RAWLSIAN STABILITY
AND THE LAW OF PEOPLES

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A paper to be presented to the workshop on
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Rawls’s position on international justice has been the target of fierce criticism. Cosmopolitan thinkers argue that the Rawlsian framework supports conclusions much more radical than Rawls himself is willing to grant. This paper aims to throw new light on Rawls’s position on international justice by reading it on the basis of an exposition and development of the second stage of justice as fairness—stability. Then it questions the main claim of Rawlsian cosmopolitans: that Rawls’s framework supports a cosmopolitan stand. Furthermore it suggests that Rawls’s position on international justice appropriately understood and extended has certain virtues as compared to the cosmopolitan position.

The structure is as follows. Section one and two are exegetical. They aim to provide an exposition of Rawls’s problem of stability. Section three presents an account of the problem of stability revolving around the ideal of the well-ordered society and suggests an institutional extension of Rawls’s theory. Section four applies this construal to Rawls law of peoples. In the light of this, section five considers the main cosmopolitan arguments. Section six concludes with a note on the general conflict between the position represented by Rawls’s view as understood in this paper and the Rawlsian cosmopolitan position.
I. RAWLSIAN STABILITY

Rawls presents justice as fairness in two stages. The explicitness of this two-stage structure varies. It appears in the clearest way in his article: ‘The Domain of the Political and Overlapping Consensus’. At the first stage, the conception of justice as fairness is worked out for the basic structure so that we may say that its ‘principles of justice and ideals [are] ... provisionally ... on hand’. It is worked out by striving for coherence between principles of justice and considered moral judgement, sometimes revising the construal of the initial position and sometimes withdrawing our considered moral judgements. This much celebrated process has undergone an interesting development in Rawls’s works after A Theory of Justice and, in turn, in ingenious contributions by Norman Daniels. Daniels emphasises the, according to Rawls, important role of philosophical background theories (such as the ‘theory of the role of morality in society’, the ‘theory of persons’ and the ‘theory of procedural justice’) envisaged to give reasons for theory acceptance independently of the coherence between principles of justice and considered moral judgements, and as such constituting a supplementary dimension of theory acceptance.

At the second stage the problem of stability is introduced. This dimension of justice as fairness is first presented as a tentative inquiry thought relevant to the deliberation of the parties to the original position. They are said to consider the so-called ‘strains of commitment’. These regard ‘men’s capacity to act on the various conceptions of justice’. Hence, it is a motivational question. This formal consideration of stability is directly being brought to bear on the question of which conception of justice to accept:

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‘It is evident that stability is a desirable feature of moral conceptions. Other things equal, the persons in the original position will adopt the more stable scheme of principles. However attractive a conception of justice might be on other grounds, it is seriously defective if the principles of moral psychology are such that it fails to engender in human beings the requisite desire to act upon it’.7

The second role of stability is as an external check on the principles deriving from the deliberation in the original position.8 This gives rise to a more substantial consideration. In A Theory of Justice Rawls phrases the motivational question in terms of the congruence of the just and the good.9 Rawls asks whether members of a well-ordered society as defined by justice as fairness have reasons from within their own good for adopting the standpoint of justice. This is not the question whether it is possible to persuade an egoist that adopting the standpoint of justice is in her own interest.10 Instead Rawls’s question regarding congruence is considered in terms of the thin theory of the good, by asking whether there is a congruence between the good of the members of the well-ordered society, with a sense of justice, and the adoption of the standpoint of justice. In Political Liberalism the substantial stability question also concerns the congruence of the just and the good.11 The difference is that now stability is at the centre of Rawls’s inquiry as such. The question is whether justice as fairness can be the focus of an overlapping consensus given the fact of reasonable pluralism—a society in which ‘there is diversity of comprehensive doctrines, all perfectly reasonable’12—which is not a regrettable factor of modern life but rather an outcome of ‘the work of free practical reason within the framework of free institutions’.13 An overlapping consensus is defined as a consensus between ‘all the reasonable opposing religious, philosophical, and moral doctrines likely to persist over generations and to gain a sizeable body of adherents in a more or less just constitutional regime, a regime in which the criterion of justice is that political conception itself’.14

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Rawls’s works after *A Theory of Justice* emphasise the practical content of justice as fairness in general, and of the question of stability in particular.15 This emphasis involves claims concerning the aim of political philosophy and the spelling out of realizability constraints on a political conception. According to Rawls, the aim of political philosophy is to ‘secure stable social unity in a constitutional regime by looking for an overlapping consensus’.16 This practical aim makes relevant certain realizability constraints. Rawls says that political philosophy should embody a ‘concern with practical possibility’.17 It ‘must be practical, that is, must fall under the art of the possible’,18 and ‘we must respect the constraints of simplicity and availability of information to which any practicable political conception (as opposed to a comprehensive moral doctrine) is subject’.19

II. RAWLSIAN STABILITY: MORAL AND PRACTICAL

The moral and practical import of stability are reflected in Rawls’s emphasis on two separate concerns contained in the question of stability, namely ‘[(a)] the kind of stability and [(b)] the nature of the forces that secure it’.20 The same dimensions appear implicitly in Political Liberalism in terms of the two questions of stability:

Stability involves two questions: the first [ad b] is whether people who grow up under just institutions (as the political conception defines them) acquire a normally sufficient sense of justice so that they generally comply with those institutions. The second [ad a] question is whether in view of the general facts that characterise a democracy’s public political culture, and in particular the fact of reasonable pluralism, the political conception can be the focus of an overlapping consensus.

Focusing on these two dimensions leads, I claim, to the following exposition.

*The kind of stability* leads us to stress that Rawls’s idea of an overlapping consensus expresses the idea of a *moral* consensus. The object of consensus, namely the

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political conception of justice as fairness is itself a moral conception\(^{21}\) framed to address each citizen’s reason.\(^{22}\) It demands support from ‘each citizen’s reason’ endorsing it from within their own doctrines.\(^{23}\) At the same time the consensus is ‘affirmed on moral grounds’ (my emphasis).\(^{24}\) This is the kind of stability of interest to Rawls. Negatively defined, Rawls stresses that an overlapping consensus is not a mere modus vivendi based on ‘self- or group interests, or on the outcome of political bargaining’.\(^{25}\) Furthermore, it is not ‘a purely practical matter’ in the sense of asking whether a certain conception is stable given available means of persuasion or enforcement.\(^{26}\) Finally, it is not a political compromise between competing doctrines reproducing the injustices reflected by the present power balance. This would make an overlapping consensus ‘political in the wrong way’.\(^{27}\)

The moral importance of an overlapping consensus springs from three sources. At the most general level, stability is linked to the ‘fundamental organizing idea of justice as fairness’: ‘that of society as a fair system of cooperation’, from one generation to the next’.\(^{28}\) This idea informs the central background theory of justice of fairness, namely the idea of the well-ordered society. On this ideal, society should be regulated by a public conception of justice.\(^{29}\) Furthermore, in a well-ordered society, persons do not endorse the public conception out of purely instrumental reasons. Springing from the ideal of the person they have an effective sense of justice and hence ‘[r]easonable persons’, as Rawls claims, ‘… desire for its own sake a social world in which they, as free and equal, can cooperate with others on terms all can


accept’ (my emphasis). The further claim of political liberalism is that this idea is ‘implicit in the public culture of a democratic society.’

The second source is the conception of a moral consensus as a basic, or elementary, good. A moral consensus such as an overlapping consensus on the political conception of justice as fairness might plausibly, as Joshua Cohen suggests, be seen as promoting a range of specific values such as trust and harmony and mutual respect. Extending on this, we might say that a moral consensus is a constitutive good. That is, it is constitutive of other values necessary for the realisation of a public conception.

The third source of the moral importance of a moral consensus is the liberal idea of legitimacy. An overlapping consensus is a consensus on a political conception endorsed from within the different comprehensive conceptions in society. If the idea is plausible, one may also say that ‘the conditions for democratic legitimacy are fulfilled’.

*The forces that secure stability* have received less attention but yield, I aim to show, perhaps the most interesting perspective on Rawls’s problem of stability. Rawls points to two ‘forces’ sharing the important task of securing stability. These are institutions and a reasonable psychology. The practical content of stability should be sought in these forces. I focus here only on the institutional force. Rawls is quite explicit on the relevance of this force, stating for example that ‘this concern with practical possibility compels political philosophy to consider fundamental institu...
tional questions and the assumptions of a reasonable moral psychology’ (my emphasis). 37 Especially Joshua Cohen and Norman Daniels have appreciated this dimension of Rawls’s political liberalism. 38 There is a deep undercurrent in the works after Theory of Justice expressing an interest in have institutional forces might contribute to a moral consensus on justice as fairness.

In the critical literature on Rawls it is argued that the practical focus is unclear, 39 and that if one takes it at face value, it is puzzling how (if at all) it fits together with the rest of his theory. 40 Furthermore there seems to be a tension between Rawls’s stated interest in ‘fundamental institutional questions’ and his actual approach which is rather weak on these questions. Discussing these and other tensions in Rawls’s political liberalism, Thomas E. Hill concludes that the way to make sense of it consist in stressing Rawls’s interest in legitimacy, i.e. a part of the moral content of stability mentioned above, and at the same time disregarding his alleged practical concerns. 41 There is, however, an alternative course which is pursued in this paper. It aims to show that a consistent understanding of the relation of the moral and practical sides of stability can be developed around Rawls’s important idea of a well-ordered society, and that the practical machinery which appears missing given Rawls’s stated practical interest can and should be provided by a careful extension of Rawls’s theory.

III. STABILITY AND INSTITUTIONS

A moral conception presupposes a general social ideal, that is, a certain conception of persons and their interaction. The social ideal of a certain conception can be brought into light by assuming that it is adopted publicly in a society, that is, assuming that it is being acted upon and consistently satisfied by the social institutions of society. We then say that the society is well-ordered by the specific moral conception, or that this

is the well-ordered society corresponding to the moral conception.\textsuperscript{42} The assumption that the moral conception under consideration would in all circumstances be acted upon and consistently be satisfied by the social institutions of society, facilitates and makes relevant an estimation of the ‘strains of commitments’—how demanding is living by the conception?—attached to a well-ordered society corresponding to the moral conception under consideration.\textsuperscript{43} Different well-ordered societies corresponding to different moral conceptions are likely to differ in how demanding they are, and hence to which extend they generate their own support\textsuperscript{44}—i.e. they differ in terms of \textit{stability}. According to Rawls, the criterion of stability is important in theory acceptance; i.e. if a moral conception is more stable than another, then it provides reasons for accepting that conception.\textsuperscript{45} Indeed he sees the study of the relative stability of different well-ordered societies corresponding to different moral conceptions as central to moral theory:

‘[T]he problem of stability is whether the well-ordered society corresponding to a particular conception is stable, or relatively more or less stable, than certain other conceptions. The comparative study of the well-ordered societies is, I believe, the central theoretical endeavor of moral theory: it presupposes a grasp of the various moral structures and their relation to our moral sensibility and natural inclinations’.\textsuperscript{46}

Rawls’s reasons for granting stability this central place derives, I believe, from two sources connected to the \textit{kind of stability} and the \textit{forces of stability}, or the moral and practical dimensions of stability. \textit{The first reason} derives from the fact that stability, according to Rawls—as shown above under the heading of the kind of stability—carries intrinsic value, or is a necessary condition for properties of intrinsic value (in addition to containing extrinsic value).\textsuperscript{47} Thus there are reasons to favour the more to the less stable moral conception. \textit{The second reason} derives from the idea that sta-
bility is an important non-moral constraint on moral principles. That is, stability represents an important set of non-moral beliefs with which a moral conception should cohere. A conception is ‘seriously defective’ if it fails, or performs poorly, on the stability criterion.\textsuperscript{48} To consider how conceptions and their corresponding well-ordered societies perform in this sense, we need to inquiry into the forces of stability. Hence we see now how the moral and the practical side of stability mesh in the comparative study of well-ordered societies; they are both indispensable to that endeavour central to moral theory.

The direct assessment of the relative stability of well-ordered societies should be supplemented by a consideration of how demanding the well-ordered societies are in terms of the complexity of the principles they are to embody and in terms of the information required for their application.\textsuperscript{49} This is evidentiary for the stability of conceptions in the sense that, other things equal, conceptions that are relatively simple and non-demanding in terms of the information required for their application stand a better chance of generating their own support.

Regarding the forces of stability, Rawls has, as said, somewhat neglected the institutional force and instead focused on the psychological one, asking whether some moral conceptions, given the knowledge in this field, are more likely than others to motivate citizens.\textsuperscript{50} The neglect of the institutional side can, I claim, be remedied by bringing institutional social theory\textsuperscript{51} to bear on both the direct comparison of the stability of well-ordered societies and the evidentiary consideration. This would include, but not be reducible to, psychological information, and I believe that it may contain some strong resources for this comparative task. Having interest in itself, this extension may also answer some of the mentioned worries about the discrepancies between Rawls’s stated practical interest and his actual approach. In this paper, I cannot actu-
ally undertake the extension.\textsuperscript{52} I can only sketch the contours of such an extension and apply it in an abstract way below.

Regarding the institutional substantiation of the direct comparison of moral conceptions and their corresponding well-ordered societies, we begin with the coherentist view that a theory of justice should fit our non-moral beliefs as well as our moral ones.\textsuperscript{53} In the present context this means that a moral conception should be capable of being immersed in a plausible institutional structure. That is, the stability of a well-ordered society can be assessed by considering the extent to which a plausible institutional account of its stability can be constructed from the social theoretical knowledge of institutions and motivation. One might worry whether such institutional information could enjoy any degree of independence from the moral theory to which it is attached, and hence whether bringing it in has any relevance whatever in terms of theory acceptance. I believe there are three senses in which institutional theory might bring some degree of independent information for the direct consideration of the stability of well-ordered societies hence serving a non-trivial role in theory acceptance. \textit{First} of all many moral conceptions seem completely to neglect non-moral institutional information. Bringing such information to bear on these theories provides a check upon these conceptions which has not been incorporated in the conception itself. \textit{Second}, bringing non-moral institutional theory into the discussion of the relative stability of well-ordered societies gives a new dimension to this inquiry. It forces us to consider how moral conceptions rely on certain aspects of institutional theory and neglect others, and how (if at all) they manage to fit this into a coherent picture. If, for example, a conception relies exclusively on one controversial non-moral institutional theory, then we should consider whether it contains other moral or non-moral elements accounting for this narrow reliance. If, on the other hand, a conception draws upon several traditions of non-moral institutional theory, we must ask whether it combines them in a plausible way and, in turn, fit this construal into the moral elements of the theory in a non-trivial and non-contradictory way. The \textit{Third} and final way in which institutional information may be said to achieve some independence from the moral theory under consideration is the strongest, because of it going one step further by having a genuine empirical content. This third way derives from Norman Daniels’s idea that considering how there might be a transition from a situation with-

\textsuperscript{52} I have tried to do this in the paper ‘Rawlsian Stability and Institutions’ (Unpublished manuscript).
out stability to one with stability on a given moral conception is evidentiary for the central Rawlsian question concerning the stability of moral conceptions. If so, moral conceptions and their corresponding well-ordered society can be subjected to an institutional inquiry not only in the abstract sense of coherence as sketched above, but also including counterfactual empirical considerations and the consideration of historical examples of transition from a narrow to a broader consensus on a moral conception. However relevant this third line of inquiry is, I unfortunately cannot hope to do justice to it in this paper.

The second area in which institutional theory might substantiate Rawls’s institutional force regards the considerations about the basic practicability of moral conceptions and their corresponding well-ordered societies which are evidentiary for their relative stability. Whereas the use of institutional information regarding the direct motivational question is heavily theory-dependent in character, the practicability considerations in the context of the comparative study of well-ordered societies are susceptible to more objective information and the new institutionalisms seem capable of delivering such information. The general lessons concerning institutions and their ability of information processing can, I claim, be applied to substantiate the practicability considerations.

IV. STABILITY AND RAWLS’S LAW OF PEOPLES

Justice as fairness expresses a deep commitment to the moral equality of persons. It takes this moral equality to justify rights and claims within the frames of a theory of distributive justice. These characteristics of Rawls’s theory might lead one to expect that it is cosmopolitan. Given the moral equality of persons, principles of justice seem to apply universally, not circumscribed by fortuitous circumstances such as states and nations. Rawls himself refrains, however, from making the apparently logical inference from the premises of the theory he develops for a closed well-ordered society. While stressing that political liberalism is not relativist, Rawls does not think that the principles developed at the domestic level apply internationally. This fact is exploited by Rawlsian cosmopolitans such as Charles Beitz, Thomas Pogge and David A. J. Richards, whom I consider below. The present section aims to explain

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Rawls’s position on international justice as grounded in reasons springing from the second level of his theory. First, I briefly present Rawls’s position on international justice.

The method Rawls uses to deal with the question of international justice is an extended version of the contractual device used in deriving principles for the basic structure of a domestic society. The extended version aims to derive principles applying to ‘the law and practices of the society of political peoples’.

The parties to the contract are representatives of societies, not of persons. Pogge, however, thinks there is a plausible alternative reading of Rawls’s brief comments in A Theory of Justice. At one place Rawls says that ‘nor do they know their place in their own society’. Pogge takes this to indicate an alternative reading of whom the parties to the original position represent. According to this reading, they represent persons from the various societies and not societies as such.

The textual support of this is, however, limited. Rawls actually says that ‘while they the parties know that they represent different nations .... nor do they know their place in their own society’. Furthermore Rawls is rather explicit on the first reading, seeing ‘parties as representatives of different nations’ that ‘represent different nations’ and are ‘representatives of states’. Finally, this reading is consistent with the one he is pursuing in ‘The Law of Peoples’. Here the relevant parties are ‘representatives of democratic peoples’ (at the first step of the ideal theory of the extension to the law of peoples) and ‘representatives of well-ordered hierarchical societies’ (at the second step of the ideal theory of the extension to the law of peoples).

Each representative represents a ‘people’ defined as ‘persons and their dependents seen as a corporate body and as organized by their political institutions, which establish the powers of government’. As such the law of peoples is modelled on and taken to apply to the existing state structure via its application to the principles and norms of international

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law and practice.\textsuperscript{65} A sensible law of peoples is, however, likely to limit the conventional powers associated with a state.\textsuperscript{66}

The constraints necessary for establishing an equal baseline which allows the derivation of principles of justice are of a similar type in the domestic and the international cases. The veil of ignorance applied to the domestic case is reused at the international level to nullify ‘the contingencies and biases of historical fate’.\textsuperscript{67} Thus in the international case, the parties are deprived of knowledge of the relative power of their society.\textsuperscript{68}

The result of the contract in terms of principles is fairly conservative. It is the ‘familiar ones’ such as ‘a principle of equality’ and ‘equal right’, giving rise to the ‘principle of ‘self-determination’ and the ‘right of self-defence’.\textsuperscript{69} In ‘The law of Peoples’ Rawls reaffirms this conclusion, specifying its content somewhat:

I believe the principles of justice between free and democratic peoples will include certain familiar principles long recognized as belonging to the law of peoples, among them the following:

1. Peoples (as organized by their governments) are free and independent, and their freedom and independence is to be respected by other peoples.
2. Peoples are equal and parties to their own agreements.
3. Peoples have the right of self-defence but no right to war.
4. Peoples are to observe a duty of nonintervention.
5. Peoples are to observe treaties and undertakings.
6. Peoples are to observe certain specific restrictions on the conduct of war (assumed to be in self-defence).
7. Peoples are to honor human rights.\textsuperscript{70}

In ‘The Law of Peoples’ these principles are reached in two steps; first they are agreed upon amongst the representatives of democratic peoples and then representatives of well-ordered hierarchical regimes affirm the same principles.\textsuperscript{71}

Rawls’s approach to the subject of international justice and the conclusions flowing from it clearly shows that he must believe that international justice constitutes a case radically different from the domestic one. In Rawls’s terminology in ‘The law of peoples’ we could say that the domestic case and the international case are two very

different ‘subjects’, to which different principles are applicable. Rawls fails, however, to be very clear on the precise character of the domestic case as compared to the international case and on the reasons we might have for seeing the two cases as being different in a morally relevant sense, thereby, in turn, giving rise to different principles of justice. Thus, Rawls invites cosmopolitan thinkers to press the question concerning the morally relevant difference between the two cases—especially given the universalistic commitments of Rawls’s theory—and hence the rationale for not applying the same principles of justice at the international level. My approach is an attempt to apply the construal in section III to understand the difference. That is, I interpret stability as the explanation implicit in Rawls’s account of why the international case is relevantly different from the national case.

Explaining Rawls’s law of peoples in the light of stability I focus first on the ‘forces’ that secure stability and second on the ‘kind’ of stability. This approach allows us most clearly to see the difference between the cases of domestic and international justice.

Focusing on the institutional force we begin by considering the direct motivational question in the sense explained above. The importance of institutions in explaining different ‘subjects’ and the moral principles that can reasonably be seen as applying to them is indicated by Rawls’s denial of ‘numbers’ as accounting for different principles being appropriate for different subjects and his accompanying point that: ‘Rather, it is the distinct structure of the social framework, and the purpose and role of its various parts and how they fit together, that explains there being different principles for different kinds of subjects’. I believe that the idea of an institutional theory of motivation can play a valuable role in spelling out the difference between the domestic and the international case. The specific claim that I seek to defend in spelling out the difference Rawls sees between the domestic and the international case is that, given the demand on conceptions of justice for a corresponding plausible institutional theory of motivation, there seems to be a relevant difference between the cases of domestic and international justice with regard to the content of the principles of justice one might expect institutions at the two levels to be capable of generating.

The material available for constructing a plausible institutional theory of motivation differs between the two cases. The material available on the international level is not sufficient to allow the construction of a plausible institutional theory securing the stability of the same narrow principles of justice as those at the domestic level.

To see this, we need to elaborate the idea of an institutional theory in the domestic case, securing the stability of the familiar principles of justice as fairness. Justice as fairness applies to the basic structure. The basic structure is defined by ‘the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation.’ The principles of justice are designed to apply to this structure. When they apply, they affect directly the mechanisms expressed in the definition of the basic structure. In the light of this we ask whether there is a plausible institutional theory which is capable of securing an appropriate and sufficient stability of justice as fairness. That is, can we construct a reasonable and realistic theory explaining how just institutions induce in citizens appropriate motivation for acting in accordance with the principles of justice?

This is a large and controversial question, which I cannot address substantially here. It is, however, possible to consider in the abstract whether such a theory would be plausible. That is, we can sensibly ask whether the subject of justice under consideration here contains the necessary formal elements making plausible an institutional theory claiming to generate the stability of justice as fairness. Three considerations speak in favour of the prima facie plausibility of an institutional theory grounding that the principles as applied to the basic structure would be stable.

(1) In applying to the basis structure, the principles apply to a structure with the necessary resources for embodying principles of justice. By ‘embodying’ I mean that the basic structure contains the necessary juridical and political mechanisms for implementing and sustaining principles of justice. I take the modern state to have at least the potential for serving this purpose. Hence the domestic case, where principles apply to the basic structure, satisfies an important condition for stability. The stability problem assumes that just principles can be implemented in the suggested way. Without a potential for implementing and sustaining just principles, we cannot, without

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engaging in a futile consideration, ponder whether just institutions induce in citizens motivation of the appropriate form.

(2) We might also say that the principles, in applying to the basic structure, apply to an existing system of social cooperation. In terms of stability this has the important implication of securing a basic condition for reciprocity and hence an important condition for the congruence of the individual good and the goods of justice.

(3) (1) and (2) establish basic conditions for stability. As such they make possible an ever deeper moral consensus on the political conception. Making plausible the efficiency of principles of justice as applying to institutions and being a basic condition for the stability of just principles, they also supply the formal conditions for a virtuous circle where the experience of the goods of a moral consensus induces a deeper consensus on the political conception of justice.

Let us now consider the international case. The first thing to notice is that we do not have anything comparable to the basic structure in the domestic case. History or/and social theory do not know of an international basic structure distributing ‘fundamental rights and duties and determin[ing] the division of advantages from social cooperation’. Thus justice as fairness applied at the international level cannot draw on the same resources as outlined for principles applying to the basic structure. This forces a choice upon the political theorist. One possibility is to say that the principles apply even though there is no clear formal structure to which they can apply. The normatively important message is that we have to work to create such a structure. The other position is to start from the existing formal structure, which might plausibly embody principles of justice, and say that our moral conception applies to this structure. Accompanying the second position is the view that this subject plausibly gives rise to principles very different from those established for the domestic subject. Staying within the domain of normative political theory, this position does not express a compromise of principles. Rather it expresses that given the difference of the two subjects, different principles of justice apply. The fact that the difference of the subjects is institutional does not, given Rawls’s incorporation of a condition of stability in

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a sound theory of justice and the postulated link between institutions and stability, change this; rather we might say that due to the character of the constraints on realizability at the international level, different principles spring from ideal justice.

Rawls seems clearly to occupy the second position, leading him to see an international political conception as applying to ‘the law and practices of the society of political people’ and not to an imaginary global basic structure. Regarding the former we can ponder whether there could be a corresponding institutional theory. That is, we can ask whether a plausible institutional theory could be constructed explaining how principles adopted at this level can be stable. I think the answer is affirmative and that we can show this through an argument formally parallel to the argument made for the domestic case (although, as will be clear below, with a rather different outcome):

1. In the case of an existing institution and practice, it makes sense to say that the formal resources to embody principles are available and hence also the first basic condition for stability.

2. In the case of an existing international society, a second basic condition for stability is in place. The parties, while perhaps not part of a reciprocal relationship, regard each other as existing in the same international society, and hence there is a plausible congruence of the good of one people with an agreement on principles of justice for the regulation of conduct of the different ‘peoples’.

3. Finally (1) and (2) secure the condition for a virtuous circle of ever deepening stability at the international level induced by the goods of the consensus on a political conception of justice.

Thus, when seeing principles of international justice as applying to the law of peoples, it seems plausible to construct an institutional theory which makes realistic the stability of the principles adopted.

There is, however, a very important difference between the two cases. It seems evident that the principles which plausibly could be stable on the domestic level

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would fail to be so at the international level. There seems to be no sensible institutional theory merging with the institutional structure that could make plausible the stability of a narrow conception such as the one advocated by justice as fairness as applying to the basic structure. An international institutional theory faces a strong challenge in terms of the plausible empirical assumption of ‘extreme opposition of fundamental values’ or the Rawlsian fact of pluralism writ large raising the question of how to accommodate this in a theory which aims to respect the limits of the practical. The inclusion of non-liberal parties in Rawls’s ‘Law of peoples’ might be seen as designed to represent theoretically this extreme pluralism, leading to the obvious conclusion that thinner principles are plausible at the global level than at the national level. Notice that explaining the inclusion of non-liberal parties in terms of stability is a more limited rationale for including non-liberal parties than explicitly given by Rawls’s notes on the extension of tolerance. The latter raises a large question of the limits of tolerance. We might ask why illiberal parties should be tolerated. That is, why should we tolerate doctrines developed under illiberal institutions and include these in a normative consensus? This might be valuable in terms of order, but is it also morally valuable? The rationale given here draws instead on the sheer cultural diversity a conception of international justice will have to deal with.

I now turn to a consideration of the difference (if any) between the subjects of domestic justice and international justice in terms of practicability as evidentiary for the question of stability. Practicability was already integrated above in so far as this was considered relevant to the construction of a plausible institutional theory of motivation. Hence, the focus below is on other relevant elements of practicability.

Rawls claims, as said, that a practical political conception does not condemn the world as it is; it aims to respect the limits of practicability and simplicity. The
claim above was that these limits could be substantiated by drawing on institutional theory. When we apply this idea to the international level, it seems that we have a case of these problems writ large. Information asymmetries abound within the frame of a single organisation. Thus they are sure to be extreme at the international level. This seems to hold true of two different ways of imagining principles of justice applying at the global level. The first way is to take principles of justice to apply to an imaginary global structure. We have no empirical experience of the plausibility of such a construction. It seems safe to say, however, that even if we could substantiate the idea of principles of justice applying to a global basic structure and such a structure, in turn, could be implemented and sustained, it is unclear whether humanly constructed institutions could deal with the informational problems arising in such a structure. The second way is to consider principles of justice as applying to states through international organisations. Again it seems safe to say that experience shows that upholding international organisations faces more severe challenges than upholding national organisations.

These facts make implausible that the same principles that are plausible at the domestic level are sensible at the international or global level.

The final topic to face in this section concerns the ‘kind’ of stability at the international level. The explanation, in terms of ‘the force(s) that secure stability’, why Rawls consider thinner principles applicable to the international case than to the domestic case raises a question concerning the moral content of stability. What kind of stability is possible/appropriate at the international level? The main answer is, I believe, that stability is a moral notion also at the international level but it is constrained by the points related to ‘the forces that secure’ stability. This means that we get a limited version of the three elements that give value to the idea of moral consensus:

*Fair system of cooperation*

Stability at the international level is not given value in terms of a global well-ordered society. Rather it is appropriate to speak of an *international society*. The ideal is an international society based on a moral commitment. Its existence is not only fortuitous
as in Hedley Bull’s version. In the latter version the international society is not stable in the right way: when in the interest of one of the parties, the contract is in danger of breakdown. In Rawls’s version there is consensus on a moral conception (law of peoples) that applies to the international law. Moral demands are made to this existing structure.

Cohen’s basic good idea
The deep moral consensus possible at the national level is not possible at the international level. Still the sensible ideal is a moral consensus on a law of peoples. As such it is the condition of goods such as, for example, mutual trust.

Legitimacy
The point on the forces of stability regarding the limited institutional capacity combined with the extreme diversity of doctrines at the global level make clear the implausibility of legitimacy if taken to mean that each person endorses the conception. Instead, a legitimacy linked to stability at the international level is an institutionally mediated legitimacy. That is, states enter as institutional mediators of legitimacy at the global level.

V. RAWLSIAN COSMOPOLITANS VS RAWLS’S LAW OF PEOPLES
This section concerns the arguments put forward by cosmopolitan thinkers. Cosmopolitans believe in the moral equality of human beings and think that moral principles ought to apply to the world at large. I am especially interested in Rawlsian cosmopolitans. I discuss these arguments on the background of my exposition of Rawls’s position on international justice. I focus on a claim definitive of their position, namely that Rawls’s theory allows a more radical conclusion concerning international justice than the one Rawls himself draws.

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1. Cosmopolitans I: Interdependence and Global Rawlsian Justice

The first argument I consider says that given the problem and declared scope of justice as fairness, it ought to apply directly at the global level. This argument needs some unpacking: According to Rawls, the problem of justice arises between persons engaged in a co-operative venture for mutual advantage, thus constituting a society. The problem is how the benefits of cooperation are to be distributed. The circumstances of justice define some more basic conditions that must be present if the problem of justice is to arise at all. The subject of justice, corresponding to the problem of justice, is ‘the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation’. These points raise the question of how to delineate ‘society’. Rawls’s approach is to focus on the basic structure of society conceived as a closed system isolated from other societies, stating that ‘I shall not consider the justice of institutions and social practices generally, nor except in passing the justice of the law of nations and relations between states (§58)’.

The cosmopolitan argument can be summarised in the following three steps:

(1) Alternative criterion of society: ‘Considerations of justice apply at least wherever there is systematic economic interaction’.

(2) Empirical premise: interdependence

(3) Conclusion: Rawls’s principles of justice apply globally. That is, they apply to the world at large. It is a question of practicability whether there should be states.

Steps one and two need a brief elaboration. Step one urges that we should not take Rawls’s reference to ‘cooperation’ too literally in drawing the line of society. Some areas in what we commonly see as a society may not cooperate directly. We want to avoid an arbitrary drawing of the line, especially in light of its great consequence: Justice does not apply to those outside the line. Accordingly, we should say that ‘considerations of justice apply at least wherever there is systematic economic interaction’.\textsuperscript{96} Step two invokes the point that ‘states participate in complex international economic, political and cultural relationships ...’\textsuperscript{97}

In discussing the cosmopolitan argument represented by the three points I refrain from disputing the validity of the two first steps. What I want to question is the \textit{inference} drawn from them that Rawls’s principles of justice apply globally. This inference constitutes, I believe, a failure to distinguish between on the one hand the conditions for the problem of justice to arise, and on the other the resolution of the problem. These are separate questions. Showing that the problem of justice arises is not the same as showing how it should be solved. It is plausible that the \textit{problem} of international justice arises especially in the light of increasing interdependence. States might plausibly be seen as less self-sufficient\textsuperscript{98} and less like units in the contemporary international system.\textsuperscript{99} Increasing benefits from social cooperation are brought about by the increasing globalisation of markets, and this makes pressing the consideration of principles for the distribution of these benefits. In other words, it is unquestionable that the cosmopolitans have successfully and legitimately pointed to the fact that the problem of international justice is a pressing one, and a problem which cannot and should not be neglected by theories of justice. Now what is less clear is that they, through this step, already have \textit{solved} the problem of international justice (or even begun to solve it).\textsuperscript{100} That is, it is questionable whether their suggestion—that prin-

\textsuperscript{100} Cf. Pogge’s criticism of Barry for making a similar mistake in his criticism of the role of the circumstances of justice in the works of Hume and Rawls. Thomas W. Pogge, ‘Book review: \textit{A Treatise of Social Justice, Vol. I:}
Principles of justice developed for a closed society on the model of a nation-state should apply globally—is a plausible, sensible, and realistic solution to the problem of international or global justice. Even if we can show that the problem of justice arises in the two cases, why assume that the same solution is appropriate? After all, the cases of, on the one hand, a closed society modelled on modern states and, on the other, an international society (if any) seem intuitively to constitute two very different subjects, and this difference is reflected, and much is made of it, in the discipline of international relations.

Cosmopolitans may reply by an attempt to explain explicitly why the problem should be solved in the same way. An obvious approach would be to invoke the idea of a global basic structure as a parallel to Rawls’s focus on the basic structure of society. The accompanying claim could be that steps one and two in the argument above imply that the appropriate subject of Rawls’s theory is the global basic structure.\textsuperscript{101} This basic structure, they could claim, is not morally different from the one Rawls considers, and hence the same considerations and resulting principles must obtain for this subject. To clarify, we introduce this new step in the cosmopolitan argument:

1. Alternative criterion of society: ‘Considerations of justice apply at least wherever there is systematic economic interaction’.

2. Empirical premise: interdependence

3. The subject of justice: global basic structure\textsuperscript{102}

4. Conclusion: Rawls’s principles of justice apply globally.

Unpacking this argument briefly, we may say that extensive economic interaction, which we take to be an apt characterisation of international relations today, constitutes a global basic structure, at least in the morally relevant sense. The interaction constitutes an institution as defined by Rawls: a public system of rules defining rights and


duties, and justice applies to such a common institution. Furthermore, the global basic structure is morally important for the same reason that Rawls gives for the importance of the domestic basic structure, namely that it has a profound effect on our life from the start. Hence the global basic structure needs to be addressed by a theory of justice.

While a compelling argument, I find that it fails to do justice to an important part of Rawls’s theory. Rawls emphasises that the subject of justice is the basic structure as defined above. Adding to this definition he says:

By major institutions I understand the political constitution and the principal economic and social arrangements. Thus the legal protection of freedom of thought and liberty of conscience, competitive markets, private property in the means of production, and the monogamous family are examples of major social institutions. Taken together as one scheme, the major institutions define men’s rights and duties and influence their life-prospects, what they can expect to be and how well they can hope to do. The basic structure is the primary subject of justice because its effects are so profound and present from the start.

The cosmopolitan claim seems to be that according to the thrust of Rawls’s theory, it does not endow the state or ‘the political constitution’ with any specific importance. The theory only looks at self-contained societies as a first approximation to the complex issue of justice. This makes plausible the claim that if we drop the thesis of self-sufficiency, which seems a sensible thing to do in the light of complex interdependence, then justice concerns the basic structure at the global level. Another way to put this is that given economic interaction we have an institution in the relevant sense to which Rawls’s conception of justice applies. Again we grant no special role to the state and/or the constitution.

The legitimate criticism which can be levelled at this is, I believe, that it fails to acknowledge the astute attention of Rawls’s theory to institutional questions. I do

not here mean (nor, however, do I wish to deny) the institutional aspect of Rawls’s theory pointed to by cosmopolitans such as Pogge, namely its aim and ability to assess institutions with regard to justice.\textsuperscript{110} I want instead to point to the institutional aspect of Rawls reflected in his belief in the importance of formulating a theory of justice on the basis of a sound social theory. To see this, consider that the basic structure is modelled on the historical development and the resources of a modern state structure. It draws on the empirical experience of the potentials of this structure. Justice as fairness is a moral conception designed to produce principles for the just operation of this formal structure. It is to determine the application of the resources of governance. Corresponding to this approach, the law of peoples is framed to apply to existing international law and practices. It is not the same as international law. It is a moral conception applying to and exploiting the formal structures at this level.\textsuperscript{111} The moral conception might also, of course, demand the attempt to reform this structure or to mould it in a different way, but it is clear, and seems to be a pervasive element of Rawls’s theory, that existing formal structure circumscribes the application of a moral conception.\textsuperscript{112}

At this stage cosmopolitans might point out that they do not envisage the principles of justice to apply to an imaginary utopian structure. Instead they might say that the principles apply to the existing state structure using the material present here. It is unclear, however, whether this would make any relevant difference. Saying that the principles apply in this way to the world at large, overrides completely the state structure in its present form, thus using them as mere tools of implementation of a global conception. Hence, on the cosmopolitan view, the principles do indeed seem to apply to an imaginary structure.

Rawlsian cosmopolitans may instead take another tack, claiming that Rawls’s attention to institutions is just a mistake on his part; there is nothing deeply Rawlsian about the institutional view. It is a failure on Rawls’s part to see the implication of his own theory. This, however, is not a convincing claim. The institutional sensitivity


\textsuperscript{112} Cf. Rawls’s discussion of a metric for interpersonal comparison most explicit in John Rawls, ‘Social unity and primary goods’, \textit{Utilitarianism and Beyond}, ed. A. Sen and B. Williams (Cambridge University Press, 1982),
seems perfectly consistent with the important second part of Rawls’s theory exposed and developed above. The point of departure in a formal structure is closely linked to the different dimensions of stability. A formal structure, however weak, seems to be a precondition for making a plausible case for an institutional theory generating sufficient and appropriate motivation. This is confirmed by the practicability conditions linked to stability expressing the limited possibility of inventing institutions de novo. Elaborating further, we should note that Rawls can agree with Pogge that the problem of justice at the international level is pressing and in need of attention. Again, showing that something is a problem is not the same as proposing a solution, such as the proposal to apply the principles of justice globally. Rawls seems instead to want to make moral demands to an existing formal structure. This is not an expression of conservatism. He aims to provide a moral foundation for international law, securing its binding force, making possible, for example, effective action towards out-law regimes. We might say that Rawls’s stand on international justice is morally ambitious in an institutionally feasible way.

In this light, cosmopolitans may simply choose to reject the stability part of Rawls’s view and the institutional awareness intertwined with it—at least according to the exposition in this paper. This, however, is such a radical move that one may wonder whether they can retain their claim that Rawls’s theory supports their conclusions, and this, remember, was their central claim. They are Rawlsian in the sense that they endorse the principles derived for the basic structure as subject modelled on the state structure of a modern state, but not Rawlsian in their denial of the relevance of the second stage in Rawls’s theory considering the stability of principles. If they endorsed the latter they would arguably acknowledge that the subject of international justice allows for different principles than the subject of domestic justice. I admit that much here hangs upon the reading of the stability dimension of Rawls’s theory. If one tends to agree with Barry that stability is superfluous in the Rawlsian construction, then eradicating it would, of course, be uncontroversial. If, on the other hand, one agrees

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with the exposition above, then ignoring the second stage of Rawls’s theory constitutes severing the one of the two main inquiries attached to justice as fairness aiming at wide reflective equilibrium. Hence this paper would be reluctant to see the cosmopolitan position as Rawlsian. This reluctance, however, does not keep us from considering the cosmopolitan position versus Rawls’s theory as explained and developed above.

The cosmopolitan reason for rejecting the stability dimension of Rawls’s theory can be found in their view on the relation between ideal theory and non-ideal theory. To them stability is part of non-ideal theory. Consider one of the clearest expressions of this position, made by Beitz:

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Ideal theory prescribes standards that serve as goals of political change in the nonideal world, assuming that a just society can, in due course, be achieved. The ideal cannot be undermined simply by pointing out that it cannot be achieved at present. One needs to distinguish two classes of reasons for which it may be impossible to implement an ideal. One class includes impediments to change that are themselves capable of modification over time; the other includes impediments that are unalterable and unavoidable.
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The cosmopolitan then point out that institutional factors and factors related to motivation fall under the first class of impossibility reasons. It may prove both difficult and costly to change institutions and motivation according to moral principles, but this is not a reasons for not demanding the implementation of moral principles or for weakening them.

On Rawls’s theory as explained above, seen together with the institutional extension, one might say two things in reply to Beitz: First, we should not overestimate the plasticity of institutions. Institutional theory and empirical research on institutions tell us that establishing institutions and making them work are extremely difficult. Second, while this point does not imply that institutions should be seen as Beitz’s second class of impediments to change that are unalterable and unavoidable, it does imply that normative theory should to a reasonable extent incorporate the lessons of institutional theory in order not to produce completely unfounded mandates.

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This second point, however, is sure to induce fierce reactions from cosmopolitans (and many other political theorists). They would probably persist in holding that even if social theory has discovered that social institutions are less malleable than previously acknowledged, this does not change the fact that they are not ‘unalterable and unavoidable’ factors and hence do not constitute a reason for any changes in the processes of developing and finally suggesting moral principles. Making a convincing argument for one or the other of these positions would take us deeply into meta-ethics. I do not consider this path in the present paper. As an alternative, I present, in the last section, some remarks on the two positions based on their relative ability to fill an important place in the general research on international relations.

Before taking on that more general question, I want to consider two alternative cosmopolitan arguments. The first line is one of radicalisation with regard to the application of the principles of justice, avoiding the above reliance on Rawls’s own definition of the problem and scope of justice. The second line is one of concession, granting that principles of justice do not apply to the world at large, emphasising instead the possibility of justifying a more egalitarian law of peoples.

2. Cosmopolitans II: Moral Equality and Global Justice

As it stands, this second argument is quite simple:

1. The moral equality of persons, or the Kantian idea of treating persons as equals.\(^{120}\)
2. Rawls’s principles of justice apply globally.\(^{121}\)

According to Richards, the idea of the moral equality of persons is reflected in moral reasoning as such by the idea of \textit{moral} reciprocity as opposed to \textit{actual} reciprocity. Arguments of justice ‘define forms of practical reasoning that persons would find reasonable whether they are on the giving or receiving end’.\(^{122}\) That is, they incorporate a constraint of reciprocity. Being a moral argument, Rawls’s principles of justice apply globally. All persons must, by virtue of their moral equality, be within the scope of justice. There is no non-arbitrary basis for restricting the scope of justice to the

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nation-state or to one generation. This parsimonious argument challenges the necessity of the empirical premise in the first cosmopolitan argument considered above. The present argument, involving no demand of actual reciprocity, does not depend ‘on facts of international trade and common markets’. It moves directly from the axiom of the moral equality of persons to the conclusion that Rawls’s principles of justice apply to the world at large.

If this argument is sound, it clearly avoids some of the problems pointed to above, in that these were located primarily in the first two steps, which this argument bypasses. Pogge expresses a doubt concerning the significance (if any) of the difference between the two arguments, because he thinks that interdependence is a firm fact, and hence relying or not relying on this premise is an academic question. This, however, does not seem to touch the argumentative significance of the difference in the context of this paper. While in this sense significant and interesting, the price is high for circumventing the two first steps in the first cosmopolitan argument, given a wish to supply what one can plausibly call a Rawlsian argument. Like the other cosmopolitans I have considered, Richards is quite clear that this is his aim; he wants to consider how the analytical framework of Rawls can be applied to international justice. By jumping directly from the moral equality of persons to applying the principles globally, he throws out the stability leg of Rawls’s theory, removing this train of thought by its roots. He does this in two senses. First, he shows no regard for the strains of commitment. These considerations are simply cut out of the original position. That is, they are not brought to bear on the ultimate acceptance of principles for a subject. Second, he cuts out the considerations of the kind of stability and the forces that secure it, and, as a consequence, rules out what I argued was a natural extension of the focus on institutions as forces that secure stability. These points make clear that Richards is subject to the same objection as was the case for the former cosmopolitan arguments. This objection says that it is unclear how he can claim that

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Rawls’s theory justifies the global application of the principles of justice. Indeed this objection might plausibly be even more pressing for Richards in light of his radical departure from Rawls’s theory in omitting Rawls’s point on the problem and subject of justice in addition to the second stage of his theory.

Considering Richards’s position in comparison to Rawls’s position as described above, the meta-ethical question arises again. Richards does not see institutions as constraints upon moral ideals. He wants instead to articulate ‘the voice of the invisible world’. This voice requires radically new institutions. The latter are implications or demands of the principles and not constraints upon the formulation of principles. Feasibility is not the same as existence, as Beitz emphasises. Feasibility is much weaker. The existence of institutions is not a necessary condition for moral principles to apply. Feasibility only requires that it is not strictly unimaginable that an institution required by a moral principle could be brought into existence. And motivating institutional innovations is one of the most important aims of moral theory. These points suggest an even more radical conflict with the understanding of Rawls presented in this paper. As seen, Rawls, while not wanting simply to accept the status quo, is sensitive to present institutional potential and how a system of sensible moral demands can be made to them. He is sensitive also to the available resources for constructing a plausible institutional theory so as to secure an important source of stability. These concerns derive from the second stage of his theory. This is the one denied by cosmopolitans, and here by Richards in the most explicit and radical way. Thus Richards’s position emphasises the presence of two different models. I defer to section six notes on the relative merits of these two.

3. International justice: An egalitarian law of peoples

127 For a similar point about Richards see Peter Danielson, ‘Theories, Intuitions and the problem of world-wide distributive justice’, Philosophy of the social sciences, 3 (1973), 331-340 at p. 337.


129 Charles Beitz, ‘Cosmopolitan Ideals and National Sentiment’, The Journal of Philosophy, 80 (1983), 591-600 at p. 595. This expresses Beitz’s acceptance of Richards’ point that the falsity of self-sufficiency is not a condition for the moral demand of a global application of principles of justice. See also note 124 above.


I now consider another form of cosmopolitan argument, which I described as involving a concession to parts of Rawls’s framework neglected by the other cosmopolitan arguments. Now the claim is not that given Rawls’s definition of the problem of justice and his notes on the scope of justice, the principles of justice apply to the world at large, or that we can infer directly from moral equality to the appropriateness of the Rawlsian principles when seen as applying globally. Instead this argument accepts Rawls’s method of deriving principles for the international case, which according to the account developed in the present paper is related to Rawls’s point of departure in formal, existing institutions, and then states that stricter principles than Rawls is willing to grant apply to the states in the international system. Thus, according to the perspective developed here, there is no initial objections to the cosmopolitan argument, as I claimed was the case regarding the former cosmopolitan arguments. That is, we work in the frame of an inquiry which makes the generation of stability institutionally plausible, and it appears that the practicability condition as explained and developed above can be satisfied.

This cosmopolitan argument can be summarised in the following points:

1. Acceptance of Rawls’s two-step process of first deriving principles for closed societies and then, using representatives of states, deriving principles for international justice. The representatives do not represent persons and the principles are not taken to apply to the world at large. They apply instead to states in the international system.

2. These representative would agree to an egalitarian law of peoples and not the ‘familiar’ principles of the law of nations. Rawls fails to or ‘simply decides against’ accommodating international egalitarian concerns within his strategy of deriving principles of justice for international justice.

Let us explain this argument in a more comprehensive way. In the first step of the extension to the law of peoples, representatives of democratic peoples deliberate under a veil of ignorance, disallowing information on the specific circumstances of the society they represent. The claim is then that the parties would adopt a principle which speaks in favour of the implementation of some form of redistributive principle
catering to the positions of the poorest societies. Rawls’s stipulation of the interest of the parties (which makes plausible the non-egalitarian result): ‘that its domestic institutions satisfy its conception of justice’, seems arbitrary and implausible. An obvious alternative is the stipulation that: ‘each delegate assumes that her people has an ultimate interest not only in the justice of its domestic institutions, but also in the well-being of its members (beyond the minimum necessary for just domestic institutions)’. Given this stipulation, it is unlikely that there is a disanalogy between the parties here and the parties to the domestic original position. If so, this would speak for a settlement which benefited the poorest societies. Furthermore, even if Rawls’s own stipulation is accepted, the parties would at most be indifferent between accepting the law of nations and Pogge’s egalitarian alternative. There is nothing in Rawls’s stipulation which explains a preference for the non-egalitarian alternative. There might even on Rawls’s own stipulation be a reason for the parties to prefer the egalitarian alternative, in that, given the plausible empirical premise that large international inequalities threaten the internal justice of poorer societies, some international redistribution is instrumentally valuable in protecting internal justice. If sound, the upshot is that Rawls’s own method justifies a modified global difference principle applying to separate peoples represented by their governments, not to the world at large. The concrete suggestion is a global resource tax.

This is a much more prominent candidate than any of the earlier arguments for being a strictly internal argument. It accepts Rawls’s method of deriving principles for

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international justice, which, as said, is taken to be a theoretical representation of Rawls’s institutional sensibility. In addition, taking Pogge as an example, it also considers stability, although there is some ambiguity as to whether stability is seen as being brought to bear on the criterion of justice, or as a practical importance of Rawls’s theory separate from the criterion of justice. Thus I accept this as an internal argument and discuss it in the two steps suggested by my exposition of Rawls’s theory above, considering first the provisional derivation of principles bracketing stability, and then the stability question, both stages seen within the system of wide reflective equilibrium.

Regarding the provisional derivation of principles, Pogge has a very strong case. Given the application of the veil of ignorance, it is unclear why Rawls thinks that there will be no principles of redistribution at the international level. There seems, at least at this level, to be no reasons for urging a disanalogy between the reasoning required for deriving principles for the two subjects under extreme uncertainty. This problem is not ameliorated by Rawls’s stipulation of the parties’ interests which seems arbitrary, and, as Pogge shows, even if this stipulation was accepted, it is not clear whether the parties would prefer the non-egalitarian law of people. These points suggest that we search the second stage of Rawls’s argument, asking whether it explains Rawls’s reluctance to endorse an egalitarian law of peoples.

Pogge’s line of inquiry concerning stability considers the question whether just institutions at the international level generate a sufficient and appropriate sense of justice. An objector to an egalitarian law of people might claim that just institutions are not enough to secure compliance. Sanctions may plausibly be necessary, but they presuppose a world government, ‘which the delegates have abundant reasons to reject.’ Pogge makes an important reply to this objection, clarifying that an egalitarian law of people in the form of an international resource tax does not require a

141 Consider the structure in Thomas W. Pogge in Realizing Rawls (Ithaca and London: Cornell University Press, 1989), part III.
world government. It can draw on the familiar resources of international organisations and on the capabilities of the units in the present state structure.

As a supplement to Pogge’s reply, I believe it possible to go behind the claim that just international institutions can generate a sense of justice considering the concrete forces substantiating this claim, and then show that also at this level a global resource tax could be sustained. The first topic to face is whether a plausible institutional theory can be developed. The answer is, I hold, clearly affirmative, because here the necessary resources for constructing an institutional theory are present, making plausible that just institutions can be implemented and that this can get off the ground the argument considered for internal justice above. The account draws on general institutional structures which, although weak, satisfy the basic conditions for being plausible recipients of moral demands. Furthermore, it exploits the resources of an existing international society between separate states with an established structure of cooperation. Thus the conditions are satisfied for the start of a virtuous circle leading towards more moral consensus on an egalitarian law of peoples, bringing along the goods of moral consensus as mentioned above. The upshot regarding an institutional theory is that operating with this as a condition for a sensible moral conception leaves us with no reasons for preferring the non-egalitarian law of peoples.

Focusing on practicability as evidentiary for stability, we reach, I claim, the same result. We have firm empirical evidence that, although mired in difficulties, extensive international cooperation on the construction of institutions is a viable possibility,144 and an international society is not a chimera.145 Notice that it is not a valid objection that this cooperation might be seen as inefficient. The important point is that there is a viable general structure to which moral principles might sensibly apply, using and extending its resources. Thus there is no moral reason for drawing back from the implication of sensible moral theories.

The upshot of the discussion is that Rawls has no reasons for not accepting Pogge’s egalitarian law of peoples. Does this makes Rawls a cosmopolitan? We may perhaps say that he is a cosmopolitan in the same way as he claims to be a universal-

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144 Allan Rosas, ‘State Sovereignty and Human Rights: towards a Global Constitutional Project’, Political Studies, XLIII, pp. 61-78.
That is, starting from within a political conception, Rawls considers the possibility of extending his account and in so far as it extends successfully to the law of peoples, it might also be said to extend to all persons mediated, of course, by the state structure.

VI. CONCLUDING REMARK ON IDEAL AND NON-IDEAL THEORY IN INTERNATIONAL JUSTICE

Taking account of the result of the discussion, we might say that as Rawlsian arguments many of the cosmopolitan arguments run afoul of the constraints in the Rawlsian theory. The last argument is more clearly internal to Rawls’s theory and seems to justify the view that Rawls should favour an egalitarian law of peoples. This, however, still leaves open an exciting question indicated above: has the Rawlsian edifice become a strait-jacket for progress? Should we, instead, admit the inspiration from Rawls, but then move radically beyond his theory (as seems to be the approach of several of the cosmopolitan writers mentioned above)? The difference between the two visions is, as indicated, a deep meta-ethical problem, which I cannot address in this paper. I aim, instead, in this last section of the paper, to make a note on the ability of the two approaches to contribute to research on international relations.

On the cosmopolitan view, the role of normative political theory is to generate ideals. These ideals might be very far from what is politically feasible, but as long as they are not strictly impossible this is not a problem. The contribution of normative political theory to international relations consists in these ideals, on the basis of which non-ideal theory can consider how we may reach them. Generating ideals requires an abstract inquiry uncontaminated by non-ideal theory.

Rawls’s view as presented in this paper incorporates into normative political theory a sensitivity to institutional questions. It does not urge the same ideals and principles for subjects to which widely diverging existing institutional resources are available.

On the contribution perspective, I think that Rawls’s strategy is better equipped than the position occupied by cosmopolitans. By incorporating institutional constraints in the normative theory, the resulting theories and their accompanying ideals are more apt candidates for the serious attention of the machinery of international relations theory and, in turn, for political action. Ideals developed in isolation from the knowledge of other disciplinary approaches to international relations run the risk of being mere unfounded mandates.

There is, however, an obvious danger related to this strategy. It runs the risk of simply justifying the status quo and thereby making itself superfluous, with no interesting contribution to research on international relations. This is a real danger, but I think an element of it could be countered by my argument that institutional constraints do not keep us from endorsing an egalitarian law of peoples.