

Rawls and the Global Original Position

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Cosmopolitans including Charles Beitz, David Richards, Brian Barry, Thomas Pogge and Gillian Brock propose the device of an original global position to work out global principles of justice. However, John Rawls does not agree with this kind of proposal. In this paper, I add two key original contributions, which go beyond previous arguments by cosmopolitans and advance the current debates. First, to argue against Rawls's objection to the global original position, I demonstrate the importance of the distinction between accepting a particular substantive principle and accepting the original position procedure. Second, in order to respond to cultural pluralism, I take a unique approach to show that the idea of the person as free and equal is a fundamental part of the global public culture by examining the most fundamental legal documents: the proto-constitutional documents in international law and the constitutions of the major states. I apply Samuel Huntington's classification of civilisations to identify the major civilisations and their core states and show that the idea of the person as free and equal is implicit in the constitutions of most influential countries even these countries are categorised in different civilisations.

Keywords: Peace; Rawls; the law of peoples; the global original position; cultural pluralism.

1. Introduction

The “original position” with its “veil of ignorance” is a model of representation that Rawls designs to develop the political principles of domestic justice as the fair clause of social cooperation in *A Theory of Justice* (Rawls 1999a: 11). The justificatory perspective of the original

position, the focus on the basic structure and the selection of guiding principles from the original position are three major theoretical features in Rawls's theory of justice. Rawls envisages a fair social cooperation clause as agreed upon by all those involved in social cooperation. And the consent of free and equal citizens must be under the right conditions. We get the idea of the "original position" by combining the fair conditions to be observed in the formulation of the social fair cooperation clause, that is, the principle of justice. Rawls writes, "I have said that the original position is the appropriate initial status quo which ensures that the fundamental agreements reached in it are fair. This fact yields the name 'justice as fairness'" (Rawls 1999a: 15).

A close relationship exists between the original position and Kantian constructivism (Rawls 1999b: 303). Rawls points out that Kantian constructivism specifies a particular conception of persons as rational agents in a construction procedure according to certain reasonable requirements, which determines the first principles of justice through the agreements of these rational persons (Rawls 2001: 516). Kantian constructivism links the conception of the person, the reasonable procedure of construction and the principles of justice. For Rawls, Kantian constructivism is the best way to justify a proper conception of justice we can hope for. Moral objectivity is not independent of the social or human point of view. It can only be constructed (through a procedure) on the acceptable moral facts by free and equal, reasonable and rational moral persons.

In his international theory in *The Law of Peoples*, nevertheless, Rawls criticises and rejects the approach of the global original position. He applies the device of the original position in two stages (involving three uses) rather than a single global original position for the selection of political principles of international society. Those represented in the second stage of the original position are peoples, who are collective entities rather than individual persons. In the first step of the second stage, the liberal peoples agree upon the law of the peoples for the society composed of liberal peoples. In the second step of the second stage, the liberal peoples propose to the decent peoples the selected eight principles of the law of the peoples in the previous step. Rawls claims that decent peoples would accept these eight principles in good faith. Thus, Rawls gives up the idea of the person as free and equal, reasonable and rational individual as the justificatory foundation to work out the international principles, and hence deviates from Kantian constructivism in his international theory.

Rawls's shift in his approach has significant theoretical implications and consequences in international theory. This paper attempts to sort out Rawls' objections against the global original position and then present corresponding analyses and responses. It also compares the theoretical advantages and disadvantages of the global original position and Rawls's approach in *The Law of Peoples*. Hopefully, this

study may shed some light on clarifying justificatory grounds in selecting guiding principles for global peace and justice.

2. *The idea of the global original position in the theories of cosmopolitan justice*

Soon after Rawls published *A Theory of Justice* in the 1970s, some other scholars advocated extending the original position to the global context and envisioned a single global original position to reflect on the principles of global justice. These advocates are called cosmopolitans or theorists of cosmopolitan justice.

Charles Beitz writes, “Thus the parties to the original position cannot be assumed to know that they are members of a particular national society, choosing principles of justice primarily for that society. The veil of ignorance must extend to all matters of national citizenship, and the principles chosen will therefore apply globally” (Beitz 1999: 151). Beitz maintains that, once properly reinterpreted, Rawls’s two principles of justice can be applied globally. Not only is the state a social cooperation system, but the entire human society is also a global social cooperation system due to increasing economic and political interdependence. The familiar reasoning in Rawls’ domestic theory of justice can be applied in the global case. Therefore, Beitz proposes to envisage a single global original position in which contracting parties represent each individual, instead of the state, on a global scale. They choose the principles of global justice behind the veil of ignorance of individual persons’ fundamental interests (Beitz 1999: 143–161).

Thomas Pogge also endorses Beitz’s proposal and proclaims that nationality is of no moral significance. “Nationality is just one further deep contingency (like genetic endowment, race, gender, and social class)” (Pogge 1989: 246). He envisions a single global original position to construct a global institutional scheme (Pogge 1989: 246, 247, 256).

In addition to Beitz and Pogge, David Richards (1982), Brian Barry (1973, 1989) and Gillian Brock (2009) also support the use of the global original position. This device’s primary feature is that all individuals of humankind are considered free and equal. Their consent for the right reasons should ground the justification of the principles of justice for the global basic structure. The global original position embodies moral universalism, which means each individual of humankind has a global stature as the ultimate unit of moral concern (Pogge 2008: 169). Put another way, the contractarian framework of the global original position is based on the concept of “moral reciprocity,” that is, “treating persons one would oneself reasonably liked to be treated” (Richards 1982: 281–282).

3. *Rawls's criticisms of the global original position*

Regarding the theoretical device of the global original position proposed by these writers of cosmopolitan justice, Rawls argues against it in both *The Law of Peoples* in 1993 and 1999. In the former work, he claims that the approach of the global original position makes the foundation of the law of the people too narrow. He also enlists the main reasons why the approach in *The Law of Peoples* is superior to the global original position. The clear defence of his approach includes the following: First, the theory of domestic justice focuses on the basic structure of society, and so far, everything has progressed well. So when formulating the law of the peoples as the guideline for international relations between peoples, it is reasonable to presume the existence of domestic societies and the principles of justice for their basic structure as a starting point. Second, peoples as sovereign entities now exist in some form worldwide. Third, his approach can consider factors such as peoples' considerations and government's consent (Rawls 1999c: 535–536).

In the 1999 work, at least literally, his principal and almost sole reason, which he gives explicitly, for opposing the global original position seems to be that the global original position may lead to global liberal principles of justice and hence the liberal foreign policy, which is unacceptable. For Rawls, the device of the global original position means that all people will have equal rights to liberties owned by citizens of a constitutional democratic society. According to this interpretation, the foreign policy of liberal peoples, which Rawls hopes to clarify, will be a step-by-step approach to shaping all nonliberal societies and moving them towards liberalism. Rawls rejects this kind of foreign policy because it assumes that only a liberal democratic society is acceptable.

After summarising these two major objections to a global original position, I now turn to detailed analysis and responses to them. And I will start with the latter objection because it is Rawls's last opinion concerning the global original position.

4. *The global original position and liberal foreign policy*

4.1. *Liberal rights and the liberal foreign policy*

Rawls objects to the use of the global original position. His primary rationale for his objection is this:

To proceed in this way, however, takes us back to where we were in ζ7.2 (where I considered and rejected the argument that nonliberal societies are always properly subject to some form of sanctions), since it amounts to saying that all persons are to have the equal liberal rights of citizens in a constitutional democracy. On this account, the foreign policy of a liberal people—which it is our concern to elaborate—will be to act gradually to shape all not yet liberal societies in a liberal direction, until eventually (in the ideal case) all societies are liberal. But the foreign policy simply assumes that only a liberal democratic society can be acceptable. Without trying to work out a

reasonable liberal Law of Peoples, we cannot know that nonliberal societies cannot be acceptable. (Rawls 1999c: 82–83)

Evidently, his objection resorts to his opposition to liberal foreign policies. Why does Rawls oppose the foreign policy of liberal people to shape all nonliberal societies in a liberal direction? His main argument is that, out of respect for reasonable pluralism, liberal societies should be tolerant of decent societies. If decent societies are not made equal and *bona fide* members of the Society of Peoples, they do not receive due respect. We must clarify whether Rawls is against all people possessing equal rights to liberties or only against liberal foreign policies.

Rawls makes it clear that if a liberal constitutional democracy is indeed better than other forms of society, which he believes is true, then liberal peoples should also believe and assume that once liberal peoples treat decent peoples with due respect, decent societies will gradually recognise the advantages of the free system and take initial actions to make their system freer. He hopes that dissenters in decent peoples will promote the liberal change of decent people (Rawls 1999c: 61). From this point of view, Rawls does not generally oppose that citizens in all societies have the right to equality and freedom. He is only opposed to the liberal diplomatic policy, that is, the adoption of step-by-step measures to shape all nonliberal societies according to the model of liberalism.

4.2. *The distinction between the global original position as a theoretical device and substantive political principles*

Rawls believes that everyone will have equal rights to liberties enjoyed by each citizen in the constitutional democratic society means the need for liberal peoples to pursue a liberal foreign policy. This direct link seems problematic. There are other approaches to promote individuals' rights and liberties in the world. The primary example is the human rights approach adopted by the United Nations. The iconic event is the signing and ratification of the Universal Declaration of Human Rights and other human rights covenants. Another example is the European Union's approach, stipulating conditions for accession to encourage countries interested in joining the EU to become more liberal.

Rawls might respond to the arguments above like this: the international human rights approach and the EU approach are also initiated and executed by democratic countries and hence still part of their foreign policies. But it is proper to insist that these approaches are not unacceptable because both the international human rights approach and the EU model are based on the consent of the participating countries. In Rawls's international theory, only liberal peoples are societies with a genuinely normative feature. Decent peoples are qualified to be tolerated only because they satisfy some of the liberal conditions, such as human rights protection and political consultation. Rawls still hopes

that decent peoples will eventually implement liberal reforms moved by domestic dissenters. His opposition to the liberal foreign policy is essentially against the compulsory liberalisation of decent peoples by foreign regimes. Nonetheless, decent peoples can achieve liberalisation voluntarily under the international and EU human rights approaches. Thus, it is not tenable for Rawls to link liberal rights and liberties directly to the liberal foreign policy of democratic countries.

More importantly, Rawls's criticism of the global original position does not distinguish between the global original position as a theoretical device and the principles of justice derived from the original position and the resulting foreign policy. He believes that starting from the global original position would necessarily lead us to conclude with the choice of liberal foreign policy. But this connection is untenable. As Rawls states in *A Theory of Justice*, the original position and the principle of justice are two separate parts of the contractual theory of justice. A person can agree to the original position without agreeing to the specific principles of justice derived therefrom, and vice versa. Rawls writes:

It is, therefore, worth noting from the outset that justice as fairness, like other contract views, consists of two parts: (1) an interpretation of the initial situation and of the problem of choice posed there, and (2) a set of principles which, it is argued, would be agreed to. One may accept the first part of the theory (or some variant thereof), but not the other, and conversely. The concept of the initial contractual situation may seem reasonable although the particular principles proposed are rejected. (Rawls 1999a: 14)

Therefore, even if the opposition to a particular substantive principle and its practical implication is sound, it cannot necessarily constitute an effective rebuttal to the global original position as a model of representation.

It is important to note that if the veil of ignorance of the global original position or other relevant supporting conditions is modified, the principles of justice obtained in this global original position may vary. What principles of justice will be derived from the device of the original position depends on the setting of the veil of ignorance and the interpretation of the relevant conditions. Therefore, the device of the global original position per se does not necessarily lead to a particular principle of justice. And the objection of the use of the global original position cannot be justified on the ground of unacceptable liberal foreign policy.

5. *Cultural pluralism in the law of peoples*

5.1. *Challenge from cultural pluralism in working out global political principles*

In the 1993 paper *The Law of Peoples*, Rawls's reason for opposing the global original position is that it makes the foundation of the law of peoples too narrow. Rawls suggests the trouble with the global original

position, which is all-inclusive, is that it has many problems with the use of the concept of freedom; because in the global case, the global original position is meant to treat all people, regardless of their society and culture, as free and equal, reasonable and rational individuals in order to conform to the concept of liberalism. This makes the foundation of the law of peoples too narrow. By this, he means that the global original position envisions people as free and equal, hence does not tolerate the perspective of a nonliberal society. Liberal peoples should not impose our own culture and values on decent peoples. The value of nonliberal society should be respected and tolerated equally. In decent societies, especially those organised by a comprehensive religious, moral or philosophical doctrine, people do not regard each other as free and equal. Therefore, presuming that all people are free and equal is unacceptable (Rawls 1999a: 549–550). Although two objections are closely interconnected, they are not entirely the same. In the previous objection, Rawls objects to the global original position because of its consequence: the unacceptable liberal foreign policy. By contrast, the essence of the latter objection is that the concept of person per se embodied in the global original position is troublesome. This contention is based on cultural pluralism.

5.2. *Global public political culture*

As Pogge maintains, criticism from cultural pluralism is the most serious objection to the globalisation of Rawls's principles of justice. He writes, "We must not impose our values upon the rest of the world, must not pursue a program of institutional reform that envisions the gradual supplanting of all other cultures by a globalised version of our own culture and values. This is, I think, the most serious objection to globalising Rawls and the one that seems to have influenced Rawls himself" (Pogge 1989: 267).

Although cultural pluralism ought to be respected, a universal concept of person is indispensable even in Rawls's *The Law of Peoples* and in the theories of some writers who oppose the globalisation of Rawls's principles of domestic justice.

In order to set up the criterion of decency of societies and hence determine corresponding foreign policies of liberal democratic countries, Rawls proposes a thin list of human rights in *the Law of Peoples*. The protection of basic human rights for every human being is still regarded as a universal starting point. That is to say, in the aspect of the protection of basic human rights, Rawls regards everyone in different societies as equal. Also, although Thomas Nagel objects to globalising the principle of distributive justice, he advocates that we have minimal concerns about human compatriots who have long been suffering from hunger or severe malnutrition, and died from preventable diseases (Nagel 2005: 118). This concern does not need to be predicated on the existence of a special relationship, but only on the humanity we share.

The claim for basic human rights is equal for every human being.

More importantly, Rawls approves the important role of liberal dissenters within decent peoples and hopes that they will promote decent peoples to freedom. Therefore, the concept of the person as free and equal in the global original position is consistent with Rawls's hope that the decent societies will reform in the direction of liberalism.

In addition, although Michael Blake agrees with Rawls's two-tiered principles of justice, that is, the international society is different from the domestic society, his argumentation can be said to be consistent with the core value of the global original position. He asserts that every human being has autonomy; the selection of different principles of justice depends on the different relationships that exist between people. This way of selecting the principle of justice can fulfil the requirement of impartiality to everyone (Blake 2001: 265-273, 281-285). Blake's argument exemplifies that building the principles of global justice by treating everyone as free and equal can express more profound respect for individuals in other societies.

Cultural pluralism does not mean moral relativism. Against the background of pluralism, the ideas of basic human rights, freedom, autonomy or humanity may still reasonably serve as the fundamental principles in reaching a global overlapping consensus.

Nevertheless, it is disputable on what these fundamental ideas should be. Leif Wenar and Amy Eckert, in order to defend Rawls' choice of the international original position, argue that, as in Rawls's *Political Liberalism* the principle of domestic justice is grounded in the fundamental ideas of the public political culture in the constitutional democratic society, Rawls follows the same idea in the issue of global justice, that is, relying on the fundamental ideas in the global public political culture in order to formulate the overlapping consensus as the global guiding principle. Since the Westphalia Peace Treaty more than three hundred years ago, we can see from the practice of international treaties, customs and international organisations that peoples (or states) rather than individuals are the main political actors. Although many countries have signed various international human rights declarations and conventions since World War II, their implementation still depends on the states (Eckert 2006: 851). So when formulating the principles of international justice, it is more appropriate to represent the peoples or the states in the original position. Moreover, Leif Wenar holds that Rawls's approach in international justice is superior to the global original position. He questions the global original position's capacity to develop the necessary principles of international relations like "nations should keep their treaties" (Wenar 2002: 72).

Nevertheless, even assuming that Eckert and Wenar's interpretation of Rawls is sound, that is, the formulation of the principle of global justice requires finding some fundamental ideas that can ground a global consensus in the global public political culture, it is not unrea-

sonable for us to believe that after the Enlightenment, especially after World War II, freedom and equality of individual persons have gradually become universal values.

Rawls builds up his principles of justice based on the fundamental ideas implicit in the public political culture of constitutional democracy. Public political culture is reflected in the Constitution, constitutional documents and judiciary reviews. Following a similar approach, we may identify the fundamental ideas implicit in the global public culture by examining the “proto-constitution” (Habermas 2006: 133) in international society and the constitutions in the major states.

The UN Charter and the International Bill of Human Rights are widely regarded as proto-constitutional documents in the international dimension. The idea of the person as free and equal is explicit in these essential documents. The UN charter expresses the ends of establishing the UN in the opening. The second end is “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small . . .” Freedom and equality are two fundamental values manifest in the UN charter. This becomes more explicit in the International Bill of Human Rights, which consists of the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (ICCPR, 1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966). The idea of the person as free and equal is widely endorsed by these covenant parties.

More importantly, this judgment can be confirmed by domestic constitutions, which are the most fundamental legal documents making up their public political culture. In the following discussions, I will demonstrate that the idea of the person as free and equal is implicit in the constitutions of most influential countries even these countries are categorised in different civilisations.

What are these major civilisations? And who are these major countries? To identify them, I will exploit one of the most prominent IR theorists in the Post-Cold War era, Samuel Huntington’s classification of civilisations. According to Huntington, there are eight or nine major civilisations in the world. And these civilisations have their own core states and corresponding concentric circles. After sorting out Huntington’s text in *The Clash of Civilizations and the Remaking of World Order*, here is the list of these civilisations and core states (Huntington 1996: 45–48, 155–179).

Civilisations	Core States
Western or Christian	USA (and Europe)
Japanese	Japan
Hindu	India
Latin civilisation	Mexico, Brazil, Argentina
African	Probably South Africa
Sinic or Confucian	China
Orthodox	Russia
Islamic	Indonesia, Egypt, Iran, Pakistan, Saudi Arabia (I would add Turkey, Malaysia)
Buddhist	I would enlist Vietnam, Thailand, Sri Lanka and Myanmar.

The USA, Europe, Japan, India, Mexico, Brazil, Argentina, and South Africa have a democratic political system even though they belong to Western, Japanese, Hindu, Latin, and African civilisations. I choose to investigate those countries whose constitutional nature is not so obvious: Egypt, Iran and Saudi Arabia in the Islamic civilisation, Vietnam, Thailand and Myanmar in the Buddhist civilisation, in addition to China and Russia.

The major findings are put in the following table:

	China	Russia	Egypt	Iran	Saudi Arabia	Vietnam	Thailand	Myanmar
General stipulation on the equal right and freedom	Article 33	Article 17, 19, 21, 22, 45	Article 51, 92, 93	Article 19	Article 26	Article 50	Article 4, 25	Article 348, 353
equality before the law	33	19	53	20		52	27	347
freedom of the person	37	20, 21	54, 55, 59, 60	22, 38, 39		71	28	353
freedom of speech, the press, assembly and association	35	29, 30, 31	65, 70, 71, 73, 74, 75, 76, 77	24, 26, 27		69	34, 35, 42, 44, 45	354
freedom of conscience and religion	36	28	64	23		70	31	34, 362, 363
electoral right (the right to participate in managing state affairs)	34	32	87	58, 59		53, 54	2, 50	369

All these countries surveyed except Saudi Arabia stipulate the basic principle of equal freedom and the basic rights and liberty in their constitutions. Even Saudi Arabia's basic law refers to the protection of human rights.

To conclude, the idea of the person as free and equal is implicit in the global public political culture. This is reflected not only in various international and regional human rights declarations and human rights conventions but also in most influential countries' constitutions. In this historical situation, it is not unreasonable to formulate a global overlapping consensus starting from the idea of treating each individual as free and equal, implicit in the global public political culture.

6. Comparing the global original position and Rawls's approach in international justice

In the previous sections, I have laid out defensive arguments to address Rawls' objections to show that these oppositions cannot effectively refute a global original position as a permissible model of representation in developing principles of global peace and justice. Now I turn to the offensive arguments. In this section, I compare the global original position and Rawls's approach in international justice and try to demonstrate the superiority of the former. First of all, I discuss the ultimate aim and priority of the theme in *The Law of Peoples* to show that global peace and stability is the dominant theme in *the Law of Peoples*. Given this specific theme or theoretical goal, I will expose the theoretical dilemmas of Rawls's approach and the theoretical advantages of the global original position. I will argue that the openness of the global original position is a significant advantage, for the device of global original position can allow us to consider more alternatives than the international original position does.

6.1. The ultimate aim in The Law of Peoples

The ultimate aim of Rawls's theoretical construction is to indicate the direction in the global order to eliminate the great evils of human history (Rawls 1999c: 6–7) and guarantee that “peace and justice would be achieved between liberal and decent peoples both at home and abroad” (Rawls 1999c: 6). Rawls pins the hope for a realistic Utopia in democratic societies (liberal peoples). He claims: “Our hope for the future of our society rests on the belief that the nature of the social world allows reasonably just constitutional democratic societies existing as members of the Society of Peoples” (Rawls 1999c: 7). It is useful to bear this aim in mind while comparing Rawls's approach and a global original position.

6.2. *Rawls's first theoretical dilemma: Unreasonable assumption of altruistic motivation of well-ordered societies and the establishment of a realistic utopia*

In *The Law of Peoples*, the original position is used three times to formulate the eight principles of the Law of Peoples. These eight principles have been devised by representatives of liberal peoples, although they must consider that the principles are reasonably acceptable to decent peoples. From the discussions above, it can be seen that the main rationale why Rawls starts with liberal peoples is that he pins the hope for a peaceful and stable world upon them. Based on this conviction, the Law of Peoples revolves around how liberal peoples should treat decent peoples, outlaw states, and burdened societies. On the other hand, the ultimate concern of the Law of Peoples is to establish a realistic Utopia to eliminate the great evils in human history. If this goal's realisation relies on liberal peoples, it presumes an unreasonable motivation of liberal peoples. Three major foreign policies as the means of realising the Society of Peoples include liberal toleration of decent peoples, intervention in outlaw states on the ground of gross violations of human rights, and duty of assistance towards burdened societies. The last two foreign policies assume altruism of liberal democracies and decent peoples.

But Rawls claims in *A Theory of Justice*, "At the basis of the theory, one tries to assume as little as possible" (Rawls 1999a: 110). By this, he means it is too strong to assume that the motive of the representatives of individuals is altruistic. This is also true for liberal peoples and decent peoples. In the case of liberal peoples, they are political societies established to benefit the citizens. They are hence self-interested. According to Rawls, there are three primary characteristics of liberal peoples: first, their fundamental interests are served by a reasonably just constitutional democratic government; second, citizens are united through what Mill called "common sympathies"; third, peoples have a certain moral character. The first feature is institutional, the second is cultural, and the third is moral and requires a firm attachment to a political (moral) concept of right and justice (Rawls 1999c: 24–25). Rawls writes, "As reasonable citizens in domestic society offer to cooperate on fair terms with other citizens, so (reasonable) liberal (or decent) peoples offer fair terms of cooperation to other peoples. A people will honour these terms when assured that other peoples will do so as well" (Rawls 1999c: 25). He also states that democratic societies are self-satisfied and have no reason to violate other countries. But even in such an idealised definition, we do not see that liberal peoples have the altruistic motive to intervene or assist other states and hence eliminate the great evils of humanity in the long run.

Moreover, Rawls acknowledges that the United States, a constitutional democracy, has repeatedly unjustly overthrown other governments, even though these countries have established some aspects of democracy. He writes, "Hence, given the great shortcomings of actual,

allegedly constitutional democratic regimes, it is no surprise that they should often intervene in weaker countries, including those exhibiting some aspects of a democracy, or even that they should engage in war for expansionist reasons. As for the first situation, the United States overturned the democracies of Allende in Chile, Arbenz in Guatemala, Mosadegh in Iran, and, some would add, the Sandanistas in Nicaragua” (Rawls 1999c: 53). This historical evidence in international relations raise doubt on the reliability of the goodwill of constitutional democracies. Therefore, if liberal peoples are assumed to own the motivation to establish a realistic Utopia to eliminate the world’s great evils, it is contrary to empirical evidence. And if a liberal people does not have such an altruistic motive, how can it eliminate the world’s great evils with its foreign policy? Philip Pettit expresses similar scepticism. He writes, “If there is a weakness in Rawls’s schema it shows up, ironically, with the principles on which radical cosmopolitans are likely to agree rather than disagree: namely, that well-ordered peoples should help those who live under oppressive and burdened regimes. If those in the second original position represent only well-ordered societies and not individuals across all societies, then it is unclear why they would have a rational motive for endorsing such altruism” (Pettit 2006: 54).

The asymmetry between the motive of well-ordered peoples and the purpose of eliminating the great evils in human history is the first dilemma that is difficult to overcome in Rawls’s approach in formulating the law of the peoples.

Furthermore, in Rawls’s thought experiment, the eight principles of the Law of Peoples are developed by representatives of liberal peoples, whereas decent peoples have no right to propose the principles. In Rawls’s procedure, decent peoples are not situated symmetrically with liberal peoples, not to mention burdened societies, benevolent absolutisms and outlaw states. Kok-Chor Tan contends that since decent hierarchical societies are not democratic, they cannot be represented reasonably in the original position (Tan 1998: 286–287). Therefore, the formulation of the Law of Peoples is rather like the legislation for the world by liberal peoples. This kind of unilateral legislation is contrary to the core position of contractualism, which Rawls claims to apply.

6.3. *Rawls’s second theoretical dilemma: Starting from sovereign state system and reflection on the global basic structure*

The weakness in Rawls’s approach discussed above might also be made up in another way in which all the political societies are situated symmetrically in the original position. Such an international original position seems to be able to avoid the unreasonable assumption of an altruistic motivation, and achieve greater allegiance and stability. However, I will argue that, even though impartial for all the states, this international original position still encounters another serious theoretical dilemma.

This formulation process is difficult to truly reflect on the sovereign state system to submit sovereignty to the interests of humankind, that is, to eliminate the great evils in human history. The following arguments can also be seen as targeted against the theoretical approach in *The Law of Peoples*, for liberal peoples are also a kind of political society with sovereignty.

On the one hand, the state system helps maintain order internally and resist external aggression. On the other hand, there is also preliminary evidence to suggest that the state system also has a major adverse effect in life and property through wars, armed conflicts and other politically organised violence. Kant points out the double-edged feature of state sovereignty. Brown writes, "As will be discussed below, Kant wants to challenge the natural law doctrine supporting state sovereignty while also dismissing arguments advocating the creation of a world state. In this regard, Kant's international theory tries to navigate a middle passage between the idea that states can act as the ultimate protectors of human freedom, while also aware of the fact that states are often the primary violators of this very freedom" (Brown 2009: 89). Andrew Kuper also opines, "The horrors of nationalistic wars, xenophobia, and unnecessary starvation might motivate instead a greater focus on human individuals regardless of their geographical location and-as Pogge argues-on lowering the stakes (and hence incentives to abuse) that attach to each institutional level and domain. If history suggests anything, it is that we should scrupulously interrogate and dismiss assumptions that might be destructively 'trapping us in the buildings and boundaries' of the past or present" (Kuper 2000: 660). Therefore, there is sufficient reason to reflect upon the state system in order to make it yield to the interests of humankind.

The international original position will encounter a paradox in this kind of moral reflection because the moral personality of states makes it self-contradictory to adjust or transform sovereignty. To be specific, if the goal of the representatives of states is to determine principles of justice as the fair clauses of social cooperation between countries, it is self-contradictory to constrain state sovereignty by the execution of the principle of justice, because it means to undermine the moral personality of the states. Put another way, states execute the contract between states, so preserving the state's moral personality is logically necessary. Just like the case of deliberation between individuals, it is self-contradictory for the contracting parties to achieve an agreement in which contracting parties become persons with no or limited capacity for civil conducts. Likewise, the international original position cannot seriously reflect on and adjust state sovereignty system. It is hence not suitable to consider more important proposals for global peace and eliminate great evils in human history.

Pogge writes, "In Rawls's sketch, the mere existence of states system in its current form reduces the agenda of the parties' global session

to dealings between governments and motivates the priority of domestic over global principles of justice. His endorsement of this institution can have force, however, only if it has been subjected to moral examination (like other social institutions). Otherwise, Rawls would be begging a crucial question, provided we allow, as reasonably we must at the outset, that justice may fail to require the states system in its present form” (Pogge 1989: 257–258). Although his remark is targeted against Rawls’s ideas on international justice in *A Theory of Justice*, it is also a pertinent appraisal on the international original position in *The Law of Peoples*.

Many vital proposals in the history of political theory and current contemporary scholarship, including legal pacifism (Kelsen 1944), cosmopolitan democracy (Held 1995, Archibugi 2008), a subsidiary world republic (Höffe 2007) and constitutionalisation of international law (Habermas 2006: 115–193) challenge the state system. To some extent, these proposals of global order are designed to go beyond the sovereign states system and consider how sovereignty is tamed and prevent evils related closely to the state system.

Unfortunately, due to the constraint of the moral personality of peoples or states, the international original position with representatives of peoples cannot reflect sufficiently upon the state system in order to help eliminate the great evils in human history. The reflection by the sovereign entities presumes the existence of a certain kind of sovereign entities and a particular kind of sovereign state system. But the requirement of global peace and justice needs us to reflect upon the sovereign system per se.

6.4 *Theoretical advantages of the global original position*

Concerning the first dilemma discussed above, the problem of unreasonable motive and the problem of stability can hopefully be avoided in the application of the global original position. The individual contracting parties are contracting with each other for their own benefit with reasonable moral constraints. An altruistic motive need not and should not be presumed. In such a procedure, there is no exorbitant requirement that parties must contribute to the well-being of all. The fundamental interests of the represented can be guaranteed rather through formulating fair clauses of cooperation, based on rationality and reasonableness of all parties, than through altruism of one or some particular parties. Also, in the global original position the represented is every individual, the principles of global justice must be justified to all persons with the same reason, and affect them equally. Hence, the principles of justice developed from this procedure can win allegiance and stability more firmly.

Concerning the second dilemma, the global original position approach has a distinct advantage: openness. It does not presume the justice of the status quo and hence can help us exclude the arbitrary

moral factors from the existing global system in formulating a global political principle for the global basic structure. The device of the global original position can be used to consider more alternatives than Rawls's international original position, which regards the states system as a starting point for moral reasoning and makes the range of alternatives of global political principles narrower. The global original position is more suitable to consider the historical and present proposals of the world order because the representatives of individuals in a global original position do not necessarily adhere to any existing sovereign state systems. Legitimacy and justice of these systems ultimately need to be justified by appealing to the fundamental interests of every individual. What features sovereign entities should have cannot be determined by the Rawlsian international position, which presumes particular characteristics of the peoples as collective entities. The determination of proper characteristics of peoples is only hopeful to be worked out successfully from the starting point of moral individualism and universalism embodied in the device of the global original position.

To be more specific, starting our arguments from the global original position helps us consider more alternatives concerning the global basic structure, such as the proposals of world government and realism. In contrast, beginning from the original position populated by "peoples", which are sovereign entities with limited sovereignty, would make both of them unqualified as alternatives. From the perspective of Rawls's international original position, realism will be excluded from the beginning because realism presumes absolute sovereignty, which contradicts the characteristic of limited sovereignty of Rawls's "peoples". And the proposal of world government will also be neglected because it means the disappearance of other sovereign entities, such as Rawls's "peoples". This also explains why Rawls claims there are no other alternatives to compete with his eight principles of the law of peoples. The global original position helps us consider the most significant alternatives and can better serve as a legitimate justificatory foundation for comparing and selecting global political principles.

Rawls writes, "As mentioned earlier, the law of peoples might have been worked out by starting with an all-inclusive original position with representatives of all the individual persons of the world. In this case the question of whether there are to be separate societies, and of the relations between them, will be settled by the parties behind a veil of ignorance. Offhand it is not clear why proceeding this way should lead to different results than, as I have done, proceeding from separate societies outward. All things considered one might reach the same law of peoples in either case" (Rawls 1999b: 549). Even this is possible; it is still better that the proper political principles for the global basic structure to be worked out from justifications to individual persons rather than peoples or states. As Kuper argues, "To the extent that the moral claims of states have any normative force in liberalism, it is derivative-

it must be justified. In political liberalism, we do not close off the possibility that parties representing free and equal persons in a global original position would decide in favour of thin states or even in favour of an inferior position for a woman within a particular state (although I doubt they would); rather, we say that thin states, and her occupying this position, must be justified" (Kuper 2000: 652).

The philosophical distinction between the global original position and Rawls's international original position can be illuminated by the distinction between cosmopolitan liberalism and social liberalism made by Beitz in his paper "Social and Cosmopolitan Liberalism." Beitz claims that social liberalism advocates that international justice is fundamentally a matter of fairness to societies (or peoples). In contrast, cosmopolitan liberalism insists that this is a matter of fairness to individuals (Beitz 1999: 515). In other words, social liberalism gives an independent ethical status to domestic-level societies, while cosmopolitan liberalism regards individual well-being as fundamental, and the value of society is derived only based on personal interests (Beitz 1999: 520).

Beitz proposes that if social liberalism considers the independent moral value of the state (or society) only because it is the most effective political mechanism that can guarantee human rights, then there is no difference between the two doctrines (Beitz 1999: 529). If individual interests can be merged into the interests of the state, then it seems that the same results can be obtained either with the international original position or the global original position. But as Kuper argues, personal interests cannot be fully incorporated into national interests. He cites immigration between underdeveloped (U) and developed (D) countries as an example. "It might be rational for D to restrict immigration because it would result in a loss of capacity to secure the rights and well-being of its citizens; and it might be rational for U to restrict emigration for similar reasons" (Kuper 2000: 646). He continues, "It may be the case that allowing some more movement of people between the two would result in a gain for those who are worst off or even in a more extensive scheme of basic liberties for all. This is not, however, a consideration that could count for parties representing U and D (sets of citizens) but only for parties representing all the persons in U and D as individual persons" (Kuper 2000: 646). And it is also worth noting that allowing immigration has important interests for the immigrants themselves and their families. This consideration is also difficult to count for representatives of states or peoples. It can be seen that personal interests cannot be fully integrated into national interests. Furthermore, the interests of non-democratic societies (including the decent societies constructed by Rawls) can hardly be said to be able to merge personal interests, especially those interests represented by dissenters. Therefore, the international original position cannot incorporate the global original position.

7. Concluding remarks

As we know, the arguments of the original position concerning the selection of the best political principle for the basic structure of society include not only the requirement of morality but also the realistic considerations, which means to evaluate the feasibility and efficiency of the candidate principles through taking account of information of relevant facts, empirical theories and historical experience. The full justification of the proper conception is related to moral constraints and all relevant general facts and theories. The idea of constructivism needs to identify which facts are relevant from the appropriate point of view and to determine their weight as reasons" (Rawls 2000: 246). This makes the justification susceptible to a broad range of arguments, including moral and realistic considerations, and permanently open to criticisms and revisions. The correct moral judgment must be made by agents who are not only reasonable but also fully informed (Rawls 2000: 244).

Just as the original position and Kant's Categorical Imperative procedure, the global original position can also be regarded as attempting to extend the limits of practical possibility realistically towards a moral ideal. The major cosmopolitans, such as Kant, Hans Kelsen and Jürgen Habermas, are well aware of the limits of reality and try to figure out a realistic proposal after considering the particular circumstances of the contemporary situation and the complex historical momentum. They all advocate gradualism rather than revolutions, which can substantially alleviate the worry of "too utopian".

The cosmopolitan project is not necessarily a task that must be accomplished in the near future. Yet, this model provides an appealing, logical and self-sufficient ideal to guide humankind's long-termed endeavours. It may be postponed, and it may even not be realised completely due to the "crooked" half of human nature and human society. Still, it must be recognised and pursued as an ideal that stimulates the arduous efforts of you and me, here and now.

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