer an adequately immediate explanation for his duty of assistance. Certainly, his three guidelines, which indicate the

³ While Rawls's duty of assistance's second guideline defends the promotion of human rights (Rawls 1999: 108-111, cf. 48 n. 59), Martin (2015: 745-746) seems wrong to think that a *separate* Rawlsian duty to fulfill the right to subsistence in burdened societies exists.

analogy with the duty of just savings and specify the aim of assistance, the importance of political culture, and the focus and limits of assistance, do much to demarcate it. Yet, not only do these guidelines not clearly explain the duty of assistance as a *duty*, but also do they seem to function primarily to make the duty of assistance more realistic and acceptable than cosmopolitan egalitarian justice. Thus, Rawls explains the duty of assistance in a ‘relative’, thus non-direct, sense at best.

Still, Rawls’s only explanation of the duty of assistance that could count as an attempt at justification - and perhaps added in 1999 for that reason - is the duty of just savings analogy (Rawls 1999: 106-107): as we saw, the two duties supposedly share ‘the same underlying idea’. However, the analogy between ‘intergenerational’ just savings and ‘international’ assistance is strained on Rawls’s own terms, because in domestic society - which is the object of a ‘proper patriotism’ (Rawls 1999: 44, 62, 111-112) - the duty operates within a people including their own descendants (*their* children, with whom the present generation is directly connected), whereas internationally it would apply between groups of ‘strangers’ who each are self-responsible in principle (against Williams 2011: 84-85, cf. 86-88). Rather, this more intuitive justification, while not strong enough to sustain an international duty as such, is merely sufficient for the duty of assistance to have a cutoff point, like the duty of just savings.

Overall, Rawls’s presentation of the duty of assistance betrays insecurity about the duty’s adequacy. Rather than providing an ‘argument for the duty of assistance analogous to the argument for a distributive principle in domestic society’ (Beitz 2000: 689),⁴ Rawls tries to protect his originally domestic theory against cosmopolitan reformulations by explaining the sensibleness of his peoples’ duty *against* cosmopolitan justice.

3. THE FAILURE OF OTHERS’ ‘RAWLSIAN’ ATTEMPTS TO JUSTIFY THE DUTY OF ASSISTANCE

Having argued that Rawls’s eventual choice to include the duty of assistance in his list of international principles is troubling, I now turn to the ‘Rawlsian’ ideal-theoretical and non-ideal-theoretical efforts of other philosophers to justify this duty. However, second, I argue that these attempts fail, and probably inevitably so. I start with non-ideal theory.

⁴ As Beitz adds, ‘there is no suggestion, for example, that the international distribution of natural resources is unfair or that the circumstances of an individual’s birth...are in any ethically significant sense arbitrary’ (2000: 689).

Rawls-adherents David Reidy (2004: 314 n. 10, 2007: 195 n. 3, 231) and Rex Martin (2015: 748-749) have argued that Rawls's non-ideal theory needs a principle of corrective, or rectificatory, justice for addressing historical injustices such as (the legacy of) colonialism or imperialism. In his attempt to defend Rawls, Reidy (2007: 198-199) has even suggested that the duty of assistance could be justified as a duty of corrective justice in the real world of today. Note that, by itself, Rawls's own belief that wealth and poverty are mainly determined by internal-cultural factors (Rawls 1999: 108, 117) offers insufficient ground for averting Reidy's and Martin's claims. This non-ideal theory underlying, empirical dispute - the effects of colonialism or imperialism as opposed to the role of political culture - cannot be settled by simply siding with Rawls, who nowhere mentions any need for corrective justice between peoples and burdened societies as rectification of past wrongs.

Yet the above line of reasoning cannot save Rawls's duty of assistance due to conceptual and empirical problems. Obviously, this attempt would not solve the problem identified earlier regarding ideal-theoretical cooperative organizations among peoples, but one could also not plausibly defend the duty of assistance as based on a principle of rectificatory justice in non-ideal theory. First, the mixing up of negative and positive duties as noted in the previous section would then simply be extended beyond ideal theory to non-ideal theory. Second, corrective justice is a particular, case-by-case principle that is extremely hard to apply and does not fit the Law of Peoples's universal aim (Rawls 1999: 85-86, 121-122). As Brian Opeskin (1996: 22, 26-28) points out, corrective justice is merely applicable in defined circumstances and therefore no general solution for poor countries, since plausible claims for corrective justice require the wrong to be recent and the injury to be reliably quantifiable. Various difficulties exist, such as the reliance on a - highly speculative and hardly objective - counter-historical assessment of colonized societies' non-colonial developmental paths in order to establish the harm done, the absence of a clear causal relationship between being colonized and being (relatively) poor, and the uncomfortable finding that colonization often also conferred educational, economic, technological, legal, and infrastructural benefits on the local population (Opeskin 1996: 34-35). And third, since corrective justice merely requires rectifying past wrongs, peoples responsible for colonialism or imperialism could compensate the - adequately quantified - harm done by making a single full payment, or perhaps a few partial payments, to the burdened societies affected, irrespective of whether or not this helps to establish these societies' well-orderedness. Thus, Reidy and Martin seem right only to the extent that a colonialism- or imperialism-based duty of corrective justice may be of supplementary value. Since the duty of assistance must be kept apart from

corrective justice, conceptually and probably also empirically (cf. Martin 2015: 749; against Williams 2011: 78, 139-140, 154), a separate justification for it remains necessary. The above sympathetic critique cannot support Rawls's own duty and is of casual non-ideal-theoretical value at best.

Ideal-theoretically, the basic problem is whether peoples could have duties to societies not represented in the international original position. Now, as Pietro Maffettone notes, the recent literature about what could justify the duty of assistance regards it as 'the result of an assurance problem based on the possibility that a well-ordered people might become a burdened society through no fault of its own' (2017: 355 n. 3; cf. Reidy 2007; Williams 2011; Kenehan 2013: 316-317). This way, the duty of assistance principle would protect peoples from relapsing into burdened societies. Thus, Reidy defends the duty of assistance as ideal theory-based and non-ideal theory-extended:

It would be rational for agents [representing well-ordered peoples in an international original position] to agree to a *mutual insurance policy* guaranteeing coverage to any burdened society so long as there is no clear and compelling historical evidence of its political responsibility for self-inflicted wounds. If this is right, then Rawls's duty of assistance...has a sound justification within ideal theory and is naturally extended to the conditions of nonideal theory with just the implications Rawls suggests: well-ordered peoples today owe aid and assistance to most, if not all, presently burdened societies (Reidy 2007: 198-199, emphasis added).

Huw Lloyd Williams offers a justification comparable to, yet more basic than, Reidy's:

[B]urdened societies are regarded as exempt from the international original position given their reduced capability, but their interests are nevertheless served by representatives of other peoples who know they might befall the same fate, and are concerned to include *provisions for mutual assistance*. The fact that burdened societies are not party to the original agreement does not seem to me to be good grounds on which to deny that a duty of justice applies to them (Williams 2011: 88, emphasis added).

However, the 'assurance problem' solution fails due to various reasons. First, Rawls himself does not claim his duty of assistance to be something like an 'assurance problem', which is expectable actually since the duty of assistance is a duty to help *already* burdened societies and the ideal-theoretical eighth principle a later addition (1999) to an earlier, essentially non-ideal-theoretical account (1993). Second, as Williams acknowledges, 'there seems to be a qualitative difference between...a duty of mutual assurance between well-

ordered peoples, and a duty of assistance' to (historically) burdened societies that could not have demanded equal respect or developed a full moral identity (2011: 73, cf. 83). Third, Reidy's condition of a burdened society having 'no clear and compelling historical evidence of its political responsibility for self-inflicted wounds' violates Rawls's own view that the duty of assistance applies just as well to self-caused burdened societies (Armstrong 2009: 469) and suggests a corrective justice justification already rejected above. And fourth, Williams's argument may work as an empathy-based plea for assistance to burdened societies but not as a defense of a *duty* to do so - let alone one of justice. After all, that 'peoples...might befall the same fate' as burdened societies (say, 'as the result of a natural catastrophe'; Maffettone 2017: 355 n. 2) is extremely unlikely or hardly possible within the context of Rawls's ideal theory, also because peoples can typically rely on each other for provisions and support (cf. Rawls 1999: 37-38). Moreover, this argument suggests, rather perversely, that the higher peoples' chances of falling into burdened-ness are, the stronger their duty of assistance becomes.⁵ Thus, we are dealing with flawed attempts to support Rawls's duty.

Now Williams (2014: 336-337) also argues that, on Rawls's view, burdened societies are to be seen as future members of the Society of Peoples, so that their interests are still represented equally and these societies treated in the spirit of equality, and that, therefore, the duty of assistance is a duty - again even a strong one of justice rather than a weak, humanitarian one. However, this argument of Williams's is at worst question-begging for *presuming* a duty of assistance - so that equal representation is guaranteed - and at best in line with Rawls's emphasis on the 'aim' of assistance, of which it is questionable, as suggested in the previous section, whether this as such is sufficient for establishing a straightforward *duty*, let alone one of justice. In fact, Rawls reformulates the 'aim', which is 'to help burdened societies to be able to manage their own affairs reasonably and rationally and eventually to become members of the Society of well-ordered Peoples' as defining the 'target' of assistance (1999: 111, cf. 106-107); the 'aim', then, is not the 'duty's' basic justification but merely its 'third guideline', defining its 'target'. Overall, Williams (2011: 81-89) overstretches Rawls's view by arguing that the duty of assistance is a duty of justice (grounded in a global cross-original position 'hidden' equal treatment)

⁵ Williams draws a flawed analogy: 'Individuals with temporary health problems are regarded as exempt from the original position given their reduced capability, but their interests are nevertheless represented there by rational choosers, who know they might befall the same fate and so are concerned to include the provision of health care in the social minimum' (2011: 88). In *this* case, it seems more plausible to believe that healthy 'rational choosers' will care for provisions and are rather equal in this respect: sooner or later, they all may well, even suddenly, 'befall the same fate' as the unhealthy.

without firstly demonstrating that there is a Rawlsian duty *at all* for peoples to help societies outside the international original position.

Why, then, do such ideal theory defense attempts seem bound to fail? Within Rawls's framework, peoples should be reasonable towards other peoples as fellow partners in the international position. However, it is just not obvious why they should also be reasonable, let alone equally so, to burdened societies as *non*-peoples. Thus, early Rawls-critic Thomas Pogge explains the ideal-theoretical problem for justifying the duty of assistance by a plain, Rawlsian reciprocity-emphasizing argument - remarkably, one virtually ignored by Rawls's defenders:

It is doubtful that the [newly added duty] would be adopted in Rawls' international original position, which represents liberal and decent peoples only. Each such representative is rational and seeking an international order that enables his or her own people to be stably organized according to its own conception of justice or decency. Such representatives may well agree to assist one another in times of need. But why is it rational for them to commit to assisting poor peoples that never had a liberal or decent institutional order?...[P]eoples neither liberal nor decent are not represented in the international original position, and the interests of their members are thereby discounted completely (Pogge 2004: 260-261).⁶

Darrell Moellendorf puts the point as follows: 'The selection of the duty of assistance in this original position is beset with interpretive difficulties. If the parties assume strict compliance, it is unclear why they would select a duty of assistance' (2014: 227). The Pogge-Moellendorf critique is as strong as it is simple, even if we consider that peoples with their shared goals are reasonable as well as rational (cf. Rawls 1999: 35, and that Pogge and Moellendorf actually want Rawls to accept the cosmopolitan original position already disputed in the introduction).

Noting that Rawls himself does not understand the duty of assistance as grounded in either beneficence or distributive justice (Beitz 2005: 21; cf. Brown 2015: 196), Charles Beitz, another early critic, suggests that this duty could have a more prudential justification at best:

The force of the duty of assistance seems to arise...from the importance for liberal societies of enlarging the Society of Peoples to include, eventually, all the societies of the world. For example, [within the constraints imposed by Rawls's theory] it might be argued that the chances

⁶ Pogge adds that this is also problematic for 'forceful intervention' in outlaw states (2004: 280-281), since outlaw states, like burdened societies, are not parties in Rawls's international original position.

of peace would be greater in a world in which all societies had been lifted out of burdening conditions (Beitz 2000: 688-689).

But, as Beitz (2000: 689) adds, since any security threat coming from burdened societies will not be that serious, defending the duty of assistance this way would not be very convincing.⁷ Therefore, it is conceivable to see 'assistance' as a Rawlsian obligation of charity at best, as Allen Buchanan (2000: 710), yet another early Rawls-critic, suggests. As Buchanan explains: 'There is no indication that this duty of aid is to be understood as the collective responsibility of the society of peoples and no mention of a right on the part of "burdened societies" to receive it' (2000: 710, cf. 715) - societies that, for Rawls, remain responsible for their own predicaments (cf. Armstrong 2009: 466-470). Indeed, since the mere aim of globalizing the Society of well-ordered Peoples cannot turn 'assistance' into a moral 'duty', and a defense of the duty of assistance in terms of prudence is dubious empirically - but also weak morally - assistance seems best understood as a measure of charity, or supererogatory act (praiseworthy but not mandatory). If so, peoples retain the *right* to provide assistance.

In short, the discussed attempts to justify the duty of assistance are, and most likely cannot be but, unduly strained. Like Rawls himself, the Rawlsians involved fail to somehow defend the duty of assistance parallel to Rawls's defense of domestic distributive justice. Perhaps a satisfactory defense does appear possible one day, but surely the prospect looks dim. But there is still a third issue to consider.

4. RAWLSIAN SKEPTICISM ABOUT THE DUTY OF ASSISTANCE IN THE NON-IDEAL WORLD

Third, I argue that Rawls's Law of Peoples leads to skepticism about the duty of assistance's applicability to the non-ideal world. Pivotal to this - presumably surprising - argument is Rawls's introduction of non-ideal theory:

On the assumption that there exist in the world some relatively well-ordered peoples, we ask in nonideal theory how these peoples should act toward non-well-ordered peoples. We take as a basic characteristic of well-

⁷ Rawls (1999: 112-113) himself suggests that well-ordered peoples seek a world in which all societies have well-ordered - thus not dangerous but peaceful and cooperative - regimes, and so support a duty of assistance, at least initially, out of self-interest; over time, affinity, mutual concern, and cooperativeness among peoples may become stronger and moral considerations-based. But, apart from lacking in empirical convincingness, this motivational argument does not make the 'duty' of assistance itself any more moral.

ordered peoples that they wish to live in a world in which all peoples accept and follow the...Law of Peoples (Rawls 1999: 89).

Rawls makes two claims here. First, peoples naturally want other state-level collectivities to come to behave as well-ordered peoples.⁸ Second, insofar as necessary, it is up to existing 'relatively well-ordered peoples' to make this happen. As I will explain, both claims, particularly the second, are troubling, especially in case of the duty of assistance, which, recall, is explicated thus: 'The long-term goal of (relatively) well-ordered societies should be to bring burdened societies...into the Society of well-ordered Peoples. Well-ordered peoples have a *duty* to assist burdened societies' (Rawls 1999: 106, emphasis in original).

There is, I argue, a double flaw in the bridge between ideal and non-ideal theory that applies to non-ideal theory in general but to the present kind in particular. First, Rawls's 'relatively well-ordered peoples' notion is shaky. Rawls never clarifies 'relatively', in terms of content, stage, and sufficiency (without completeness being required) for assuming duties towards others. He never explains when actual 'peoples' qualify as 'relatively well-ordered', so that they may be expected to conduct a moral foreign policy, including a duty of assistance. And he never defends the duty of assistance's immediate and full, rather than gradual, force from the tipping-points of 'relativeness' and 'people-ness'. Actually, it is hard to see how a wholly satisfactory defense could have been provided in this respect.

Second, Rawls's duty of assistance is unstable, if not worse, for being dependent on 'people-ness' as such. Rawls (1999: 17, 23-30, 34-35, cf. 46-48) bases his theory on 'peoples' with their reasonable-moral motives (peace, mutual equal respect, human rights), because he sees 'states' as merely rationally pursuing power and self-interest. However, Rawls's international law characteristically cannot be relevant to state actors external to the Society of Peoples, since he assumes that, as long as state-level collectivities have not become peoples, they cannot have acquired moral foreign policy duties. But how could we ascertain that peoples exist, or will always exist (even if merely 'relatively'), in our non-ideal world? What if (many) so-called liberal collectivities should be considered outlaw states for having violated the human rights of outsiders? Indeed, 'the idealized counterfactual features attributed to hypothetical liberal peoples...may not reflect the characteristics of actual liberal peoples' (Kang 2016: 46-48, quotation 47), and the same goes for 'decent peoples'. Could the wish to avoid foreign duties not be a (internally conceivable)

⁸ In referring to 'non-well-ordered peoples' Rawls is inaccurate again, since in his theory peoples are well-ordered by definition. Yet here we should assume that he has all human state-level collectivities other than 'peoples' in mind, notably 'benevolent absolutisms', 'outlaw states', and 'burdened societies'.

reason for rationally self-interested collectivities to not become peoples? Is 'relativeness' not actually an ad hoc concession to make things easier in this regard? Thus, with only well-ordered peoples having a duty of assistance, the duty is jeopardized in a world of amoral, if not immoral, states.

Rawls's theory, then, betrays a realist tendency towards international skepticism (against Beitz 2000: 696): it must accept that the non-ideal world may have states as its major actors, and allow for the serious possibility that even 'relatively well-ordered peoples' do not, or hardly, exist. If a limited number of such peoples do exist, these may not be wealthy enough (together) to provide meaningful assistance to an indefinite number of burdened societies. Insofar as, now or in the future, global politics is dominated by states that do not or no longer qualify as Rawlsian peoples, it would include no real Rawlsian international duties and thus no duty of assistance (Kamminga 2015). In the *non*-ideal world, peoples could lose their well-orderedness by being *unable* to prevent falling back into burdened societies themselves and thus to assist other such societies. Or they could become outlaw states, thus could *choose* to lose their well-orderedness and their duties of assistance, possibly even while remaining rich.

Now Rawls (1999: 101, 43 n. 53) does suggest that the countries of North America and Europe qualify as liberal-democratic peoples.⁹ Yet, as Beitz notes, it is questionable 'whether the requisite common sympathies and moral nature can be found in culturally diverse societies like those of the United States or Belgium, to say nothing of India or the Philippines' (2000: 680). In fact, it appears difficult for 'liberal' collectivities to meet, and certainly to uphold, the three Rawlsian criteria for peoplehood (even if only 'relatively'): 'a reasonably just constitutional democratic government that serves their fundamental interests; citizens united by...“common sympathies”; and...a moral nature [in being both reasonable and rational]' (Rawls 1999: 23, cf. 23-25). One typical danger, as Rawls himself notes, is that the democracy or moral character of American and European peoples becomes undermined by capitalism and consumerism.¹⁰ Also, the United States may have lost much of its democratic

⁹ Perhaps Bahrain, Kuwait, Oman, Qatar, the United Arab Emirates, Bhutan, Singapore, Samoa, and Brunei could qualify as decent peoples. But these countries together have very little global impact (Brown 2015: 74).

¹⁰ Rawls once wrote about the European Union in relation to the United States: 'Isn't there a conflict between a large free and open market comprising all of Europe and the individual nation-states, each with its separate political and social institutions, historical memories, and forms and traditions of social policy[?] Surely these are great value to the citizens of these countries and give meaning to their life. The large open market including all of Europe is aim of the large banks and the capitalist business class whose main goal is simply larger profit. The idea of economic growth,...with no specific end in sight, fits this class perfectly. If they speak about

character for violating Rawls's criterion of democracy of being 'not directed by the interests of large concentrations of private economic and corporate power veiled from public knowledge and almost entirely free from accountability' (Rawls 1999: 24).¹¹ And Rawls's remark that a people could decide to go to war for economic profit or expansion or power and influence (Rawls 1999: 91) brings the American 2003 Iraq war to mind.¹² Or, as Pogge (2004: 282; 2006: 223, cf. 221) argues, it is highly questionable to what extent rich Western countries may qualify as (liberal) peoples rather than being outlaw states for having violated the global poor's human rights. Even if we reject Pogge's stress on the West-imposed world order as a systematic cause of world poverty, we should still allow for the possibility - and this is sufficient here - that this order is occasionally involved in global poverty. Surely this is a relevant empirical issue that Rawls as a political philosopher cannot evade.

To recapitulate, the problem of Rawls's (unintended) eventual international skepticism with the resulting shakiness of the duty of assistance is twofold. First, Rawls problematically assumes collectivities to have moral duties only if and once they have become relatively well-ordered; these duties, then, lack independent moral status. Second, the more it has to be stressed, in line with Rawls's overall perspective, that the ideal ought not to be confused with the real world, the greater the gap between ideal theory and non-ideal theory becomes. From some point, ideal theory cannot be plausibly used as a benchmark anymore: applying peoplehood to the non-ideal world will then start to have absurd implications. As Chris Brown notes, under non-ideal conditions, 'we are really interested in the rights of states since states actually exist whether they are [peoples] or not...and so find ourselves trying to translate "peoples" into states', but at some point the 'translation' breaks down (2015: 73).¹³ And if we must conclude that no sufficiently well-ordered peoples exist, we must acknowledge that there are no duties of assistance either. Since this is possible, and also that there may be rationally self-interested collectivities that refuse to

distribution, it is [al]most always in terms of trickle down. The long-term result of this - which we already have in the United States - is a civil society awash in a meaningless consumerism of some kind' (Rawls and Van Parijs 2003).

¹¹ As Rawls asks: 'When politicians are beholden to their constituents for essential campaign funds, and a very unequal distribution of wealth obtains in the background culture, with the great wealth being in the control of corporate economic power, is it any wonder that congressional legislation is, in effect, written by lobbyists, and Congress becomes a bargaining chamber in which laws are bought and sold?' (1999: 24 n. 19).

¹² Rawls admits that 'so-called liberal societies...may act wrongly' (1999: 91 n. 3).

¹³ Arguably, liberal collectivities will always qualify as well-ordered peoples for meeting the requirements for decent peoples (cf. Rawls 1999: 63). Yet as a solution for the present problem, its absurd implication would be that Rawls *needs* the *non-liberal* category of decent peoples to save his *liberal* international theory.

become peoples and then take on moral duties to outsiders, the duty of assistance, and thus the fate of burdened societies unable to become well-ordered on their own, will be blocked by an 'unlucky' real world situation. Certainly, for Rawls, collectivities should become and remain liberal or decent, but if they are not or do not wish to, they effectively, and troublingly, have no duty to assist burdened societies.

In short, a serious line of skepticism regarding the non-ideal world applicability and stability of the duty of assistance exists within Rawls's Law of Peoples itself. While the other kind of non-ideal theory - just war doctrine - is also affected by the above analysis, the critique is less worrying in that case. While Rawls defends a '*duty* of assistance', he justifies merely a '*right* to war', that is, a right for peoples to defend themselves or to intervene in outlaw states to protect human rights (Rawls 1999: 89-94). Indeed, Rawls plausibly suggests that Michael Walzer's philosophically less abstracting *Just and Unjust Wars* [1977], as an 'impressive work' from which he does not 'depart...in any significant respect' (1999: 95, cf. 98), could have done that latter job at least as well. Not surprisingly, the Law of Peoples' list of principles (Rawls 1999: 37) does not even include a right, let alone a duty, to intervention.

5. CONCLUSION

Altogether, Rawls's duty of assistance is a non-starter. His Law of Peoples, its prominent status in the debate on global justice notwithstanding, cannot successfully uphold its duty to assist deprived countries, undeveloped and unstable as that is. Considering Rawls's confused treatment of 'correction' among cooperating peoples as falling within the scope of the duty of assistance, the most ideal theory could support is a principle of corrective justice among well-ordered peoples. In non-ideal theory, Rawls may well uphold a mere 'right of assistance' besides a modest, casual corrective justice duty. From his perspective, it seems reasonable to hold that peoples, even if hard to identify in the non-ideal world, may well try to universalize the Law of Peoples and so to provide assistance to burdened societies, if assistance is not carried out 'paternalistically' (Rawls 1999: 111). This way, burdened societies remain intended future members of the Society of Peoples. As with the 'right to intervention', the Society of Peoples's aim justifies only this. Adopting these moral notions would not offset but still soften an abandonment of the duty of assistance as Rawls's key addition to contemporary international law.

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