

Global Justice: A Rawlsian Perspective

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ABSTRACT

Rawls claimed that the views of political philosophers are shaped by

their particular political and social worlds and their circumstances and problems as they saw them. To understand their works then, we must identify those points of view and how they shape the way the writer's questions are interpreted and discussed. (Rawls 2000 p104)

In 2017 how to achieve global justice is one of the major problems that pre-occupy political philosophers. It may be argued that, with the publication of *The Law of Peoples* (1999), Rawls had seemingly dealt himself out of this discussion (Martin and Reidy 2006).¹ In this thesis I will argue not only that Rawls's theory of justice requires a global theory of justice but that a Rawlsian theory of global justice makes a significant contribution to an understanding of the problem of global justice.

The just savings principle is an important, yet neglected, aspect of Rawls's theory of justice. Initially Rawls introduces it as a problem of intergenerational justice but by the time we come to *Political Liberalism* (1993) it may more properly be regarded as the means whereby the ongoing viability of the basic structure of a society is assured. In this thesis I argue that the idea of just savings should properly be regarded as ensuring that the costs associated with implementing and maintaining the basic structure are incorporated in any considerations regarding the distribution of the burdens and benefits associated with social co-operation.

The idea of just savings is not unique to constitutional democracies. The concept applies to all societies – irrespective of the form of government. All societies need to ensure that there are sufficient resources to maintain the ongoing viability of that society. Rawls argued that his objective was to bring 'together certain general features of any society that it seems one would, on due reflection, wish to live in and want to shape our interests and character' (Rawls 1974 p364). In subsequent iterations he modified this to refer to constitutional democracies. This would seem to preclude extending the domestic social contract to cover the globe.

Social contract theory presumes that there is a compelling reason for people to co-operate in order to achieve their goals. Rawls constructed his social contract so that it is stable, efficient and fair (Binmore 2005). I argue that in so doing he provided a template for a social contract that could be applied in any situation where parties need to co-operate. The reality of the Anthropocene provides

¹ The criticisms of *The Law of Peoples* appear to be based on the fact that Rawls did not endorse a cosmopolitan position. However, a careful reading of L.O.P. shows that it makes the case for a process whereby we may transition to a just global order.

a compelling reason for all nations to co-operate. Therefore it can be argued that we have a precondition for a global social contract that is stable, efficient and fair.. Consequently, I have modified Rawls's domestic contract to create a means of addressing the challenges of the Anthropocene.

There are many challenges in developing a model of global justice. Two critical ones are that states are reluctant to surrender their sovereignty and there is a wide divergence of views of what constitutes just terms of association. Given that states are reluctant to surrender their sovereignty any theory of global justice to be acceptable needs to be able to accommodate sovereignty.² Similarly at the global level the terms of a global association needs to be described in such a way as not to compromise the capacity of states to make decisions that are in their interests.

The original contribution to scholarship of this thesis lies in the use of the just savings principle as the basis for addressing both these concerns. The just savings principle enables us define a global association in terms of the considered interests of the states.

² I am referring here to sovereignty as popularly conceived. One can mount an argument that sovereignty that the current Brexit negotiations only serves to highlight that the idea of sovereignty may need to be significantly modified to reflect 21st century realities. We may well be moving into a world where virtual space is more significant than physical geographic space. See Anthes (2015).

DECLARATION

I certify that this thesis does not incorporate without acknowledgment any material previously submitted for a degree or diploma in any university; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where due reference is made in the text.

Signed.....

Date.....

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This has been a lonely journey. But I have not been alone. Throughout the course of thinking and writing about the problem of global justice I have been heartened by the many people who were generous with their time in commenting on my ideas or pointing me in the direction of sources and arguments I had not considered or not been aware of. So perhaps I need to thank Professor Google, for thanks to her I have been able to get in touch with scholars around the world to discuss the various questions that I was wrestling with.

But there are some people to whom I owe special thanks. Firstly, to Rodney Allen and Ian Hunt. It was Rodney who in an honours seminar introduced me to Rawls's *A Theory of Justice*. At that stage we only had discussed his papers – here was the argument captured in one volume. Forty years were to pass before I could follow up on that initial discussion. I approached Rodney and Ian Hunt to supervise my thesis. They argued my case to be admitted on the strength of work I had completed many years previously. Thanks to their patience I gradually began to write material that showed promise – the prologue is the only section to survive almost intact from those early stages. When Ian and Rodney retired, Lina Erikson and Andrew Gleeson took over. At this stage the argument was there in embryonic form. But there were lots of rough edges that needed to be chipped off. Unfortunately, in 2017 Lina had to return to Sweden so the final stages of thesis were shepherded through by Cassandra Star and Andrew Gleeson. Finally, my thanks to Kate Leeson who took on the challenge of editing the thesis.

The final person I need to acknowledge is Susan Abberley. Whilst I was working on this, seemingly interminable, PhD, I was also supposed to be assisting her with the running of our business. Many is the time that she had to shoulder a heavier workload because I was locked away with my thesis; were it not for her support this would never have been completed.

1. PROLOGUE

Just before planet fall we were ushered into the main conference room. There were just 200 of us, selected, we were confidently assured, completely at random. Although I had no idea how long we had been kept in suspended animation, it would have been for a long time – I recognized neither the planet nor the galaxy. My musings about this new planet were interrupted by the ship's central computer. Although we all knew that we were listening to a machine, it was comforting to see that the choice had been made to create a holographic representation of a real person.

‘We are in orbit around planet Earth. In a matter of six months you will all be translated to this planet to resume your lives. As was explained at embarkation, if we encountered an inhabited planet you would resume your former lives in the bodies of the existing inhabitants. To avoid psychological shock all memory of your previous lives will be erased; as far as you will be concerned it will be as if you have lived all your lives on this planet’.

‘You may wonder why translation has not simply commenced; why 200 of you are here to have the process explained to you. The reason is simple. There are approximately 200 nations on planet Earth. Each of you will be translated to live the remainder of your lives as the citizen of one of these nations. Over the next six months you will have the opportunity to study the planet – you will learn all about its recent history. Given that none of you know where you will live and will have no memory of your previous lives it was felt appropriate that you should at least have the opportunity to determine how these 200 nations conduct their affairs.’

The holograph faded and we were left with our own thoughts. We had six months to get to know this planet and its inhabitants and come to a decision: settle on the planet or stay on the ship. It didn't take long for many of us to conclude that we were being offered a poisoned chalice. Just a cursory look at what the inhabitants themselves were saying about their planet was scarcely encouraging.

We noted that there were vast discrepancies in lifestyles. People in what was referred to as the developed world were living a lifestyle of conspicuous consumption – if everyone on the planet adopted that lifestyle then the planet would struggle to support 2 billion people, let alone the 9 billion or so it was heading towards. We also noted with disquiet that the present

generations in the developed world were largely living off the wealth that their ancestors had plundered from their colonies. The colonies might be gone but they were still living off the proceeds. It seemed that few in the developed world could see that these past injustices had the potential to lead to global instability. In all countries one could find an educated elite, an elite that could, if it so chose, foment unrest and political instability. We had embarked on this journey so that we could eke out our lives trapped in a war zone.

Some of us were facing a particularly bleak future if we were unlucky enough to be allocated one of the countries threatened by rising sea levels, or a country where the majority of the inhabitants were living in chronic poverty. Then there were countries like Brazil whose vast rainforests could properly be described as the lungs of the earth. The problem for Brazil was that vast wealth lay locked up in those rainforests – Brazil could either be mindful of the future of the planet and protect its rainforests or look after its citizens and exploit their wealth. We looked at Europe and the USA – countries that had accumulated vast wealth, mostly at the expense of the poorer nations of the planet. We could see the disaster being magnified if India and China attempted to emulate the lifestyle of the USA and Europe. The people on the planet were already using up their resources faster than they were able to replace them. If that trend continued then it would not be long before the planet would be unable to support human life.

I brought these sobering thoughts to the first meeting. It was soon clear that we had all seen the same reality. Those of us who would be allocated to the so-called developed world had a much better chance of living a half decent life but most of us realized that we were facing a bleak future unless we managed to set up some rules that would enable us to turn the fortunes of this planet around.

It came as no surprise that there were a number of us who wanted to override the controls and move on; we had done the maths. It was clear from this cursory inspection that 1 per cent of the global population controlled most of the wealth. It seemed that this 1 per cent had embarked on an ‘education programme’ to convince the inhabitants that they were living in the best of all possible worlds (Schultz 2017). ‘Clearly, the odds were stacked against anyone of us being part of that 1 per cent’. Also, as some were very quick to point out, a social system built on such significant inequalities was unlikely to enjoy long-term stability.

How could we expect them to agree to any conception of equitable sharing of the planet's limited resources when every single nation had not been able to make equitable arrangements for its own citizens? We commented on President Bush Senior's statement 'The American lifestyle is not up for negotiation' (Singer 2002 p2). To which American lifestyle was he referring? The lifestyle of the many Americans who struggle to make ends meet (Lardner and eds 2005) or of that minority of Americans who control not only America's wealth but in fact much of the global wealth (Schweickart 2002)? All of these nations seemed to have one thing in common: basic institutions that were designed to perpetuate social inequality.

We saw a planet that on every level was teetering on the edge of anarchy. Like it or not, the nations were facing a stark choice. They could either co-operate or they could continue the way they were. The latter course would ensure that inequalities were exacerbated, the scarce resources would be run down even faster, the four riders of the apocalypse would ride and with luck some remnants might survive, but it would be a planet with a wonderful future behind it. It would take centuries before the knowledge so painfully gained would be recovered; indeed, some of it might never be recovered.

But, as some of us pointed out, we were cosmic refugees; if we were too fussy about where we made planetfall we could end up travelling the universe without settling anywhere. We agreed that we would give ourselves more time to think through the challenges this planet was facing and see whether its problem admitted any solutions.

2. INTRODUCTION

We will never know if our interstellar boat people decided to settle on Earth. I suspect that if they were to think through the problem logically then they would, like us, have no choice. Their spacecraft, just like planet Earth, is subject to the second law of thermodynamics.³ It will not be able to travel indefinitely – systems will break down, machines will lose their functionality. Only in science fiction will we find machines that seem to be able travel, like the *Flying Dutchman*, for eternity.

The prologue is important in setting the scene for this thesis. If we assume that the people on board are committed to a Rawlsian theory of domestic justice then how will they reconcile the

³ The Second Law of Thermodynamics refers to the fact that the state of entropy of the universe, as an isolated system will increase over time.

demand for global co-operation to a theory that is designed for a closed society?. However, as they orbit Earth they identify a problem. Central to their understanding of Rawls's theory of justice is that it is designed 'as a fair system of cooperation over time from one generation to the next' (Rawls 2001 p4). To maintain that fair system over time Rawls relies on the just savings principle. The problem is that to maintain that fair system of domestic co-operation they need to have a complementary theory of global or international co-operation. The question becomes: is it possible to develop a global social contract that is consistent with Rawls's domestic contract?

The first thing to note is that if you are to be allocated to one of 200 nations on Earth you know that as far as distributive equality is concerned it will not matter greatly to which country you are allocated – the bulk of the wealth and influence is controlled by just 1 per cent of the world's population. Even if you were to rank all of the 200 countries according to something as arbitrary as their GDP you still would not be advised to use that ranking, for every single one of those 200 nations is characterized by inequality. So, in the main it will not matter greatly where on Earth they will land. Regardless of where they land they are optimistic that, over time, they will be able to introduce Rawls's theory of justice. What is of greater concern to them is their long-term future. Having noted the reality of the Anthropocene they are convinced that, unless there is some form of global co-operation, no-one on the planet can be confident that there will be a future for them. In effect they can see that, regardless of how well off they are in the short-term, unless there is the opportunity to develop a global social contract with the specific objective of counteracting the threat of the Anthropocene there is little point in settling on Earth.

Global Justice

The problem of global justice is not one problem but many problems. Nagel summed the situation up well:

Concepts and theories of global justice are in the early stages of formation, and it is not clear what the main questions are, let alone the main possible answers. I believe that the need for workable ideas about the global or international case presents political theory with its most important current task. (Nagel 2005 p113)

Given that we are at such an early stage it should come as no surprise that there are a bewildering variety of responses to the question of how to achieve global justice.

I believe part of the problem is a question of time. The taxonomy of injustices that tend to feature prominently in the introduction or the opening chapters of the various texts seem to demand an immediate solution. This includes texts such as Paul Collier's (2007) book *The Bottom Billion* – here the subtitle is 'Why the poorest countries are failing and what can be done about it'. There is of course nothing wrong with proposing solutions, nor do I wish to argue that Collier's solutions are misguided. Our interstellar travellers would be inclined to argue firstly that they need to adopt Rawls's theory of justice, but that alone will not be enough. They also need to adopt a complementary theory of global justice – one will require both if one is to achieve a Rawlsian well-ordered society.⁴ A Rawlsian approach seeks to describe what such an ideal theory of global justice consists of. Once we have identified an ideal theory of global justice we can determine whether a particular set of solutions is consistent with that ideal.

One of the more contentious features of the cosmopolitan approach is that there are those who take the view that global justice implies world government. Their positions are well summed up by Miller: 'there cannot be global justice, in any strong sense, in a world in which national communities are responsible for their own destinies' (Miller 2008 p383).

Does global justice imply a surrender of national sovereignty? This is also the question that preoccupies Nagel, who concludes that it is simply not possible to develop a form of global justice that does not depend on some form of supranational sovereignty. That reasoning appears to be based on the view that Rawls's principles of justice only hold 'within a set of individuals who share coercive political institutions' (Blake 2008 p682). The significance of these institutions is that they form part of the basic structure of society. Blake goes on to argue that 'coercion not co-operation is the sine qua non of distributive justice' (p684). From that line of reasoning, Blake (and indeed Nagel) assume that one needs a world government with the coercive power to implement global policies. Nagel (2005) explicitly rejects the idea that it is possible to implement a theory of global justice in the absence of world government – there needs to be some global coercive force to implement justice at the global level; in the absence of such a force he regards global justice as a chimera. However, Binmore reminds us of David Hume's metaphor that 'a social contract holds together like a drystone wall or a masonry arch. Each stone supports and is supported by its neighbours, without any need for

⁴ Consistent with Rawls's ideal theory, there are three features that make a society well-ordered: 1) all citizens agree to the same conception of justice; 2) society's laws and institutions are based on that conception of justice; and 3) citizens comply to the terms of justice (Freeman 2007 p484).

cement or glue' (Binmore 2005 p4). That metaphor is the catalyst for the original contribution that this thesis makes to our understanding of global justice.

The challenge in applying Rawls's social contract theory to the question of global justice is that Rawls's theory was designed for a closed society. There have been calls to simply define the globe as one large closed society (Singer 2002 p9). Pogge's (1989) sustained attempt to do just that was rejected by Rawls (1999 p116). Therefore, the challenge is to frame an argument for a theory of global justice that is consistent with Rawls's theory of justice. Rawls anticipated the need to do just that. In *A Theory of Justice* he makes the point that 'Justice as fairness is not a complete contract theory' (1971 p15). As he states in *Political Liberalism*, 'that a society is closed is a considerable abstraction, justified only because it enables us to focus on the main questions free from distracting details' (1993 p12). However, once we have settled this idealized form of justice, then we may need to return to these distracting details. As Rawls says, 'how far its conclusions must be revised once these other matters are understood cannot be decided in advance' (1971, p15).

This account of global justice is an attempt to demonstrate that there is no pressing need to modify Rawls's domestic theory but rather that, in the light of what we have learnt in the last 50 years or so, there is a need to modify that theory by describing a complementary theory of global justice that is consistent with the way the domestic theory has been constructed.

I will be arguing that, just as Rawls does in the domestic case, we need to focus on the core issues of global justice so that we can form an uncluttered view of global justice. Developing a theory of global justice that is consistent with Rawls's theory of justice may seem on the face of it an impossible task. I have already referred to Rawls's rejection of Pogge's attempt to do just that. Rawls is no longer alive to comment on this latest attempt to develop a Rawlsian theory of justice but we do have a clear guide to how such a theory should be constructed. In his discussion of Locke's doctrine of natural law, he gives us an unambiguous instruction – namely to consider the work of any political philosopher we need to understand and to describe that doctrine in its best light (2007 p105). In so doing we need to start with the problem that is being addressed. When it comes to Rawls's political philosophy this is comparatively straightforward. His three main texts – *A Theory of Justice*, *Justice as Fairness* and *Political Liberalism* – all say much the same thing. Thus, in *Political Liberalism* he states:

I begin with a first fundamental question about political justice in a democratic society, namely what is the most appropriate conception for specifying fair terms of social co-operation between citizens regarded as free and equal, and as fully co-operating members of society over a complete life, from one generation to the next? (1993 p4)

In *A Theory of Justice* we can be excused for interpreting Rawls's theory as applying to all forms of government, but by the time Rawls gets to *Political Liberalism* he limits his account to democracies. Arguably that is inconsistent with his earlier account. In theory he had stated that he was concerned with identifying 'the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association' (1971 p10). Yet the two are not necessarily in conflict. Indeed, in this account I will be arguing that it may well be that the domestic theory applies specifically to a democratic society. However, if we want to describe a complementary theory that covers all polities irrespective of their form of government then the statement in *A Theory of Justice* will suffice. We can rephrase the statement in *A Theory of Justice* as follows: the principles that polities concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association. This restatement provides us with a starting point for a global theory.

The next question is why would we seek to identify principles that apply to societies? The reason for this comes from the reference to 'from one generation to the next'. In this one phrase Rawls packs a number of critical ideas. In *A Theory of Justice* he discusses this under the heading of 'Just Savings'. He describes at some length the importance of ensuring that each generation can maintain the material conditions that are required to support the theory of justice. This also provides the basis of my claim that we need a global theory of justice, for if we live in an interdependent world then that means that we do not have absolute control over our ability to maintain the conditions that make the domestic theory of justice possible.

The argument developed in this thesis runs as follows:

1. The principle of just savings embedded in Rawls's Theory of justice requires that the conditions of moderate scarcity are maintained across generations.
2. The conditions of scarcity are not under the exclusive control of anyone polity.
3. There are global forces both human and non-human which threaten the conditions of moderate scarcity.
4. Therefore in order to implement and maintain Rawls's principles of justice there is a

need for global co-operation.

It is further argued that the constructivist nature of Rawls's Theory of Justice it follows that it is possible to construct a global social contract that is consistent with and complementary to Rawls's Theory of Justice.

Social Contract Theories

The starting point for social contract theories, including that of Rawls, is to ask the question 'what would prompt someone to surrender her freedom to become part of society?' A social contract is designed to bring 'together certain general features of any society that it seems one would, on due reflection, wish to live in and want to shape our interests and character' (Rawls 1974 p364). Whilst the content of the various social contracts may change, they all endeavour to identify the terms and conditions that a rational and reasonable person would accept as a fair and equitable way to distribute the burdens and benefits arising out of social co-operation. Typically, social contracts are designed with reference to one polity. They are underpinned by the idea that polities as sovereign entities have absolute freedom to determine how they are to be governed. The idea that states are autonomous entities is central to all social contract theories.

However, Nagel's opening remark that 'we do not live in a just world' invites us to confront a different problem. Pogge's response to the problem is that we seem to make an arbitrary distinction between the demands of justice at the domestic level and the demands of justice at the global level. He asks: 'why should our moral duties ... be so different in the two cases?' (Pogge 2008 p95). This is a common theme that pits the cosmopolitans against those who aver like Miller, Nagel and others who state that autonomy trumps considerations of global justice.

However, if we return to the way Rawls constructed his social contract we can approach the problem from a different angle. The starting point for Rawls was to identify an ideal set of conditions under which we would want to live. This thesis makes the case that, having identified such conditions, societies would then identify the ideal set of conditions that should govern their relationships with one another. Therefore, the original contribution that this thesis makes is to demonstrate that, using Rawls's conception of justice, it is possible to reconcile the cosmopolitan and nationalist views. That is, it is possible to construct a theory of

global justice that is consistent with national sovereignty. Sangiovanni (2007) has already demonstrated that one can mount a coherent argument to that effect.⁵ There is one important distinction between my approach and that of Sangiovanni. In this thesis, I am agnostic about the need to make a distinction between distributive justice at the state level and the global level. I argue that, even if there were no discrepancy between state and global distributive justice, there would still be a need for Rawls's theory of justice to be complemented with a Rawlsian conception of global justice. Such a Rawlsian conception will be realistically utopian in that it 'joins reasonableness and justice with conditions enabling citizens to realise their fundamental interests' (1999 p7). Clearly when a theory demonstrably addresses citizens' fundamental interests it has a greater likelihood not only of being implemented but of being valued and maintained over time.

Given that my purpose is to construct a Rawlsian global theory of justice, the obvious question arises: why did the person who was best equipped to develop such a theory not do so? The closest we come to a Rawlsian theory of global justice is *The Law of Peoples* and that does not purport to be a global theory of justice. Instead Rawls builds on his arguments in *Political Liberalism*. Firstly, in *The Law of Peoples* Rawls (1999 p199) assumes that it is possible for all peoples to implement the principles of justice. Furthermore, he 'believed that every society in the world has a duty to develop its institutions so that it realises the moral requirements of justice as fairness' (Freeman 2007 p425). In *The Law of Peoples* Rawls gives us an account of how, in an ideal world of liberal and 'decent' societies, such societies should arrange their affairs. As part of a liberal conception of justice, Rawls seeks to identify the duties of liberal societies in a world where some societies do not conform to or even aim to implement justice as fairness. *The Law of Peoples* is designed to determine how a liberal society should interact with other societies. Rawls (1999 p116) explicitly rejects the attempts by Beitz and Pogge (Beitz 1978, Pogge 1989) to use *A Theory of Justice* to develop a cosmopolitan account of global justice. The reason for rejecting any moves to extend the idea of distributive justice globally is that in the first instance all societies have sufficient human resources to implement the principles of justice and secondly there is no need to raise the standard of living 'beyond what is necessary to maintain just institutions' (1999 p119). The argument in this thesis is that for a society to maintain just institutions it will be necessary to

⁵ Sangiovanni's (2007) argument is that the reason distributive justice is domestic is because the goods that are being distributed are those provided by the state. The result is that questions of distributive justice at the global level are of a very different content to questions of distributive justice at the domestic level.

construct a global basic structure that conforms to a set of global principles of justice, principles that complement the domestic principles of justice.

Given that in *The Law of Peoples* Rawls ‘endorses the independence and autonomy of different peoples’ (Freeman 2007 p425), it follows that any global theory of justice that purports to be Rawlsian needs to respect the autonomy and independence of constituent states. This opens up the question that such a theory may fall foul of the fallacy of composition. However, Rawls consistently argues that in a well-ordered society ‘citizens acquire the appropriate sense of justice ... They will then be able to understand the principles and ideals of the political conception ... [and] will normally be moved to act from them as circumstances require’ (1999 p15). He goes on to say that ‘liberal peoples have a certain moral character. *Like citizens in domestic society, liberal peoples are both reasonable and rational*’ (emphasis added, p25). Note that in the first instance Rawls argues that ‘citizens acquire the appropriate sense of justice’. The claim he is making is that, by virtue of creating a well-ordered society, people will begin to see the norms on which justice is based as self-evident and ‘normal’. The result is that liberal peoples have a moral character which includes that they are both reasonable and rational. Since they are both reasonable and rational it follows that they will conform to the principles of justice in the way they relate to other liberal societies.

For any theory of global justice to be consistent with Rawls, one needs to distance oneself from the idea that global justice demands a world government. His views are consistent with Kant’s *foedus pacificum* (see Rawls 1999 p84). Rawls is not looking at a theory that seeks to create a world government. He does not call into question the sovereignty of states.

According to Brock (Brock 2009) cosmopolitans are committed to the idea of the equal moral worth of all humans. It follows from that proposition that cosmopolitans are required ‘to endorse principles of justice that (somehow) are concerned with the well-being of every individual person (no matter what their group memberships)’ (Brock 2009 p45).

Brock uses Rawls as an authority to justify this position for, whilst Rawls himself rejected the cosmopolitan account, Brock argues that it is reasonable to use *A Theory of Justice* as a justification for a cosmopolitan view:

After all, if the point of the veil of ignorance is to exclude us from knowledge of factors that are morally arbitrary, where one happens to be born (or citizenship)

qualifies as one of those quintessentially arbitrary factors from the moral point of view. (Brock 2009 p20)

Brock is right of course; where one happens to be born is an arbitrary factor. But that observation misses a crucial point. The veil of ignorance functions as a device of representation; it is designed to enable the representatives to develop principles to which institutions must conform to give people the opportunity to realize their rational life plans (Rawls 1993 p24ff). Specifically, the original position ‘helps us work out ... what justice requires when society is conceived as a scheme of cooperation between free and equal citizens from one generation to the next’ (p26).

There is the temptation to read the Original Position as a description of a set of universal normative values. Brock argues that ‘there are central basic liberties that all reasonable people should find valuable’ (p151) Whilst I intuitively agree with that proposition we need considerably more than an intuitive sense that this is a universal belief. Her approach differs little from that of Beitz (Beitz 1978), and Pogge (Pogge 1989) who argued for a global distribution principle. Her work differs in that her focus is on basic liberties but as Rawls argued in *The Law of Peoples* – all societies have the capacity to be well ordered (LOP p119). Given the similarities between her approach and that of Pogge and Beitz one can only assume that Rawls would have repudiated her approach as well.

The argument in this thesis is that, just as the driving force behind Rawls’s domestic social contract is the concept of mutual advantage, so any global social contract will likewise be based on the concept of mutual advantage. Global justice tends to be discussed in terms of what may be regarded as a ‘deficiency’ model. Brock introduces her account of global justice with the words: ‘the key idea is that every person has global stature as the ultimate unit of moral concern and is therefore entitled to equal respect and consideration no matter what her citizenship status or other affiliations happen to be.’ (Brock 2009p 3) Whilst I concur with these sentiments I do not believe that they are sufficient for a theory of global justice. Politicians, in both democratic and non democratic states may be applauded for sentiments such as these but more is required if they are to maintain popular support. That support can be gained when arguments are framed in terms of mutual advantage. If public policies to provide aid to other nations is framed as a means of further national interests then it is more likely to be supported. The argument in this thesis is that the objectives described by Brock are more likely to be achieved if the debate is framed in terms of

national interest. This in turn means that the discussion centres around mutual advantage.

This is by no means the only way a social contract may be structured. Binmore advances three reasons for preferring Rawls's social contract. Firstly, it is internally stable; that is, it is in equilibrium. But other social contracts are also in equilibrium so, secondly, it is important that his social contract is efficient otherwise 'it will not compete successfully with the social contracts of other societies' (Binmore 2005) p5). And finally it needs to be fair. I concur with Binmore that Rawls's theory of justice captures the 'deep structure of human fairness norms' (p15). The problem with Rawls's theory is that it fails to recognize that internal stability is threatened by the fact that 'social processes shaping [citizens'] lives routinely overflow territorial borders' (Fraser 2008). It follows that justice cannot stop at territorial borders – to maintain domestic justice there is a need to enter into a co-operative relationship with other peoples.

Rawls's ideal theory provides us with a set of foundational principles that enables policy makers to identify a rational course of action. Once we have identified an ideal theory of justice we have a standard against which we can assess public policy – it will not resolve all problems associated with choosing the most rational course of action but will provide us with a basis of discriminating between alternative strategies.

Chapter five makes the case that there is a global basic structure in place. Given that for Rawls 'a well-ordered society is one designed to advance the good of its members and effectively regulated by a public conception of justice' (1971 p397), we need to ask whether the global basic structure is conducive to ensuring that all societies have the potential and capacity to be well-ordered.

Chapter 6 deals with a neglected aspect of Rawls's theory. Rawls argues that his theory of justice is designed to establish fair terms of co-operation from one generation to the next. I counter this by pointing out that those fair terms of co-operation may be compromised by the actions of external agents. Therefore, to ensure that fair terms of co-operation can be maintained over time it will be necessary to complement the domestic theory with a global theory of justice.

The result is a global theory is a mirror image of the domestic theory. It is a mirror image in that it establishes principles on which global relations among states are to be regulated for

mutual advantage, it is a public conception of global justice, and is consistent with the aims and aspirations entailed by domestic justice. Such principles enable the application of a form of public reason at a global level. As a result, we can paraphrase Rawls and claim that ‘peoples acquire the appropriate sense of justice ... They will then be able to understand the principles and ideals of the political conception ... [and] will normally be moved to act from them as circumstances require’ (1999 p15). This is an important idea for it implies that, as the expectations and understandings of peoples are influenced by their participation in a global process that seeks to establish conditions of co-operation which are equitable and fair.

Given that Rawls’s domestic theory is incomplete without a complementary theory of global justice, it follows that an appropriate challenge as we approach the fiftieth anniversary of the publication of Rawls’s *A Theory of Justice* would be to describe how public policy may be structured in the Anthropocene to ensure that justice as fairness is embedded in public policy at both the domestic and global levels.

The fundamental objective of this thesis is to demonstrate that Rawls’s Theory of justice can be lay the foundation for a strong egalitarian international platform. To do that I will begin with an account of Rawls’s theory framed in internationalist terms.

3. A RAWLSIAN PERSPECTIVE

The argument in this thesis is that Rawls's domestic social contract needs to be complemented with a global social contract. It is further argued that the principles of a global social contract need to be congruent with the domestic principles. It follows therefore we need to have a sound understanding of the essential features of Rawls's social contract. I refer to this understanding as a 'Rawlsian Perspective'.

A Magnificent Obsession

'I wish to show that the fundamental idea in the concept of justice is fairness' (Rawls 1958 p164). With this simple statement Rawls introduced the world to a project that was to occupy him for the whole of his working life. During the following 40 or so years his work may be regarded as a conversation with other philosophers about this one concept. If one wants to understand Rawls's theory of justice one needs to start with his 1958 paper 'Justice as Fairness'. He provides us with a preliminary view of the two principles of justice, he introduces us to the idea of justice as a virtue of institutions and the idea that he is concerned with a political conception of justice and not a comprehensive moral theory. We also see, albeit in embryonic form, the idea of the original position. In the 1958 paper Rawls imagines the parties considering the principles of justice as 'Persons engaged in a just, or fair, practice [who] can face one another openly and support their respective positions, should they appear questionable, by reference to principles which it is reasonable to expect each to accept' (p178).

In 1958 this paper challenged the dominant utilitarian orthodoxy and it is scarcely surprising that Rawls is at some pains to demonstrate that what he is proposing overcomes some of the problems that are associated with utilitarianism. In subsequent years this paper was to morph first into *A Theory of Justice* (1971), then *Justice as Fairness: A Restatement* (2001). These two works bookend a lifetime of thinking about what he was to describe in *Political Liberalism* as the first 'fundamental question about political justice in a democratic society', namely 'what is the most appropriate conception of justice ... specifying fair terms of social co-operation between citizens regarded as free and equal, and as fully co-operating members of society over a complete life from one generation to the next' (1993 p3). Clearly, the 1958 idea of justice as fairness is still very much in evidence.

The 1958 paper and the subsequent 1971 version of *A Theory of Justice* attracted a great deal of critical attention. As Rawls considered the objections he refined and modified his own position. This can make Rawls difficult to read for unless one has an intimate knowledge not just of the published papers concerning his theory but also of the critiques, resultant rebuttals, and discussions at conferences one can get lost.⁶ This is why Shapiro argues that *A Theory of Justice* may be regarded, in part at least, as a sustained rebuttal of the various criticisms that had been directed at those formative papers. That may not have been a winning strategy: ‘he has made every conceivable effort to accommodate the moral positions of others ... [as a result] Rawls’s conception has become more vague and indeterminate’ (Shapiro 2011).

Yet he had that very simple formulation at hand; his theory is about describing the sort of conditions under which we would like to live. As he stated in his reply to Alexander and Musgrave, his aim is to bring ‘together certain general features of any society that it seems one would, on due reflection, wish to live in and want to shape our interests and character’ (Rawls 1974 p364). Although this was written after the publication of *A Theory of Justice* it was an idea that had preoccupied him prior to its publication. We can add that it is an idea that has preoccupied every generation: ‘what makes an ideal society?’.

The problem with that question is that the answer is different for each generation, for each generation needs to respond to its own unique set of circumstances. This may lead us to the view that we are confronted with contested justices and contested rationalities. MacIntyre argues that one’s conception of justice will depend on one’s situation. Our views are framed not only by our historical, social and cultural situation but also with our personal comprehensive theories of the good (MacIntyre 1988). This is not an insignificant problem for a thesis that purports to extend Rawls’s theory of justice to the global domain. It implies that to do so is a form of cultural imperialism. If MacIntyre (MacIntyre 1988) is right that different traditions and experiences give rise to different conceptions of justice and rationality, then clearly there are major difficulties with identifying one conception of justice and one conception of rationality.

One can agree with the historical accuracy of MacIntyre’s observations without abandoning this enterprise. MacIntyre begins his account of justice by describing the various competing views of what justice demands. His argument is essentially that what is rational depends on

⁶ I do not claim such intimate knowledge; every time I read Rawls, I find something new, something I had missed on previous readings or I read yet another commentary that exposes me to fresh insights.

the sort of problems that one is confronting. In that sense it is similar to the dialogue between Thrasymachus and Socrates. (Plato book 1) For MacIntyre (1988) there is no neutral, impartial and universal point of view – a standpoint with which I broadly agree. Throughout this thesis I will be arguing that a political conception of justice is a considered response to the objective circumstances that we are facing. I will seek to demonstrate that we have developed an understanding of the natural world that implies a need for international co-operation; that there are challenges which no polity can meet on its own.

Justice as fairness is a magnificent obsession. The purpose of the thesis is to take up the challenge of Rawls's theory and investigate its own internal completeness vis-à-vis some critical questions of international justice that are raised by the just savings principle. It follows therefore that I need to start with an analysis of Rawls's theory, or perhaps I should say philosophy. Rawls is no longer here to defend this theory. But he has given us guidelines about how we should approach the work of any political philosopher:

when we discuss these writers our first effort is to understand what they say, and to interpret them in the best way their point of view appears to allow. Only then shall we regard ourselves as ready to judge their solutions from our point of view. (2007 p104)

In this first section my aim is to gain a clear understanding of what it is that Rawls is trying to say. In so doing it will be possible to evaluate his solutions and determine whether they can assist in addressing the problem of global injustice.

A Voice from the Past

To understand Rawls's theory of justice from his point of view we need to take a moment to walk in his shoes; we need to ask ourselves the question: what were the issues that prompted him to develop his theory in the first place?

To answer that question, we need to appreciate that his views, like those of other political philosophers, are shaped by their 'particular political and social worlds and their circumstances and problems as they saw them. *To understand their works then, we must identify those points of view and how they shape the way the writer's questions are interpreted and discussed*' (2007, p 103, emphasis added). So to understand Rawls we need to start by identifying the nature of the political and social world that he inhabited. In this way Rawls was drawing on Colingwood's insight that when considering the works of political philosophers we need to appreciate that they are addressing questions that were pre-

occupying their contemporaries.(Rawls 2007 p 103) In his preface to the revised edition of *A Theory of Justice* Rawls does tell us what his question is; he describes his conception of justice as justice as fairness and goes on to say: ‘The central ideas and aims of this conception I see as those of a philosophical conception for a constitutional democracy’ (1971 pxi). Closely related to this is the other question that shaped Rawls’s theory: ‘how is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical and moral conceptions?’ (1993 pxviii). His approach to that question was arguably determined by questions he did not articulate. His aim was to answer that question by developing an ideal theory of justice for a ‘closed society’. He acknowledged that was a substantial abstraction but, given the context of his time, a legitimate one. It was legitimate because the world order was defined in terms of nation-states. The United Nations was formed by nation-states. In essence, all people were citizens of one state or another. The state established ‘the major social institutions [which] distribute fundamental rights and duties and determine the advantages from social co-operation’ (1971 p6). In the light of that it would make sense to have a close look at the principles on which those social institutions are based. ‘That a society is closed is a considerable abstraction, justified only because it enables us to focus on certain main questions free from distracting details’ (1993 p12).

But perhaps the most significant contribution that Rawls’s theory has for global justice is a product of the fact that he was a US citizen. That led him to ask the question how, in a society where people hold a variety of different comprehensive moral views, it is possible to arrive at a view of justice on which all can agree. The idea that cultural diversity need not be an obstacle to creating a stable society was comparatively rare.⁷ It is an idea that we should not lose sight of, for global justice, if it is to be truly global, needs to be able to accommodate every possible religious, social and political point of view⁸.

Today we are acutely aware that we are living in an interdependent world. That was by no means obvious during Rawls’s formative years. For whilst it is tempting to treat Rawls as a contemporary thinker it is mistaken. I suspect that the criticisms that philosophers such as

⁷ Although there is generally a far greater cosmopolitan outlook now, it is also fair to say that there is growing disquiet in many western nations that cultural diversity can be destabilizing.

⁸ This may well be setting the bar too high; there are comprehensive theories of the good that are inimical to any consideration of global justice. I am presuming that people holding these views will be in a minority but given recent events this may well be far too optimistic.

Pogge, Nussbaum and Singer make of Rawls's theory are based on influences that were significantly different to those that shaped Rawls's philosophy. When Rawls embarked on his PhD in 1946 each of these had yet to be born. Nowhere is that more evident in the fact that Rawls rebutted and rebuffed Pogge's attempt to use his theory for the development of a cosmopolitan form of global justice (1999 p119). For Rawls's generation there was no pressing need for a global theory of justice. The 1941 Atlantic Charter signed by Roosevelt and Churchill included the principle of respect for self-government. This is reinforced when we consider that the Bretton Woods Agreement, which was built on the ideas contained in the Atlantic Charter, has as its main objective to secure national sovereignty by creating a stable global financial order. However, by the close of the twentieth century another interpretation, equally legitimate and possibly more persuasive, was that the agreement laid the foundation stone for a global world order. But this was far from evident during the period 1945–1965; instead one could see Bretton Woods as enabling the colonial powers to divest themselves of their colonies. As the former colonies achieved independence they needed to consider what form of government to adopt. These newly independent countries arguably started with a clean slate. Given those international circumstances one can imagine that a political philosopher would be interested in the question: given the opportunity to design a system of government *ab initio* what sort of government should one aim to establish?

Decolonization was not the only motivation to rethink what the foundational principles of liberal democracies ought to be. Even in the absence of decolonization the immediate post-war period was a time of considerable soul searching about the idea of a constitutional democracy. For we can argue that 'It was perhaps only natural that a war in which very different regimes were pitched against one another should bring about a reassessment about the way men govern themselves' (Watson 2000 p376). That reassessment was dominated by sociologists and economists. Political philosophy did not appear to have anything new to contribute. Political philosophy was pre-occupied with the works of 19th century political philosophers. *A Theory of Justice* was published at a time when the world was more than ready for a revival of academic political philosophy.⁹

⁹ What seemed received wisdom in 1955 had been dispelled by the early sixties. The post-war generation had not just discovered rock and roll but during the sixties, America and indeed the western world was racked with protest movements, movements against the Vietnam War, against segregation, apartheid and female inequality.

Rawls's magnificent obsession with fairness spoke to the post-war generation. His objective was to bring 'together certain general features of any society that it seems one would, on due reflection, wish to live in and want to shape our interests and character' (Rawls 1974 p364). Of some concern to Rawls's generation was the outcome of the 1955 Milan Conference. This conference was attended by leading intellectuals from both the left and right. The participants were left in no doubt that the fundamental political problems of the Industrial Revolution had been solved. Lipset (1960) claimed that this was the end of ideology.¹⁰ As far as political philosophy was concerned it seemed that there was little new to explore. The big theories – Marxism, liberalism and utilitarianism – dominated the political landscape; it seemed the role of political philosophy had become tying up loose ends.

But for philosophers like Rawls World War II had also been a reality check. Italy and Germany had started life as democracies yet were able to morph into totalitarian dictatorships. Both Hitler and Mussolini could claim, not without justification, that their regimes were a product of democratic decision making. The idea that a liberal democracy could choose to embrace a totalitarian dictatorship was unthinkable in 1930; in 1945 it was an established fact. In both *The Human Condition* (1958) and the *Origins of Totalitarianism* (1967) Arendt was concerned with the fundamental incompatibility that appeared to exist between the actual power of modern man and his inability to make sense of the world that he had created.

Rawls understood that incompatibility only too well. It required a fresh look at what we mean by a just society. It required that we establish some fundamental principles on which our social norms could be based.

It is important to take a closer look at the question of what constitutes a just society. The first thing to note is that it is a universal. Rawls and others were keen to identify the features of *any* society one would want to live in. They assumed that there are some propositions that we

¹⁰ Lipsett noted that the only dissenting voice in 1955 was one Friedrich Hayek. He wrote *The Road to Serfdom* in the 1940s in which he argued against what was to become known as 'big' government. When one considers that at the same time as he was warning against centrally planned economies Bevan was putting the finishing touches to what was to become the National Health Service and in the USA there was still support for Roosevelt's New Deal. With the benefit of hindsight we can only see too well how fragile the 1955 consensus was. Margaret Thatcher and Ronald Reagan began the job of demolishing the 1955 consensus. It lends extra credence to the importance of clearly establishing a set of foundational principles against which public policy may be measured.

can make about an ideal world that everyone would subscribe to. This idea seems to be reinforced in *Political Liberalism* when Rawls acknowledges that communities are often divided ‘by reasonable though incompatible religious, philosophical and moral doctrines’ (1993 pxviii). Yet historically we have had many instances where, that diversity notwithstanding, people have lived in comparative peace and harmony. However, as we have seen in the break-up of Yugoslavia that peace and harmony is delicately poised; once Tito died it did not take long for that unity in diversity to unravel. (Burg 1986) Does Yugoslavia provide us with the empirical evidence that there are no universal principles that we can draw upon? Is that empirical evidence further reinforced by the growth internationally of political movements which undermine the nineteenth-century nationalist doctrine ‘that humanity is naturally divided into nations, that nations are known by certain characteristics which can be ascertained, and the only legitimate type of government is national self-government’ (Kedourie 1970)? Furthermore, Kedourie goes on to describe what those characteristics were thought to consist of: ‘the only legitimate political association is one which binds men together speaking the same language, sharing the same culture, and cherishing the same heroes and ancestors’ (p35). For nineteenth-century nationalists and their twenty-first-century reincarnations, the very idea that it is possible to create a society where people hold different and conflicting religious, philosophical and moral doctrines is anathema.¹¹

This creates the first problem for Rawls. He is making two complementary claims: a universal claim that it is possible to identify a set of principles that everyone would agree are the foundation for a fair society. And he is making the claim that we can identify a set of principles that can provide the possibility of unity in diversity. It may appear that the second claim is merely an elaboration, a particular instance of the first claim. But it is important to differentiate between the two. For the first claim would hold that, whilst we might agree on what constitutes a just society, it is nonetheless the case that any legitimate political association will be one with people who share the same set of cultural and social values. By adding the second claim we are recasting the idea of political association. If the nationalists are right, then Rawls has embarked on a fool’s errand. On the other hand, if he succeeds in making his two claims then it would seem to strengthen the hand of those who, like Pogge, argue that his theory naturally leads to a cosmopolitan theory of justice.

¹¹ As discussed in the previous section, Alasdair MacIntyre (1988) also appears to have doubts about the possibility of establishing a stable liberal democracy in a culturally diverse society.

Neither are fatal problems, but they do need to be acknowledged. With respect to the universal claim, it can be argued that the original position and veil of ignorance (see below) confirm that the principles of justice are not dependent on any particular moral, religious or philosophical comprehensive theory of the good. To describe, even in the most general terms, the sort of society that everyone would want to live in is a major challenge. It assumes that there are values that we share by dint of being human that enable us to identify the sort of political association that is compatible with all moral, religious or philosophical comprehensive theories of the good. By the time we come to *Political Liberalism* Rawls's considered position has changed somewhat. *Political Liberalism* is an account of the ideal features of constitutional democracies. However, when we look at his theory we need to be open (as indeed he was) to the possibility that there may be other forms of government that can meet this core condition. Yet it seems that by the time he wrote *Political Liberalism* he was restricting his discourse to 'political justice in a democratic society'. Does that mean that only democratic societies can conform to this universal proposition?

We might begin to answer that question by looking at the idea of primary goods. One of the functions of the basic structure of society¹² is 'to distribute fundamental rights and duties and determine the division of advantages from social co-operation' (1971 p6). Rawls goes on to assume that what is distributed are 'certain primary goods, that is, things every rational man is presumed to want ... the chief primary goods ... are rights, liberties and opportunities, and income and wealth' (p54). Furthermore he argues that there should be 'a public understanding not only about the kinds of claims it is appropriate for citizens to make when questions of political justice arise, but also a public understanding about how such claims are to be supported' (1993 p179). It is the aforementioned primary goods (to which we now add 'the social bases of self-respect' (p181) that enable us to develop a political conception of justice that 'is independent of any particular comprehensive doctrine' (p180). The list of primary goods that are subject to distributive justice is by no means exhaustive nor is it without dispute (see e.g. Arneson 1990). The suggestion here is that, although the primary goods are universal, their particular articulation may vary from society to society. Consider the way they are articulated in *Political Liberalism*:

1. basic rights and liberties

¹² The concept of the basic structure is discussed in Chapter 5.

2. freedom of movement and free choice of occupation against a background of diverse opportunities
3. powers and prerogatives of offices and positions of responsibility in the political and economic institutions of the basic structure
4. income and wealth, and
5. the social bases of self-respect. (1993 p181)

There really is no reason to suppose that these five criteria can only be satisfied within a constitutional democracy. In a similar manner, those who drafted the Universal Declaration of Human Rights assumed that member states of the United Nations would articulate human rights in much the same way in every polity, but they were to be disappointed (see ASEAN 1993). So too, there is plenty of room for manoeuvre when it comes to subscribing to a fair distribution of this set of primary goods.

What the foregoing illustrates is that, whilst at one level there may be general agreement that a set of principles are universal, when it comes to developing practical policies we may well find that there are conflicting and even contradictory policies which satisfy the ‘principles of justice’ This is a basic problem that faces us when making the transition from ideal theory to non-ideal theory. At the ideal level we can agree about the principles of justice but we are then baffled when someone who purports to support the same principles implements the theory in a radically different way.¹³

The second point to note is that Rawls identifies the role of society in shaping our interests and character. He clearly sees us as social animals but social animals with the capacity to design our social structures of choice. The third point to note is the role that the idea of ‘due reflection’ plays. As we will see when we discuss ideal theory, this is in part based on our understanding of the objective conditions that we face in designing an appropriate social order. But it also draws upon Rawls’s work to develop an objective foundation for political and moral philosophy – his so-called idea of ‘reflective equilibrium’ – and it is to this idea we turn next.

¹³ This is well described by Paul Edwards (1955). He discusses the statement ‘the Steak at Barney’s is rather nice’. Two people, both of whom like steak, disagree about the statement for one likes steak rare and the other likes it well done. This is not altogether dissimilar to disagreements about whether a particular society is just or not.

Reflective Equilibrium

A central problem for moral philosophy is how to justify normative statements. Any proposition may be justified if there is some way in which we can demonstrate that the proposition is either true or false, or whether it is reasonable or not to accept that proposition. Where propositions deal with matters of fact one has some objective means of assessing whether one is justified in accepting that proposition as true or reasonable.¹⁴ But, given that normative propositions do not deal with matters of fact, there is the temptation to assume that one's attitude to the truth or reasonableness of normative propositions is a matter of personal preference; there is no objective means of confirming normative propositions.

Rawls rejects the notion that normative propositions are simply a matter of personal preference. He claims that one can argue that some normative propositions are true or false, reasonable or unreasonable. However, unlike propositions which are based on matters of fact, to arrive at the truth value or reasonableness of normative propositions is a more complex task.

The starting point is to note that there are propositions which are a product of our considered moral convictions. 'There are questions we feel must be answered in a certain way ... we have reached what we believe is an impartial judgement not likely to be distorted by an excessive attention to our own interests' (1971 p18).

It is not difficult to come up with examples of such questions. Rawls uses the example of racial discrimination and religious intolerance but there are other, less controversial questions. We can surely readily agree with the proposition that suffering and death from the lack of food, shelter, and medical care are bad, or that the gratuitous infliction of pain is wrong. Propositions of that ilk are for Rawls 'provisional fixed points which we presume any conception of justice must fit' (1971 p19). All that this means is that if a conception of justice accepted racial discrimination, religious intolerance and accepted, with equanimity, the suffering and death of people from lack of food, shelter and medical care we would surely want to reject that conception of justice as being unreasonable or false.

¹⁴ This is contentious; I am adopting a common-sense view. There are many statements that purport to be statements about matters of fact cannot be readily proven either false or true. Whereas there are propositions that are analytically true these rarely offer us a practical insight as to how we should behave.

So how does this help create a form of normative justification? There are many normative propositions which are by no means as clear cut as the above examples – does it settle the question of whether it is good to allow the commercial harvesting of human organs for transplant purposes? Does it help us determine whether we should have legislation allowing euthanasia under certain circumstances? On the face of it the answer is no. However, if we follow Rawls’s advice and plot all the normative propositions about which we can be reasonably certain, propositions about which there is general agreement, then we have the basis to develop a coherent moral point of view in which truth and reasonableness do have an objective standing. We will have a means of deciding the more difficult questions where the answers do not appear to be intuitively obvious. This is not to claim that complex moral questions are instantly resolved – far from it.

Reflective equilibrium provides us with a basis for arguing that our considered moral judgements do have an objective standing. Freeman describes reflective equilibrium as ‘a methodological claim that a justification of a moral conception requires showing that it “fits” (in some to be specified sense) with our considered moral convictions at all levels of generality’ (2007 p31). Thus, since we consider that the infliction of pain is morally wrong, we might be moved to develop a general principle based on that response. But consider what happens when we try to apply that principle. As we are omnivores, animals are part of our diet. Some people eat lobsters. Some restaurants have a large aquarium filled with living lobsters. Diners are invited to select their lobster which is then cooked on the spot. The lobster is still alive when it is dropped in boiling water. When I first encountered this practice, I was told the lobsters did not feel any pain. As I was not convinced, lobster was off the menu. But it is interesting to note that the chef felt compelled to reassure me on this point. The idea that it is morally wrong to inflict pain seems to be deeply ingrained. In this instance the justification became that lobsters do not feel pain so it did not contravene the injunction not to inflict pain. But there are other considerations that we may need to consider. One could argue that, given that we do not need to eat meat, killing animals amounts to a gratuitous infliction of pain. We know that there are many people who live a healthy lifestyle without eating any animal products. For them the injunction not to inflict pain is absolute. But now consider the experiences of Captain Scott. In his failed attempt to reach the South Pole he ran out of food and so decided to kill his dogs for food. We can now argue that there are circumstances where the infliction of pain may be justified. This requires us to modify our

original principle – it would now read the infliction of pain is wrong except in situations where our survival is placed at risk.

Reflective equilibrium thus conceived may be regarded as an internal Socratic dialogue. The use of reflective equilibrium amounts to us arriving at the position which coheres best with our considerations of other cases. What is more, whilst the general principles on which our judgements are based are fixed, particular applications of those principles are not fixed but are constantly up for review. Here again the case of the slaughter of animals provides us with a useful example. The very idea that the killing of animals for consumption could possibly be morally wrong is a relatively recent development.¹⁵ Furthermore, when we factor in questions such as climate change and overpopulation it is not difficult to come to the conclusion that maintaining large herds of animals for human consumption is both deleterious to the environment (methane is a significant contributor to greenhouse gas concentrations) but it is also, in many instances, an inefficient way to source protein. Here we have a situation where, as we have learnt more about the impact we are having on the environment, it is reasonable to conclude that we need to source our protein from vegetables rather than meat. It is an ongoing process of testing your judgements against established principles to seek to establish some sort of congruence between them.¹⁶ Reflective equilibrium is then an ongoing process of testing our considered normative judgements against our instinctive responses. Thus, whilst the problem of the slaughter of animals has been issue for some for a long time (Buddhists for example) it became a wider concern with the introduction of factory farming.¹⁷ When people saw what was happening in abattoirs they began to question our judgements about killing animals for food. It may seem that we should simply trust our instinctive responses and skip this rather convoluted process of going back and forth. The problem is that our instinctive responses are far from reliable. Reflective equilibrium becomes a tool for making informed normative judgements about complex issues that may well play out over an extended time frame and/or globally.

Reflective equilibrium is not a panacea. There will be situations where there is a reasonable disagreement regarding the appropriate action to be taken as Rawls stated: ‘the idea of

¹⁵ Recent only in the sense that philosophers like Singer have mounted the case for recognition of animal rights. See Singer (1973).

¹⁶ Rawls’s view of reflective equilibrium is consistent with the arguments he developed in in his 1955 paper where he distinguished between general principles and their application to specific instances.

¹⁷ Graphic videos are readily available on YouTube (e.g. utube4animalsrights 2007).

reasonable disagreement involves an account of the sources, or causes of disagreement between reasonable persons so defined. These sources I refer to as the burdens of judgement' (1993 p55).¹⁸ For example, when it comes to harvesting human organs we should be able to rule out the deliberate breeding of some people as sources for human organs but what do we do about using human embryos for research? We may mount a case for payment to encourage people to donate organs but we would want to ensure that this does not simply become a means for the poor to supplement their income. On the other hand, we may decide that once a person is dead then society has an irrevocable claim over that person's organs and can use them in the interests of society as a whole.

Rawls advocates going through the process of identifying our moral convictions, convictions that satisfy the criterion that they may be regarded as impartial judgements: 'We express this by saying that a political conception of justice, to be acceptable, must accord with our considered convictions, at all levels of generality, on due reflection, or in what I have called elsewhere "reflective equilibrium"' (1993 p8). This idea of a reflective equilibrium is the backdrop against which the theory of justice must be seen. The process of a reflective equilibrium will result in a set of 'principles which match our considered judgements duly pruned and adjusted' (1971 p19).

The implication here is that when people think carefully and systematically about moral questions those questions yield a logic that is capable of being understood. The common humanity that we all share provides us with confidence that it may well be possible to develop an ideal theory of global justice; reflective equilibrium gives us the means to identify those values that others may share. Whilst reflective equilibrium has its critics, for many moral philosophers 'the method of reflective equilibrium is the only game in town' (McGrath 2010 p326). More importantly it provides us with a normative foundation on which to build an ideal theory of justice.

It is commonplace to state that we live in a changing world. But we also need to bear in mind that for much of human history change was slow. For example 'Rip van Winkle' was published in 1819. Rip slept through 20 years of village life. Although when he awoke things

¹⁸ I view the burdens of judgement almost as a form of cheating on Rawls's part – he acknowledges that there will be situations where we will not be able to agree on the objective facts and simply states that this is a fact of political life. He concludes: 'Many hard decisions may seem to have no clear answer' (1993 p57). Yet these hard decisions are the stuff of day-to-day politics.

had changed, people had died, children had grown into adulthood, there had been political changes and the American War of Independence had been fought and won, the only change that required a reassessment was to acknowledge that he no longer owed loyalty to King George III. But now consider what would happen if we set the story in 1990. Rip falls asleep in 1990 and wakes up in 2010. As before it is a mere 20 years. Yet there have been major transformations: in 1990 the internet was largely unknown but by 2010 it had become deeply embedded in the life of all developed societies. There have been medical advances and each new medical advance gives rise to a host of new ethical questions. Social media was unknown in 1990, few would have predicted the beginning of the end for postage or cheque books. Now individuals can start up a global corporation with little more than a mobile phone. In such a world we need a moral compass; we need a political philosophy that is responsive to the problems that we are facing – reflective equilibrium is a critical part of the toolkit. But to apply that tool appropriately we have to have some understanding of the roles of political philosophy.

The Four Roles of Political Philosophy

In both *Political Liberalism* and *Justice as Fairness* Rawls opens the discussion with a chapter called ‘Fundamental Ideas’. The two chapters need to be read in tandem for both seek to describe the role that political philosophy has in shaping a society’s political culture. There is, however, an important distinction between the two sets of fundamental ideas. *Justice as Fairness* seeks to identify the fundamental ideas that hold true irrespective of the political philosophy that one favours. In *Political Liberalism*, the fundamental ideas deal specifically with the issue of political justice in a democratic society.

We know that at the heart of politics lie contested questions. Collingwood claimed that ‘The history of political theory is not the history of different answers to one and the same question, but the history of a problem more or less constantly changing, whose solution was changing with it’ (quoted in Rawls 2007 p103). Collingwood’s statement masks a complexity that Koestler (1941) rather brilliantly illustrated in his novel *Darkness at Noon*. In discussing the question of building submarines, he noted that the debate concerned two types of submarines: small and large submarines. The importance of the argument lay in what it said about foreign policy. Those advocating building large submarines saw the submarines as having not merely a defensive function but also an offensive function. Those advocating the smaller submarines saw them as having a defensive function only. What this example illustrates is that

superficially the contested question is about the size of submarines but what is really at stake is a view of the role of the defence force – is it just to protect or should it also have the capacity to intimidate one’s neighbours? In the main these questions are resolved because the discussion is conducted within an agreed political order. The political order determines the process whereby such questions are resolved, a process that is known and understood and, even more importantly, accepted by all. But in citing Collingwood, Rawls goes on to say that ‘there are certain basic questions that we keep asking, such as What is the nature of a legitimate political regime? What are the grounds and limits of political obligation? What is the basis of rights, if any? And the like’ (2007 p103). These and other questions are constantly being asked, and the responses to these questions and the prominence of these questions depends on the way we view our circumstances and the problems that we face.

The problem that Rawls sought to address in his theory of justice was how to determine the fair terms of co-operation among citizens within a polity. For Rawls’s generation the focus of justice was local. For us in the twenty-first century the sort of questions we are asking tend to be framed in a global context; the greater our awareness that our decisions will have an impact beyond our borders the more important it becomes to settle the question of order. This accounts for the first of the four roles of political philosophy, namely to settle the problem of order; to provide a framework for the discussion of contested questions. Rawls notes that there are periods where ‘certain basic questions lead to deep and sharp conflict’ He goes on to say that ‘its practical role ... is to focus on deeply disputed questions and to see whether, despite appearances, some underlying basis of philosophical and moral agreement can be uncovered’ (2001 pp1–2). The role of political philosophy then is to provide us with an agreed framework within which we can explore those questions and issues which are in dispute.

Rawls’s argument is essentially that political philosophy is stimulated by situations where there are deep, divisive conflicts that cannot be accommodated within the existing political paradigm. In 1993 he wrote:

The reception of my book, though, took me by surprise and I looked for an explanation. I suppose it has some merit, but I have always believed that most of its wider appeal lay in the situation at that time, the time of the Vietnam war and the state of academic and political culture then ... the book gave a demonstration, however faulty, that its subjects could be talked about as a coherent part of philosophy, supported by quite reasonable arguments, and not simply as the expression of one’s opinion and sentiments.

It seems that the publication of *A Theory of Justice* coincided with a happy confluence of ideas that enabled Rawls to build on ideas that he had first explored as part of his PhD.¹⁹ Firstly, there was his interest in developing some sort of rule-based moral theory. Noting the problems with value judgements that were tied to particular ideological or religious beliefs, he stated ‘the aim of the present inquiry, namely, to describe a decision procedure whereby principles, by means of which we may justify specific moral decisions, may themselves be shown to be justifiable’ (1951 p177) His aim was to take moral decisions back to first principles. Thus, when he states in *A Theory of Justice* that ‘the guiding idea is that [the theory of justice is based on] the principles that free and rational persons ... would accept’ (1971 p10), he is building on these formative ideas – and in particular the idea of reflective equilibrium which gave him confidence that it is possible to construct such a theory of justice.

We know that Rawls’s war service had a profound effect on him. He entered World War II a committed Christian and was discharged a committed atheist. He would also have been familiar with the Nuremberg war crimes trials and the far-reaching questions they raised. Then there was the problem of totalitarianism. Eighteenth- and nineteenth-century liberal political philosophy had, by and large, been a reaction to and rejection of absolutism. Constitutional democracy had been touted as the way whereby unjust absolutist regimes could be replaced by liberal democracies guided by the ideas of the Enlightenment.²⁰ Yet the unthinkable had happened in both Italy and Germany: a democratic government had pursued the sort of unjust policies that, it had been confidently presumed, had been the exclusive preserve of absolute, hereditary monarchies.²¹ What shook many to the core was the fact that

Totalitarian rule ... far from being ‘lawless’ ... is more obedient to these suprahuman forces than any government ever was before, and far from wielding its power in the interests of one man, it is quite prepared to sacrifice everybody’s vital immediate interests to the execution of what it assumes to be the law of History or the law of Nature ... it can do away with petty legality. (Arendt 1967 p461)

¹⁹ His PhD dissertation was on moral knowledge and judgements on the moral worth of character (see Freeman 2007 p3).

²⁰ Both in *Justice as Fairness* and *Lectures on the History of Political Philosophy* Rawls draws our attention to the fact that Hobbes, Locke, Rousseau and Marx developed their political philosophies as a reaction to the failure of the existing political philosophies to address the deep divisive conflicts of their day. Crane Brinton (1965) uses a similar argument to account for revolutions. Gillis (1970) likewise introduces the idea of the importance of an alternative vision of the way the state may be organized.

²¹ That Rawls (2007 p85) would have concurred may be inferred from his discussion of Hobbes, where he leaves us in no doubt that he rejects Hobbes’s theory advocating absolutism.

In that context, there was a need to identify a basis for law using fixed normative principles. Since Rawls's early papers were concerned with identifying some universal normative rules, they were, one could argue, an attempt to codify Kant's categorical imperative. One of the stumbling blocks appeared to be competing comprehensive moral perspectives. As we have already seen, Rawls recognized that there is a potential conflict between universal political rules and comprehensive moral, religious and philosophical doctrines. For Rawls this can be resolved with the idea of an overlapping consensus. The best way to visualize this is to see each comprehensive theory of the good as part of a Venn diagram; the problem of order is settled if we focus our political philosophy on that area of the Venn diagram where the various comprehensive theories overlap. It is that area of overlap in which we can locate our political philosophy. In the area of overlap we find the one space where there is agreement; the question becomes (as we will see in the next section) whether that space enables us to settle the problem of order.

I have already referred to Collingwood's idea that good writers write for their contemporaries. This may well account for the reason *A Theory of Justice* was so well received for Rawls tackled a major problem with the question of order, a question that had yielded unsatisfactory answers. As I have already mentioned Watson stated that 'It was perhaps only natural that a war in which very different regimes were pitched against one another should bring about a reassessment of the way men govern themselves' (Watson 2000 p376). In Rawls's case that reassessment is summed up on page 3 of *A Theory of Justice*: 'laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust' (1971 p3). That statement fit in with the zeitgeist – this particular post-war generation believed passionately that one of the responsibilities of a citizen was to hold institutions up to scrutiny; if they were found wanting or unjust one had an obligation to resist.²² As Rawls was writing that resistance was well and truly in evidence. Watson sums up the sixties as 'the time when, outside of war, more people in the West than ever before faced up to – or were faced with – the most fundamental dilemmas of human existence: freedom, justice and equality, what they meant and how they could be achieved' (2000 p516).

²² Chapter 30 of Watson's *A Terrible Beauty* (2000), 'Equality, Freedom and Justice in the Great Society' includes references to many of the people that shaped the thinking of the New Left: Martin Luther King, Franz Fanon, Ivan Illich, Germaine Greer, Eldridge Cleaver, all incisive critics of the failure of the existing society to deliver justice. It is hardly surprising therefore that Watson also includes Rawls in this chapter.

If the sixties were a time for questioning the way our domestic institutions shaped our lives then arguably the twenty-first century is a time when we are questioning the global order. This is perhaps best summed up in the slogan of the 2004 World Social Forum: ‘Another world is possible’ (Stiglitz 2006 p3). For the immediate post-war generation the problem of order arose because ‘there is no public agreement how basic institutions are to be arranged so as to be most appropriate to the freedom and equality of democratic citizenship’ (2001 p2). For the current generation the problem of order concerns how we reconcile our domestic interests with our global responsibilities.

The first role of political philosophy then is to develop an agreed framework within which we can settle the question of order. Rawls refers to the second role as ‘orientation’. This second role of political philosophy, as Rawls describes it, is to orient us in our particular conceptual space; thus, as our understanding of that conceptual space changes our political philosophy may well need to change with it.

Now whilst the aim of Rawls’s theory is to show how we can develop ‘a well-articulated conception of a just and reasonable society’ (2001 p3), he does not appear to consider that such a conception may also be a stumbling block to creating a just and reasonable society. We are all born into an existing society and from birth we are encouraged to see what is just and reasonable through the prism of the dominant culture and world view within our community. For example, there has been considerable work done on differences among national value systems. Social anthropologists have argued that, although ‘all societies, modern or traditional, face the same problems; only the answers differ’ (Hofstede 1994) The nature of those answers is determined in part by cultural differences. Hofstede makes the case that those cultural differences can be grouped under four broad headings: social inequality, individual versus group identity, concepts of masculinity and femininity, and ways of dealing with uncertainty. It is beyond the scope of this thesis to address the questions and controversies raised by this research; suffice to say that, whilst there is considerable divergence of opinion about the details of the research, there is a consensus that cultural differences play a significant part in the way people view what is a legitimate way to approach political questions.²³ This ties in with what Miller and others have argued, namely that there is an element of uniqueness about national identity. Likewise O’Neill cautions

²³ A recent TED Talk describes a project which highlights that income is the main difference between the way people in different societies live (Rönnlund 2017).

against assuming that political and ethical values are universal. There is an aspect to Hofstede's research that is particularly relevant to our discussion here. His follow-up research has demonstrated that cultural orientations are changing in response to changing circumstances. (Hofstede 2010) This is of relevance to our current discussion for it highlights that people's expectations of their political institutions are not fixed. Therefore, a political philosophy that can exist outside of specific cultural and social mores will enable citizens to respond to changing circumstances without needing to abandon their political philosophy.

In developing a Rawlsian response to the question of global justice it is important that we do not lose sight of that role of political philosophy. People are unlikely to support a political conception of global justice that cannot be oriented in their understanding of the unique challenges that they face.

This idea is closely related to the third role Rawls assigns to political philosophy, namely reconciliation. Rawls argues that a democratic society is characterized by diversity – he is referring to the 'fact of profound and irreconcilable differences in citizens' reasonable comprehensive religious and philosophical conceptions of the world' (2001 p3). Given the current climate this is quite a radical view. Throughout the western world we are seeing the emergence of political parties which reject diversity. Rawls would argue that the problem facing western democracies is that they have lost that role of reconciliation; it may seem reasonable to demand that all citizens share the same comprehensive conceptions of the world but in the real world citizens have a range of world views. To demand that everyone adopts one comprehensive view is to deny that we regard political society 'as a fair system of cooperation over time from one generation to the next, where those engaged in co-operation are viewed as free and equal citizens and normal cooperating members of society over a complete life' (2001 p4). To demand that citizens all conform to the same comprehensive world view is to deny that we view our citizens as free and equal. Reconciliation in this context means that all citizens need to play an active role in shaping the social world, and we need to ensure that our political and social institutions enable citizens to take an active part in shaping the direction of their society.

This leads logically into the fourth role of political philosophy: probing the limits of practical political possibility. It means that we are faced with the ongoing challenge of determining what the conditions of our social world in fact are. This may well mean that as our

understanding of those conditions changes we may find that what is realistically utopian likewise changes.

In demanding that the theory be realistically utopian, Rawls is also demanding that we engage in an ongoing process of determining how the basic structure, that is, ‘the main political and social institutions and how they fit together in one scheme of cooperation’ (1999 p4) impacts on our lives. If we couple that idea with reflective equilibrium we can see how the task of maintaining a just society is an ongoing process. To enable us to ensure that society is realistically utopian he provides us with another tool: the concept of public reason. Public reason builds on the ideas contained in the four roles of political philosophy to enable us to resolve complex and controversial issues.

Public Reason

Scanlon (2003 p139) argues that Rawls uses three separate but complementary arguments to justify his theory of justice: reflective equilibrium, the original position and public reason. Of the three, the idea of public reason may be regarded as the most familiar: ‘The idea of public reason specifies at the deepest level the basic moral and political values that are to determine a constitutional democratic government’s relations to its citizens and their relation to one another’ (1999 p132).

I say familiar for we can find reference to an idea of public reason in Hobbes, Rousseau and Kant to name but three (Solum 1993). These various versions of public reason have but one thing in common – all of them seek to provide a justification for the authority of the state to enact laws. It takes but a moment’s reflection to see the importance of this idea for democratic liberal theories.²⁴ It is not enough that decisions are made in accordance with due processes. We also need to be assured that those decisions may be justified by reason. Rawls has taken this broad and somewhat amorphous idea a step further by insisting that political liberalism’s ‘normative claims are merely political, and [that it] purports not to draw on

²⁴ Hobbes’s commitment to public reason is seemingly an aberration: ‘For Hobbes, public reason is the reason of one person – the absolute monarch who is the sovereign’ (Solum 1993 p759). The sovereign, as far as Hobbes is concerned, has a privileged understanding of the mind of God and hence, when acting as God’s lieutenant, makes decisions which do not reflect personal and private interests but are consistent with God’s plan for humanity.

“comprehensive moral doctrines,” or on unsustainable metaphysical claims’. (Rawls 2005 p10)

Rawls introduces the idea of public reason in *Political liberalism* as a characteristic of democratic peoples. Larmore argues that:

In fact, conceiving of the principles of justice as the object of a rational agreement comes to more than saying that each individual concerned has reason to accept them. The language of the contract also points to the good in each individual’s finding that reason in the reason that others have to accept them as well. This good lies at the core of the ideal which Rawls calls ‘publicity,’ and a virtue of the idea of contract, as he observes, is that it gives expression to this ideal. (Larmore 2003 p370)

Rawls describes the critical role that the idea of publicity plays in his theory of justice as follows:

When the basic structure of society is publicly known to satisfy its principles for an extended period of time, those subject to these arrangements tend to develop a desire to act in accordance with these principles and to do their part in institutions which exemplify them. A conception of justice is stable when the public recognition of its realization by the social system tends to bring out the corresponding sense of justice. (1971 p154)

This quotation contains some important ideas that are worth unpacking; ideas that are relevant to any discussion about both domestic and global justice. Firstly, it draws our attention to the way a political culture is transmitted, the way we are socialized in that culture. Secondly, if Rawls is right about this first point then it also creates problems for applying his theory. Whereas in his idealized account we are behind a veil of ignorance, in the real world where his theory ultimately has to survive it needs to compete with the pre-existing political culture. Therefore any non-ideal accounts of his theory need to deal with the question of how that transition is to be made. Thirdly, at the global level it implies that global institutions will subtly change our expectations of domestic institutions, and finally, the task of creating a just political order is never ending. As our understanding of both the physical and social world develops we will recognize the need to constantly review and reassess our political culture. Underpinning such a review is public reason; if we are agreed that the two principles of justice are the way to achieve a fair society then public reason provides the means whereby we create a rational response to changing circumstances.²⁵

²⁵ Rawls acknowledged that there is a ‘family of reasonable political conceptions. Of these justice as fairness, whatever its merits, is but one’ (1999 p141). Whilst he was confident that justice as fairness

It is not sufficient therefore that the two principles of justice are fair; they also need to be publicly known: 'The publicity of the rules of an institution insures that those engaged in it know what limitations on conduct to expect of one another and what kinds of actions are permissible' (1971 p49). It is that public knowledge of the principles of justice and the ongoing public reaffirmation of those principles which ensure the stability of the basic structure, for every time individuals conform to the principles, it reinforces to everyone that the principles are being implemented and that they apply to all. The relationship between publicity and public reason is that, whereas the former is about ensuring that everyone is aware that all citizens accept and conform to the principles of justice, the latter deals with the scope of the political conception of justice.

The ideas of freedom of speech and conscience are central to any liberal philosophy. But the concept of freedom of conscience is not without its problems. Under what circumstances is one's duty to comply with the laws enacted by the legislature trumped by one's duty to live according to the dictates of one's conscience?²⁶ The most common example concerns people who refuse to fight for their country. Can someone claim the right not to participate in a war simply on the grounds that their conscience forbids them to fight? Can someone refuse to participate in a war regardless of whether it is a just or unjust war? How far does freedom of conscience extend? For example, if you believe that to receive a blood transfusion is morally wrong are you entitled to deny your child a blood transfusion? Is the state entitled to override your moral scruples and order a transfusion to save the life of your child?

Clearly questions such as this need to be accommodated within a liberal theory of justice. However, it is not sufficient that we can accommodate these questions by making some minor adjustments to the theory. If we find that to maintain a stable society we need to accommodate more and more exceptions, then we may well find that the liberal theory of justice becomes unworkable. Thus, although Rawls started with the hope that his theory could be developed into a comprehensive theory of the good,²⁷ by the time he came to write

trumped the available alternatives because political values are not moral, the way is always open for alternative accounts (1999 p143).

²⁶ *A Theory of Justice*, from section 55 onwards, deals with the question of civil disobedience.

²⁷ 'For it is clear the contractarian idea can be extended to the choice of more or less an entire ethical system, that is, to a system including principles for all the virtues and not only for justice' (Rawls 1971 p15).

the lectures on which *Political Liberalism* is based he had abandoned that idea in favour of a political conception of justice.

We can now see the critical importance of Rawls's question/problem of the role of competing comprehensive theories of the good. For if his theory of justice does not provide us with a comprehensive ethical system we will need to determine how we handle the problem of competing comprehensive theories. Although this is a practical problem (more about that below) we must address this question as part of the ideal theory. The idea of competing comprehensive views applies to an ideal theory just as much as it applies to a non-ideal theory. If a particular ideal theory is not to be dismissed as utopian there is a need to ensure that we can address the question in an ideal context first.

We cannot merely assume that comprehensive theories will somehow take care of themselves; we need to demonstrate that the logic of our theory of justice is such that comprehensive theories of the good may be accommodated within that theory. Rawls achieves this through the idea of overlapping consensus.

Rawls uses the concept of an overlapping consensus to account for how one can make public reason work. The idea is that there is a set of core values underpinning the theory of justice which may be accommodated within the comprehensive framework of beliefs that each citizen holds. Thus, each person's support for the idea of public reason is built on their own particular comprehensive set of beliefs; there is no need to abandon any aspect of their comprehensive theory in order to commit to the ideal theory of justice.

How can Rawls be confident about this? We need to bear in mind that the two principles of justice were hypothetically developed under the conditions of the original position. The parties arrived at the two principles of justice after a process of reflective equilibrium whereby they arrived at two principles that they could endorse regardless of what their comprehensive theories of the good might be. It follows therefore that, irrespective of what their comprehensive moral views may turn out to be, embedded in those views would be the idea of fairness: 'justice as fairness is not reasonable in the first place unless in a suitable way it can win its support by addressing each citizen's reason, as explained within its own framework' (1993 p143). Justice as fairness is then the subject matter of an overlapping consensus.

Rawls's argument is that the one element that all comprehensive theories have in common is the idea of fairness. For Binmore the original position succeeds because at the heart of all comprehensive theories of the good is a kernel of reasonable beliefs that is congruent with justice as fairness. It is that kernel that forms the basis of an overlapping consensus. He goes on to say: 'Why does the device of the original position strike a chord with most of us the first time we hear about it? I think it's because we recognize the deep structure of the fairness norms that we routinely use in resolving everyday co-ordination problems' (Binmore 2005 p129).

However, it goes deeper than that. The principles of justice were supposedly developed behind a veil of ignorance; in particular the participants were not aware of the content of their own particular comprehensive theory of the good.²⁸ Once the task of establishing the principles of justice was completed would one not expect that they would be faced with a stark choice of having to either abandon their comprehensive theory of the good (if it was inconsistent with the two principles of justice) or find a way of accommodating both the principles of justice and their comprehensive theory of the good? The third option would be to abandon the principles of justice in favour of their comprehensive theory of the good. If Binmore is right that the two principles of justice were chosen because they are consistent with our intuitive understanding of what constitutes fair terms of co-operation, then it follows that we need something like the idea of public reason to accommodate both our comprehensive views of the good and what it means to be good citizens in the Rawlsian sense.

The problem that Rawls describes is more far reaching than mere differences of opinion. We are dealing with comprehensive views of the good; views by which people set their moral compass, views which shape their individual rational life plans. We need to address the question, how people may be prepared to 'endorse a constitutional regime even when their comprehensive doctrines may not prosper under it, and indeed even may decline?' (1993 p460). The answer lies in the notion of reciprocity.

...each person engaged in co-operation should not simply benefit (mutual advantage) but should benefit on terms that are fair. Rawls construes it to require terms of

²⁸ Although the original position is an heuristic device, if we accept that we should adopt the two principles of justice then we switch from dealing with an hypothetical situation to an actual situation.

cooperation where gains to those more advantaged must benefit those least advantaged more than any alternatives do.(Freeman 2007 p481)

In a democracy as envisaged by Rawls ‘there is no other way fairly to ensure the liberty of its adherents consistent with the equal liberties of other free and equal citizens’ (1993 p460).

Within the context of a political conception of justice there are some questions that deal only with issues arising out the fair and equitable distribution of the burdens and benefits arising out of social co-operation. It is these questions which will be resolved by reference not to one’s personal comprehensive understanding of the good but by reference to the principles of justice. Furthermore, the resolution of these differences does not demand that one sacrifices any aspects of one’s comprehensive moral theory: ‘Central to the idea of public reason is that it neither criticizes nor attacks any comprehensive doctrine, religious or nonreligious, except insofar as that doctrine is incompatible with the essentials of public reason and a democratic polity’ (Rawls 1993 p441). The assumption is that in a democratic society people discriminate between their personal morality and the morality of the political culture. In a democracy where citizens are seen as free and equal persons it follows that there are some political and institutional arrangements which are more suited to realizing the values of liberty and equality (1993 p5).

Furthermore, since a critical part of the theory of justice is the idea of self-respect, the idea of reciprocity implies that we can only demand self-respect if we in turn respect others. Self-respect then demands that we can claim the right to pursue our own comprehensive theory of the good and in turn must allow others to do so also.

With respect to Rawls’s theory we need to ask what do we do about political disagreements in the ideal situation of a well-ordered society, that is, a society that is perfectly just, a society where all citizens agree on a particular conception of justice, where this is known to all, and furthermore all the laws and requirements conform to that conception of justice? This is far from a simple problem. Up until comparatively recently it was assumed that political stability demanded that people not only conformed to the laws of the land but also shared the same comprehensive moral theories. Nineteenth-century nationalism assumed that what made up a nation was a set of shared beliefs – a common language and culture (Kedourie 1970) p35). The problem with this characterization of nationalism is that it is and always has been wildly inaccurate. Nations are far more typically characterized by internal diversity. Whereas co-

nationals will readily identify people from the east or west, north or south as being very different, it is foreigners who tend to see them as being all the same.

However, we need to ask whether or not public reason is an appropriate response to the question Rawls poses regarding stability in a plural society. Raz counsels that we should avoid claiming that, 'We should consider other people's interests, not the principles they rightly or wrongly uphold' (Raz 1998 p25). But Rawls recognizes that in the non-ideal world disputes are not confined to disputes about principles; indeed some of the most entrenched and deep-seated disputes have little to do with principles and everything to do with people's interests.

This is in stark contrast to the premise underpinning Rawls's theory of justice. For 'the principles [are] that free and rational persons *concerned to further their own interests* would accept ...' (1971 p10, emphasis added). This reasoning is also implicit in *Political Liberalism*: 'the idea of social cooperation requires an idea of each participant's rational advantage, or good' (1993 p16). We can readily agree that vested interests will, in the non-ideal world, often trump questions of principle. Arguably it is easier to get agreement about matters of principle than it is to compromise on one's interests. But this is not a refutation of the idea of public reason in the ideal world – indeed public reason can be a powerful tool to blunt the force of vested interests when people are required to concede that to persist in protecting their vested interests they are in fact denying the principles of justice.

Raz does give some support to Rawls's concept of public reason by arguing that intractable political disagreements are not, at the source, disagreement about principles: 'Political conflicts are often conflicts about the allocation of scarce resources among people who share belief in the same political principles' (Raz 1998 p26). He goes on to claim that the dispute is translated into a dispute about principles to enable protagonists to claim the moral high ground, whatever their principles happen to be. Raz's discussion is important when one considers political disagreements in a non-ideal context but is it any help when developing an ideal theory of justice?

Raz's arguments can be construed as providing a powerful buttress for developing an ideal theory of justice. In highlighting that many political disagreements are not about principles, are not based on rational or reasonable beliefs or based on false beliefs but on a desire to protect vested interests, then that makes the development of an ideal theory of justice even

more important. We can see that if we can design an ideal theory of justice, one that establishes the principles on which a fair distribution of scarce resources is to be effected, then we have identified what Rawls seeks to establish in public reason. This is the groundwork for a political conception of justice to which one can subscribe without needing to surrender one's comprehensive theory of the good and which can then be used as a means of adjudicating objectively and fairly about competing claims for scarce resources.

However, not all would agree with that conclusion. Sen (2009 p97) argues that Rawls' ideal theory fails to offer any guidance to what sort of practical policies can be introduced to overcome problems such as those described by Raz. Rawls does acknowledge the practical problems raised by Raz. He deals with these under the heading 'burdens of judgement.' The burdens of judgement essentially are practical problems that we face in arriving at a particular policy decision. Rawls provides us with at least six such problems. Firstly, there can be legitimate disagreements about the empirical evidence. Secondly, we may have legitimate disagreements about the way we weigh different factors in arriving at a particular decision. Thirdly there might be a degree of indeterminacy about our concepts. To understand the nature of that indeterminacy consider a rainbow – whilst we can distinguish among the various colours it is no simple matter to agree precisely where blue finishes and green starts. Fourthly, our responses to situations are in part informed by previous experiences. Fifthly, there are normative considerations about which there can be legitimate differences without violating the principles of justice. Finally, he refers to the fact that any system of social institutions

is limited in the values it can admit ... in being forced to select among cherished values, or when we hold several and must restrict each in view of the requirements of the others ... Many hard decisions may seem to have no clear answer. (Rawls 2005 p57)²⁹

So, when Sen argues that the fact that a transcendental theory is not a great deal of help in selecting among alternative policies he seems to be implying that it is possible to develop a theory that overcomes the so-called burdens of judgement. For these burdens of judgement are not restricted to applying transcendental theories; they will apply to any theory of justice. They are a reality of practical politics and no matter how we may wish for it to be otherwise

²⁹ This last quotation also serves to blunt much of Raz's criticism. Rawls here highlights that he is aware of the complexity of political disagreements and does not offer a simplistic solution to such disagreements as Raz appears to suggest.

there will always be some problems that do not admit an unambiguous solution. Arguably in the realm of practical politics vested interests can use the ‘burdens of judgement’ as a means of encouraging politicians to avoid addressing some problems.³⁰

But the notion of liberal tolerance may have brought to the fore deeper divisions that go beyond religious differences. In countries like the USA the very legitimacy of the government applying its norms of fairness to Indigenous peoples is called into question. The Sioux people reject ‘the entire practice and procedures for settling disputes about past injustices through monetary compensation’ (Bohman 1995) p254) The Sioux are not unique in this regard. Questions about legitimacy are becoming increasingly common throughout the world. Scotland, Wales and Northern Ireland in the UK, the Kurds in Iraq, Iran and Turkey, the Catalan in Spain and to a lesser extent the Walloons and Flemish in Belgium all reject to a greater or lesser degree the authority of the central government. Under those circumstances we are not dealing with competing comprehensive theories but something far more fundamental – the authority of the central government to legislate. This same issue is raising its head with the so-called New Right movement. Whether it is Trump in the USA, the Brexit brigade in Britain, the PVV in the Netherlands, the Front Nationale in France or the AfD in Germany all, concerned about their national sovereignty, are retreating from global organizations.³¹ Nor is this the only question that creates problems for liberal theories generally.

In an ideal theory of justice, such as that of Rawls, we can attempt to start with a clean slate. In the original position, from behind a veil of ignorance, we can develop principles of justice that will usher in a fair society. Rawls argues that this involves insisting from the outset that the participants should not be able ‘to tailor principles to the circumstances of one’s own case. We should further ensure that particular inclinations and aspirations, *and persons’ conception of the good do not affect the principles adopted*’ (1971 p16 emphasis added). Now we can question whether it is ever possible to completely disentangle ourselves from our beliefs. If this is indeed the case does it not follow that no matter how careful we are in applying reflective equilibrium, no matter how diligent we are in attempting to consider the

³⁰ Al Gore (2007) has highlighted how this strategy works with climate change. A deliberate policy of misinformation renders the electorate impotent to arrive at a rational response.

³¹ Nor is this issue confined to Europe – it manifests itself around the globe. One could argue that public reason under these circumstances is defined by being against something rather than for something.

problem from behind a veil of ignorance, it might not ever truly be possible to do so? Upon evaluating Nussbaum's overview of the feminist critique of Rawls one cannot help but suspect that his philosophy is predicated on a patriarchal model of society. I agree with Nussbaum (2003) that this can be addressed, but one cannot help but ask the follow-up question: is there anything else we have missed simply because he writes in our idiom?

We also need to take into account the fact that there are Christian fundamentalists who would not only reject the two principles of justice but would be unmoved by an appeal to public reason (Huemer 1996). Raz argues that

[If it is the case] that a government is legitimate only if its legitimacy can be justified by considerations and arguments that all those living under it can come to accept without abandoning any of their fundamental beliefs, it still follows that no Western government is legitimate since it is highly likely that in all Western countries there is at least one convinced anarchist. (Raz 1998) p40)

Do either of these counter-examples demonstrate that Rawls's theory is utopian? Is it reasonable for Rawls to assume that it is even remotely possible that an overlapping consensus can be achieved? It is true that Huemer's example founders because he defines the disagreement as one between people who reject the very basis on which a constitutional democracy is based – as there is no common ground there can be no overlapping consensus. But Raz's objection cannot be as easily dismissed, for Raz argues in effect that in any society there will be individuals, namely anarchists, who reject the authority of the state. It could therefore be argued that a liberal democracy may have to compromise its commitment to freedom of thought and abandon the notion that public reason is realistically utopian. If it is the case that within any society there will be those whose comprehensive theories cannot be accommodated then would that make the ideal theory of justice a utopian fantasy? I think not. In fact, I would argue that a Rawlsian response to this objection also helps us lay the foundations for a Rawlsian theory of global justice. As I argued above, from the way Rawls defines the original position it follows that comprehensive moral theories are developed *after* the principles of justice have already been agreed to. Please note I am not following in the trap of translating a heuristic device into a historical fact; rather I am arguing that this is the logic of the original position. The original position determines the conditions under which a social contract will be entered into; it does not pretend to be a comprehensive theory of the good but instead creates a situation where individuals or groups of individuals may be able to pursue their own comprehensive theories. It follows therefore that if, embedded in a society, there are groups with comprehensive moral theories that are fundamentally opposed to the

principles of justice, opposed to the point where there is simply no way to reconcile them within the fabric of society without placing the stability of society at risk, then it follows that these individuals or groups have rejected the principles of the social contract. For a key part of the social contract is that comprehensive theories of the good must not trump the principles that guide the basic structure.

We have to bear in mind that the early social contract theorists had a convenient fall-back position. If one did not like the social contract then one could always move on, live outside of society or find a society that was more congenial to one's views. Indeed, one of the features of European history of the last three hundred years or so is that people did just that. After the peace of Westphalia there was considerable internal migration as people moved into countries that followed their religious persuasion. The history of migration to the Americas is dominated by an attempt to set up democracies informed by a particular religious perspective. Indeed, if one looks at recent history, one of the features of democracy in practice has been its inability to cope with competing comprehensive views. One would have to question whether or not it is indeed possible that 'there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical, and moral comprehensive views' (Rawls 2005 pxvi). Is this taking the ideal theory too far? For today there is genuinely no escape; one cannot remove oneself and create a new society consistent with one's comprehensive views.

Furthermore, even if it were possible, we have learnt one thing from studying culture and comprehensive beliefs and that is that they are constantly changing. Many so-called ancient traditions are only a few generations old and can change with remarkable rapidity.³² But this is precisely why an ideal theory of justice becomes so important: culture is not immutable and it is possible to effect a transformation of the political culture of a society which is consistent with a limited but nonetheless broad set of comprehensive theories.

This may seem to fly in the face of the principle of liberalism. For I am now advocating a conception of liberalism which acknowledges from the outset that some comprehensive views may well be incompatible. Is this not merely tyranny in another form? I think not. As Rawls puts it: 'The zeal to embody the whole truth in politics is incompatible with an idea of

³² It is clearly beyond the scope of this thesis to deal with the process of cultural change. But there has been considerable empirical work done on the subject. See for example Hofstede (2010).

public reason that belongs with democratic citizenship' (1993 p442). Elsewhere he wrote: 'For us the primary subject 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' (1971 p6). He must be referring to a nation-state. This ambiguity in Rawls does lead to confusion – yet it need not be so. Rawls is concerned with an ideal theory of justice but I believe a far safer way to understand Rawls is to see ideas associated with nations and states as belonging in the realm of non-ideal theory. Indeed, the force of Huemer's argument rests on a non-ideal understanding of nations as being comprised of groups like fundamentalist Christians who refuse to brook any compromise.

If there are such people who refuse to compromise their beliefs then clearly they would also not want to be part of the basic structure of society. If people, either as individuals or as groups, want to contribute to the determination of the division and advantages from social cooperation then they will be prepared to negotiate with people who have competing moral theories.

This may appear to be unduly harsh. After all, we have no choice about being born into a particular society; should we therefore be compelled to adhere to principles which 'endorse a constitutional regime even when [my] comprehensive doctrines may not prosper under it, and indeed may decline?' (1993 p459). Clearly forcing members of a society to endorse a regime which is anathema to their comprehensive moral theory is a recipe for political instability. Rawls's position is that support for the constitution, that is, the basic structure of a well-ordered society, cannot be conditional – anything less than a willingness to 'accept the obligations of legitimate law' (1993 p460) is unacceptable.

I agree with Huemer (1996) that Rawls's response to this problem could be much stronger. Rawls confines himself to arguing that it is rational to accept the provisions of a well-ordered basic structure for under it everyone is protected: 'there is no other way fairly to ensure the liberty of its adherents consistent with the equal liberties of other reasonable free and equal citizens' (1993 p460). The example of fundamentalist Christians, which Huemer raises, becomes relevant only in a society where those Christians seek to impose their views on people who do not share their beliefs.

Although this discussion seems rather critical to fully appreciating Rawls's concept of public reason, it seems to me strangely incomplete. The first question that needs to be asked is what does Rawls consider a comprehensive doctrine to be? Clearly all of these doctrines as part of their comprehensive nature have to have a commitment to accepting that their doctrine need not be universal. The question is of course how they view that fact. Some may regard the fact that there are non-believers as a call to arms; that they have a sacred duty to ensure that all live according to God's law. This is critical for Rawls, for his argument is that the adherents of these comprehensive doctrines distinguish between the political sphere and the moral sphere.

According to the notion of public reason, each of these comprehensive doctrines will have surrendered the right to impose its doctrine on all members of society. Within this context one does more than merely tolerate a competing comprehensive doctrine; one accepts that this doctrine has every right to co-exist and that one needs to be prepared to make modifications to the way society is organized to accommodate that doctrine as long as those modifications do not compromise what may be regarded as our core values. Rawls, in facing this problem, seems to have come up with a solution where, through a device akin to the original position, he develops a set of values that belong exclusively to the political sphere. These values are not immutable; they will change over time: 'the forms of permissible public reason are always several. Moreover, new variations may be proposed from time to time and older ones may cease to be represented' (1993 p452).

In Rawls's argument political values are a subset of moral values and a greatly restricted one at that. These values govern the way we deal with the basic structure of society. Secondly they can 'be presented independently of any comprehensive doctrines of any kind' (Rawls 1999) p453) and they can be derived from a set of first principles, principles on which society is based.

Whilst political values may be presented as independent of any comprehensive doctrine, they cannot be wholly independent of such doctrines. This is the important and critical distinction made by Gray (Gray 1995). He argues that 'a commonality of moral outlook' (p36) is called for. However, like Rawls he confines his discussion to a domestic setting. The thrust of his argument is that cultural pluralism is unworkable and the United States' attempt to confound that view is precipitating 'a slow slide into ungovernability' (p36). Nonetheless the fact remains that to attempt to divorce political philosophy from any consideration of moral

philosophy is doomed to failure; unless there is some commonality between competing comprehensive doctrines, then at best what one can hope for is an uneasy truce amongst the doctrines. At the very least there needs to be a 'render unto Caesar' type principle where there is a shared understanding that there is a unique role for the state in normative discourse. Demarcating political life from those questions that do not impact on the polity is not merely sensible but essential for failure so to do will result in the polity becoming a battleground for competing comprehensive theories of the good.

There are comprehensive theories of the good that by their very nature will not admit the right of any other comprehensive theory of the good to co-exist. Generally, this is a feature of fundamentalist religious groups. However, even there one will find that one can make a distinction between the public/political domain and private domain. Thus, in fundamental Islamic states there are religious courts with their own jurisdictions in addition to the state's own civil and criminal court system. Theoretically the religious courts' jurisdiction is confined to the adherents of that faith; in practice the distinction between the two can become blurred.

However, a fully articulated concept of public reason that is independent of any particular moral or political framework would seem to provide the basis for a framework for global justice.

The Original Position and the Veil of Ignorance

The problem of arriving at a set of objective criteria on which principles of justice may be based is as old as philosophy; it centres on the question how do we decide what is just? For Rawls the answer is given by the device of the original position. The original position is a hypothetical situation that seeks to determine which conception of justice would be the unanimous choice of free and equal citizens who are members of that society and will be bound by the conditions of the hypothetical agreement.

Although his theory is part of the family of social contract theories, it does have some unique features that set it apart from the theories of Hobbes, Locke and Rousseau. The key difference is that Rawls does not rely on an imagined state of nature; rather the device of the original position is used as an analytical tool to explore what set of principles of justice it would be rational to adopt under conditions of uncertainty. This also makes it a constructivist theory of justice. If we accept the idea of a well-ordered society composed of moral persons

who are free, equal, reasonable and rational then if you place these people in a situation of having to design a social system you can determine what such a social system would look like.

To see how the original position is constructed we need to go back to the conditions of a well-ordered society. In such an original position, the parties to the social contract would only have access to the information that they need to determine fair terms of co-operation. Rawls limits that information to general information about the natural and social world. They do not have access to information that is morally irrelevant:

they do not know their place in society, their class position or social status, their fortune in the distribution of natural talents and abilities, their deeper aims and interests, or finally, their particular psychological makeup. And to insure fairness between generations, we must add that they do not know to which generation they belong and thus information about natural resources, the level of productive techniques, and the like, is also forbidden to them. (Rawls 1974 p637)

It is the veil of ignorance that sets Rawls's theory apart. So how would people arrive at the principles of justice when placed in this situation? Firstly, they would know that they would want more rather than fewer of the goods that are available for redistribution. Given that they know about society in general terms they would also know that they could be in a position of advantage or indeed in a position of disadvantage. So, if you know there is the very real possibility that when the veil of ignorance is lifted you will be in a position of comparative disadvantage then the rational thing is to structure the system so that, irrespective of what position you occupy, when goods are distributed the maximin principle will be applied. Then the worst outcome will be as good as is possible. The maximin principle holds that when faced with a choice you select the option whose worst outcome is better than the worst outcome of all the other available choices. This also overcomes the problem raised in the previous section where we asked the question: how do you decide how to deal with situations when our interests, our good, are in direct conflict with another person's interests or good? Given that the maximin principle applies to all distributive choices it follows that neither of you are disadvantaged. If you have established principles for a fair distribution behind the veil of ignorance, then you have the means of settling disputes about conflicting interests in a fair way.

Plans of Life

Before we consider the idea of maximin in detail we need to consider what motivates the parties in the original position. Rawls assumes that the parties in the original position use the following three ideas as their starting point for considering their principles of justice. They are concerned to:

1. advance their rational plan of life
2. develop their moral powers, and
3. exercise their capacity to be reasonable.

As for rational life plans, we tend to approach questions of justice from a predetermined conception of the good. Our motivation to be just is derived from some sort of comprehensive theory of morality. However, Rawls does not start with a comprehensive theory of morality. Instead his theory 'is grounded in a conception of the person characterised by "the two moral powers" (the sense of justice and the capacity to rationally pursue a life plan) and a higher order interest in autonomy' Hence for Rawls our motivation to commit to living a just life is not grounded in a particular comprehensive theory of the good but is intrinsic to our humanity; although Rawlsian justice is not based on a preconceived conception of the good it is nonetheless normative in as much his conception of the person is based on the idea that we do have moral powers and one of the ways we exercise these moral powers is in the execution of our rational plan of life.³³

But what is a rational plan of life? Rawls says that 'A man is happy when he is more or less successful in the way of carrying out this plan' (1971 p79). But how do we know whether or not a particular plan is in fact rational? Rawls supplies us with two definitions that enable us to assess whether a plan of life is indeed rational:

A person's plan of life is rational if, and only if, (1) it is one of the plans that is consistent with the principles of rational choice when these are applied to all the relevant features of his situation, and (2) it is that plan among those meeting this condition which would be chosen by him with full deliberative rationality, that is with full awareness of the relevant facts and after careful consideration of the consequences. (1971 p359)

³³ That conception of the good also includes a sense of what is good for everyone; it is not a narrow, self-centred view of the good.

However, a plan that does not seek to protect the welfare of those who are nearest and dearest would not be rational. It would not be rational to adopt a plan that puts in jeopardy the very people that one will need in times of crisis.

In the original position, the parties are mutually disinterested. Although they do not know what their plan of life is, or indeed their conception of the good, all they know is that they will have a plan of life and will have a conception of the good, whatever these may turn out to be. They want to be assured that society is organized so that they are able to realize both their plans of life and their conceptions of the good.

The parties in the original position are representatives. As such they do not represent just their own interests but also those of the people they represent. At no stage does Rawls claim that the people they represent are like them. Indeed he states

the [purpose of] the basic structure is then to secure the free internal life of the various communities of interests in which persons and groups seek to achieve, in forms of social union consistent with equal liberty, the ends and excellences to which they are drawn. (1971 p476)

In other words, our representatives are not simply looking after their own interests but also the interests of the people they represent. But we can go further than that. A rational plan of life will also consider the needs and wants of those dear to us – the rational plan of life for a parent will include taking care of their children; the rational plan of life for a child will include looking after their parents if they are too infirm to look after themselves. A rational plan of life will include providing support and assistance to those family members who are physically or mentally disadvantaged. In short, a plan of life that is truly rational will consider all the challenges that life can throw not just at us but also at those for whom we care. We should not underestimate the force of the maximin criterion. In the original position, the representatives are encouraged to identify the absolute worst that could happen and then design the plan so that we minimize that worst-case scenario. Given that the chances are that we ourselves could also be disadvantaged, a rational plan would allow for those circumstances. I need to add that those who argue that Rawls only ‘attributes self-interested motives to people in the original position’ (Paden 1997) are mistaken if they think that self-interest is the key motivation – on the contrary, it is the implementation of a rational plan of life that is the dominant motivation. That incorporates features that are self-interested, but no rational plan of life can survive if it is exclusively self-interested. To understand that we need to consider the idea of the difference principle.

Given that in the original position we do not know how, once we leave the original position, we will be situated, it follows that

The framework of institutions required by equal liberty and fair equality of opportunity, the higher expectations of those better situated are just if and only if they work as part of a scheme which improves the expectations of the least advantaged members of society. (1971 p65)

This is the force of the difference principle. It seeks to ensure that the better situated are not able to maintain their position of advantage at the expense of those less well-situated. In the original position, one has to take that possibility into account.

Given that the aim of the social contract is to develop fair terms of social co-operation it follows that a rational response to living in society is to develop those qualities which enhance our capacity to live in society. People who focus only on their own narrow self-interests, who demonstrate no concern for the needs and welfare of others or who lack the capacity or the willingness to commit to fair terms of co-operation, are unlikely to be welcomed as members of a cohesive society. As we shall see when discussing the idea of stability, the only reason for coercion in a well-ordered society is to deal with individuals who are unwilling to be reasonable. Thus, Rawls asserts that reasonable people understand this and will be actively working to develop their moral powers. The justification for this idea draws upon two complementary arguments: the argument for fraternity (1971 pp88–90) and stability (pp154–156).

Rawls argues that we have little difficulty in translating the concepts of liberty and equality into a coherent political philosophy. Fraternity, too, is critical to a stable theory of justice: ‘their conception of justice is threatened with instability unless sympathy and benevolence can be widely and intensely cultivated’ (1971 p155). A rational person will recognize that in order to realize one’s rational plan of life one needs to acknowledge that any plan that is indifferent to the impact of the plan on others is doomed to fail. The parties in the original position are disinterested, that is, they are neither interested in just their own interests or the interests of others – instead they are interested in developing a scheme of cooperation that ensures that the burdens and benefits of social cooperation are distributed fairly. Clearly if they succeed in doing that then they will have designed a society in which they would want to live.

To achieve that goal, they need to be able to clearly articulate what for them is a rational plan of life. But a complementary need is to appreciate that to gain the full benefits from social cooperation it will be necessary to develop their abilities to understand what measures will lead to reciprocal advantage.³⁴ Disinterested individuals have developed the capacity for empathy; they appreciate that to ensure that everyone has a commitment to the prevailing social order the needs and interests of everyone need to be satisfied.

Both a rational life plan and the development of one's moral powers are tied together by the third feature: the development of our capacity for reasonableness. Reasonableness in the Rawlsian sense refers to our ability to respond to questions of justice in conformity with reason.³⁵ This is a demanding proposition, for questions of justice can easily become emotionally charged. Unless we consciously work at taking an analytical approach to justice we will find that our decisions are based on emotion rather than reason. Specifically

Reasonable persons, we say, are not moved by the general good as such but desire for its own sake a social world in which they, as free and equal, can cooperate with others on terms all can accept. They insist that reciprocity should hold within that world so that each benefits along with others. (1993 p50)

The key point to notice is that this capacity for reasonableness refers to one's ability and willingness to ensure that decisions about justice are made with a view to ensuring that the basic structure is well ordered.

Rawls summarizes this idea as the maximin principle. When it comes to the principles of justice it gets translated as:

1. Each person has an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for all.
2. Social and economic inequalities are to meet two conditions: they must be (a) to the greatest expected benefit of the least advantaged (the maximin criterion); and (b)

³⁴ One of the conspicuous weaknesses in Rawls's theory is the lack of attention he pays to education. Education is not included among the institutions that make up the basic structure, nor is it incorporated under the public goods. Space does not permit me to explore this issue in detail.

³⁵ It is interesting that neither Rawls nor his various commentators saw the need to incorporate education as a primary good. His theory is very much dependent on people making rational choices. Unless one wishes to argue that, despite evidence to the contrary, the ability to reason is innate there is a need to include in the basic structure the opportunity to learn to reason.

attached to offices and positions open to all under conditions of fair equality of opportunity.

So why would the representatives in the original position choose these two principles? The reason is that Rawls sees justice being based on the standpoint of the most disadvantaged person. The reason for this is that it gives us a set of principles that can be universally accepted. As you do not know whether you will be that most disadvantaged person, it is in your own self-interest to ensure that you have secured the best possible outcome for yourself. Therefore you need to design the principles so that the worst outcome will be as good as possible.

The Principles of Justice

When our representatives are placed behind the veil of ignorance then, Rawls argues, the two principles of justice that rational parties will arrive at are:

1. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.
2. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society (1993 pp5–6).

Rawls's theory of justice advances the proposition that the two principles of justice are the only rational response that we can make to the problem of regulating the basic structure of society in a fair manner. As he states:

what we are doing is to combine into one conception the totality of conditions that we are ready upon due reflection to recognize as reasonable in our conduct with regard to one another ... to see our place in society from the perspective of this position is to see it sub specie aeternitatis: it is to regard the human situation from all social but also from temporal points of view. (1971 p514)

For Rawls, the only rational way to distribute the burdens and benefits arising out of social co-operation in a fair and equitable manner is to commit to the two principles of justice.

The first principle is quite far reaching. If we consider the recent Australian debate about same-sex marriage we can see how this would be dealt with under the first principle. Let us assume that we have two couples: a heterosexual couple and a gay couple. Both would like to get married. Under the law as it stood until late 2017 the heterosexual couple was free to marry but the gay couple was not. If the right to get married is regarded as a basic liberty, then the denial of the right of the gay couple to marry means that their liberty was restricted – which was in violation of the first principle of justice. Now that the law has been changed and all couples have the right to get married irrespective of their sexual orientation, then nothing has changed for the heterosexual couple but for the gay couple the law now enables them to enjoy the same freedom as the heterosexual couple.

What would happen if there were no gay couples with any interest in marrying? The principle of liberty would still demand that the option is open to them. We can apply the principle of freedom to a range of morally controversial issues such as abortion and euthanasia – if they are freedoms denied to all then there is no problem, but once they are incorporated in our list of freedoms then they should apply to all.

In understanding the difference principle, we need to take care that we do not view the original position merely as a thought experiment. The key feature of a Rawlsian style thought experiment is that it enables us determine what, in an ideal world, would be expected of us. Furthermore, it enables us to understand, in an impartial way, what we may expect from one another.

For Rawls, the original position takes the place of Hume's impartial spectator. The key difference is that 'the impartial spectator makes no assumptions from which the principles of right and justice may be derived ... it attempts to provide a deductive basis for the principles' (1971 p162). Hume's impartial spectators are sympathetic to the various parties and base their assessment of justice on their capacity to imagine themselves in the place of the various parties. By evaluating both the positive and negative impact of a decision on each of the parties the impartial spectator arrives at an optimum result. Rawls is at pains to acknowledge that the conclusions arrived at by this process are genuinely impartial but are they preferred to the way the parties in the original position arrive at their conclusion? The key difference is that the principles of justice are derived by parties who are disinterested: they do not know the specifics of the situation the way the impartial spectator does; rather they must arrive at a set of principles that can be applied to any situation.

The idea of an original position is not unique to Rawls. The risk of any original position is that they can readily fall in the trap of *petitio principii*. This can be readily illustrated by Brock's (Brock 2009) discussion of the original position. My aim in contrasting Brock's version of the original position with that of Rawls is to describe how Rawls has managed to avoid the trap of *petitio principii*. Brock begins by asking what are 'the *minimum* set of protections and entitlements we could reasonably be prepared to tolerate' (2009p50). She goes on to suggest that in her thought experiment she would assume that people would want 'some equal basic liberties and that everyone should be protected from certain real (or highly probable) risks of serious harms' (p50). She continues:

Self-interested individuals (or, at least reasonable people adopting the guise of such persons) reflecting behind an appropriate veil of ignorance should be strongly motivated to ensure ... that we should all be adequately positioned to enjoy the prospects for a decent life, as understood to include what is necessary to be enabled to meet our basic needs and those of our dependents. (pp51–52)

There are several problems with this approach. Firstly, it begins by making assumptions about what people would want. Whether they are reasonable assumptions is not at issue. Rawls's original position is based on the idea that the principles are to be decided by analysis. His view is basically that if you want a well-ordered society and if you agree that people have a moral capacity then how would they solve a problem of co-operation? How would they deal with both the objective and subjective conditions of moderate scarcity? 'Brock does not seem to share this understanding of the original position' (Moellendorf 2009 p263). Nor does she appear to understand the reasoning for the difference principle. She rejects a system of distributive justice where inequalities are designed so as to give the greatest benefit to the least advantaged. Instead she argues that what people would want is 'an income floor to be guaranteed to the worst-off individual' (p55).

Brock justifies her rejection of the difference principle on the grounds of empirical evidence. The evidence offered is an empirical study by Frohlich and Oppenheimer. This was an experimental study where the subjects were placed in a version of the 'original position' and invited to determine what principles should guide a society. It seems that when the experiment was run properly there was unanimous agreement on only one principle, viz the idea of guaranteed minimum income. She argues that Rawls himself was moved to review his conclusions after considering Frohlich's and Oppenheimer's work: 'Rawls believed that if the

results held up ... they would force him (and justice theorists) very seriously to reconsider the distributive justice part of his theory' (Brock 2009 p275)³⁶.

Brock goes on to refer to a statement Rawls makes in *Justice as Fairness* where he suggests that the difference principle may not necessarily be chosen. He states that what is required is 'something like the difference principle. (I say "something like," for there may be various nearby possibilities.)' (2001 p49). This appears to be offered as a rebuttal to Moellendorf's criticism that 'empirical evidence cannot undermine normative arguments for what one ought rationally to choose in the original position' (Brock 2009 p273) but this surely misses the point of Moellendorf's objection. The objection does not centre on Brock's minimum floor principle but rather that the principles are arrived at through a process of analysis; what people in non-ideal situations would choose is irrelevant. Rawls's account in *Justice as Fairness* is preceded by this statement:

While the difference principle does not fall under constitutional essentials, it is nevertheless important to try to identify the idea of equality most appropriate to citizens viewed as free and equal, and as normally fully co-operating members of society over a complete life. I believe this idea involves reciprocity at the deepest level and thus *democratic equality properly understood requires something like the difference principle*. (Rawls 2001 p49 emphasis added)

Far from abandoning the difference principle in favour of the empirical evidence offered by Brock, all that Rawls does here is to keep open the possibility that there may well be other ways to achieve the same result. This is consistent with Rawls's approach on a range of issues; he, as a prudent philosopher should, leaves open the possibility that there may be a better way to achieve the result that he is looking for.

But why should we ignore empirical evidence? Moellendorf's response is telling:

If actual human conduct fails to conform to models of rational choice, the explanatory or predictive power of these models can be doubted. The evidence of behavioral economics is relevant because the theoretical project is an explanatory one. But when

³⁶ I would argue that Frolich & Oppenheimer's research confirms the importance of Rawls's ideal theory. Frolich & Oppenheimer's research demonstrates how difficult it is for people that challenge their assumptions for although they sought to replicate what people would decide in circumstances similar to that described in Rawls's original position the key difference is that they were aware that whatever they decided would not make one jot of difference to their lives. The original position is essentially an analytical argument; it seeks to identify what a rational response is when confronted with the original position. If Brock were to argue that given their research it follows that in implementing a Rawlsian public policy we would be advised to adopt a minimum floor principle as a preliminary step to creating a fairer society then she would be on stronger ground. .

the theoretical project is normative rather than explanatory, evidence cannot play the same role of potentially undermining conclusions. (Moellendorf 2009 p 263)

The original position is not making a claim about what people believe to be fair or the choices that people would make. If Rawls was making that claim, then as Moellendorf states the theory of justice would be significantly undermined as a predictive analysis of the way we view justice. But as a normative account the evidence does not undermine the validity of that normative account. What it may do is raise questions about how, in the light of our actual behaviour and beliefs, that normative account may be implemented. Indeed, one of the ways we can justify counterfactual assertions is to demonstrate that they describe what would happen in the real world. On that basis, Brock can claim that Frolich and Oppenheimer's experiment represents a more accurate picture of what people would choose when confronted with the sort of questions that Rawls poses. But that does not invalidate the normative account of what we should choose. For example, we can agree that shoplifting is wrong. Surely, we would not argue that, because many people do in fact engage in shoplifting, that therefore it is not wrong. On the other hand, in many countries it is illegal to use marijuana. We also know that many people break that law. Based on that empirical evidence there will be some who argue that the use of cannabis should be legalized. Indeed even if one is opposed to the use of cannabis one could support the legalization of cannabis on the grounds that persisting with a law that is not complied with undermines the system of law more generally, as was observed during the period of prohibition in the US when many formerly law-abiding citizens became law breakers.

The reason we should reject Brock's appeal to empirical evidence is that it represents an incomplete account of the way Rawls describes the original position. It is not sufficient to conduct an experiment which mimics the original position and then asks people to choose which one of four options they would choose. The key element that is missing is the deliberative process. Rawls himself argued that institutions like the US Supreme Court play a critical role in legitimizing decisions. It can be argued that the judiciary is well placed to evaluate competing alternatives. For example, a contested question such as how we might best deal with climate change could fruitfully be referred to the judiciary.³⁷ Indeed the question of what constitutes an appropriate deliberative process cannot be dismissed lightly for, whilst Rawls favours the use of the judiciary, it is by no means the only option available

³⁷ Phillippe Sands (2015) in a lecture to the UK Supreme Court makes the case that the role of courts is to evaluate evidence and, on the basis of that evidence, make a judgement.

to us. The two principles of justice and the difference principle in particular are arrived at through a protracted process of reflection and analysis. This does not mean that the empirical work Brock cites is totally irrelevant; it has a place especially when we are developing an appropriate non-ideal response.

Secondly, people participating in such an experiment have been exposed to what Rawls refers to as the existing background institutions (1971 §42).³⁸ If, as is the case, the existing background institutions are not ‘well-ordered’ then the outcome of the distributive process will not be just. Thus, within such a context their horizons of what may be reasonably expected from a political system will likewise be circumscribed.

Of course, the other possibility is that empirical research may reveal a feature of the debate that we have overlooked, or it may be that there is more than one rational choice. These are quite reasonable responses and my argument is not that we should dismiss out of hand empirical evidence. Brock, however, goes further: ‘It is no good if Rawls gives us a theory for saints if human beings, as actually constituted, could never realize the utopia presented’ (2009 p275) It would seem the role of empirical evidence is to ground the theory, to ensure that an ideal theory can be implemented. This is a critical misunderstanding of the role of ideal theory.³⁹ Given that Rawls argues for ‘strict compliance’, one would have thought that we have *prima facie* evidence that his theory is indeed for saints. In discussing the so-called four-stage sequence (1971 §31), Rawls makes the following observation:

Justice as fairness will prove a worthwhile theory if it defines the range of justice more in accordance with our considered judgments than do existing theories, and if it singles out with greater sharpness the graver wrongs society should avoid. (Rawls 2001 p176)

There is no expectation that people are or can be saints but there is every expectation that our ideal theory enables us ‘to probe the limits of practical political possibility’ (2001 p4). The concern that I have with Brock’s faith in basing a theory on our understanding of the ‘real

³⁸ It needs to be noted that Frolich & Oppenheimer note that their subjects did not arrive at fixed and immutable positions, rather it seemed that the process exposed them to the complexity of determining a fair distributive process. (p170)

³⁹ This is explored further in Chapter 4.

world' is that in so doing we run the danger of not probing those limits. Instead we would allow existing constraints to define what is or is not a practical political possibility.⁴⁰

But there is another reason for rejecting the empirical evidence offered by Frolich and Oppenheimer. That reason is concerned with how we understand the difference principle. It seems that Brock sees the difference principle solely as a device for creating an equitable distribution of the burdens and benefits associated with social co-operation. If that is the only role the difference principle plays in Rawls's theory then it may well seem that one can introduce the idea of 'a *minimum* set of protections and entitlements we could reasonably be prepared to tolerate. However, the difference principle is about more than a just distribution of primary goods – it ultimately provides a critical reason why everyone would commit to the basic structure. For the difference principle is not particularly concerned with giving the least advantaged a helping hand; this may be how we interpret it because we start from the assumption that we will not be the least advantaged. But this is not Rawls's argument. Rather, in developing the principles of justice we need to take seriously the very real possibility that we will be the least advantaged⁴¹. If we are the least advantaged then we would want principles that maximize the benefits that we can possibly get. The difference principle is not about altruism – it is about identifying terms and conditions for social co-operation so that, whatever station in life we occupy, the distribution of the burdens and benefits arising out of social co-operation are distributed fairly.

The other point to note about the difference principle concerns the idea of merit. Rawls argues that 'the democratic interpretation of the two principles will not lead to a meritocratic society' (1971 p91). There will be those who see this as a weakness of his theory, but it is in fact a strength. The idea of merit is a chimera. I did not choose my parents, where I was born, my gender or my skills and abilities – so to structure a society so that those factors influence my life chances is, in Rawlsian terms, unjust. I cannot claim any credit for those factors about my make-up which are outside of my control. But perhaps I can claim credit for my achievements? We hear of people being 'self-made millionaires', stories of people who had a plan of life, pursued it diligently and as a result became outstanding successes. Perhaps these

⁴⁰ This is also inconsistent with the scientific method. For example we know that creating a perpetual motion machine is impossible but that does not prevent us attempting to invent machines which can run for an extraordinary long period of time.

⁴¹ Indeed that seems to be Brock's position when discussing global justice. She states that delegates when discussing the terms of a global contract would be conscious that as they could be on the receiving end of disadvantageous conditions. (p 152)

people deserve extra consideration? Again, it is hard to see how they merit special treatment for it is the basic structure of society that made their successes possible.

In a well-ordered society where the institutions that make up the basic structure are based on the principles of fairness, people will recognize and accept that the system is designed to give them the best possible chance to realize their rational plans of life.

Conclusion

What would our interstellar boat people make of Rawls's theory? Whilst they may have some misgivings about the theory of justice per se, they would at least be reassured that, if Rawls's theory is universally adopted, then irrespective of which society they join they could at least be assured that they would be treated equitably. They would also be reassured that the theory acknowledges that our social institutions are human inventions. If our institutions are human inventions, then it follows that there are no 'laws' governing these institutions. Thus, it is misleading to talk of 'the law of supply and demand' as if it is identical to any one of the four laws of thermodynamics. For whereas the latter describe observable phenomena, the former is a product of the way we arrange our institutions. We can change institutions so that the 'law of supply and demand' simply does not apply but we cannot change nature so that the laws of thermodynamics do not apply.

But the interstellar travellers would also be concerned that there are far too many societies that claim that 'inequality' is natural, part of the law of nature or the law of God. They would be concerned that it is hard to see how we can make the transition to this ideal theory of justice; people who are advantaged by the status quo are unlikely to surrender their benefits lightly.

Yet it is because a theory of justice attempts to give an account of how our institutions should be arranged so that they are fair that it is important that we start with an ideal theory of justice. An ideal theory is a tool that enables us to determine what, in an ideal world, justice should look like. It enables us to set a benchmark to aspire to. In developing a Rawlsian theory of global justice we need to take a closer look at three aspects of his theory: ideal theory, the basic structure and just savings. These three aspects of Rawls's theory will be the focus of the next three chapters.

4. IDEAL THEORY

This thesis purports to use Rawls's ideal theory of domestic justice to create an ideal theory of global justice. The problem is that there is by no means a consensus about what constitutes an ideal theory. My objective in this chapter is to clarify how I am using the concept of ideal theory to construct a theory of global justice.

Introduction

The argument I will be developing here is that all ethical and political reasoning relies to some degree on idealized accounts: 'abstraction is, taken strictly, unavoidable in all reasoning: no use of language can be fully determinant' (O'Neill 1987 p322). Arguably part of the problem may be that there is no canonical definition of ideal theory (Arras 2010). There is the additional problem concerning the word 'ideal' itself. There is the understandable temptation to treat 'ideal' and 'perfect' as synonyms I argue that this is an error.⁴² Consequently we find that discussions are often 'ideal when they should be non-ideal and vice versa' (Ypi 2020). Given this confusion in terminology I will start with 'the naming of parts' – in particular I will focus on: ideal theory, partial ideal theory, non-ideal theory and idealization (Robeyns 2007). Once these terms have been defined and explained, I will turn my attention to the problem of making the transition from ideal theory to practical policy.

We know that Rawls's theory of justice is an ideal theory. That is, it purports to describe the principles that would 'regulate a well-ordered society. Everyone is presumed to act justly and do his part in upholding just institutions' (1971 p8). Clearly to design a theory where everyone complies fully with the demands of that theory can be regarded as ideal; in the real world we do not expect everyone to comply fully. But Rawls goes further than that, for he also makes the claim that 'ideal theory, which defines a perfectly just basic structure, is a necessary complement to non-ideal theory' (1993 p285). That relationship is often not fully appreciated: 'while the debate over the point of ideal theory can be productive, it will only be so if we avoid treating ideal and non-ideal theories as rival approaches to political theory' (Stemplowska 2008 p319). That same view is echoed by Ismael. Ismael implies that part of the problem may be semantic. If we interpret the word 'ideal' as referring to perfect then

⁴² It would seem that this is what led Levy (2016) claim that there is no such thing as ideal theory.

ideal theory may be suspect. On the other hand if we use it to describe a situation which is not ‘real’ or does not purport to describe the world as it actually is then we are treading a path familiar to scientists. Newton’s account of the ideal pendulum was designed to give him, in Rawls’s language, an uncluttered view of how the force of gravity works. He did not imagine that it was possible to produce a pendulum that did not have a range of forces other than that of gravity operating on it. ⁴³This is not a world away from the Rawlsian enterprise for what Rawls is effectively saying is, if you do not know where you are going you are liable to end up someplace else. For Rawls, as with Newton, we need to start with an ideal theory before we embark on our non-ideal theories.

This is not a trivial problem. On the one hand if the ideal theory demands too much of us, if it describes conditions that most of us mere mortals will be unable to fulfil, then it is hardly a useful guide to action (Brock 2005). On the other hand, in the absence of ideal theory how can we ‘formulate judgements about the justice and injustice of society ... without having an ideal of what a just society would look like?’ (Valentini 2009 p337).

The Purpose of Ideal Theory

Rousseau’s maxim that we ‘must start with people as they are and laws as they can be’ (Rousseau 1968 p 49) constitutes the demarcation between ideal and non-ideal theory. In other words:

Our goals ought to reflect the most rigorous moral views on what an ideally just society should look like; yet our strategies for achieving them must take account of how society actually is, its non-ideal agents and its existing political structures. (Ypi 2020 p536)

For Ypi the distinction between the ideal and the non-ideal is that the ideal describes what we should aim for; the non-ideal describes the strategies whereby we might achieve our aims. We could summarize our ideal theories ‘as devices that are supposed to allow us to progress from one set of statements towards another set of statements in order to increase our

⁴³ Ishmael’s example also highlights the problem with using scientific analogies to illustrate Rawls’s discussion of ideal theory. In the case of Ismael the Newton example is apt. Newton used the pendulum example as a means to unpack the mathematical foundations of his theory of gravity. Rosenberg in his critique of Rawls’s use of ideal theory refers to the development of an ideal theory of gasses. (Rosenberg 2016) It is beyond the scope of this thesis to fully unpack the complexities associated with ‘evidence’ based theory. I am currently preparing a paper entitled “Normative Empiricism” which seeks to identify how we can determine what empirical evidence is appropriate to use when justifying either an ideal or non-ideal theory.

knowledge about some x' (Stemplowska 2008 p323). Ypi (2010) argues that the key distinction between ideal and non-ideal theories is that the former do not make recommendations, whereas non-ideal theories are designed to develop recommendations that are both achievable and desirable. We can see therefore that there is a close relationship between ideal and non-ideal theories. Ideal theories provide us with the theoretical framework whereby we can describe what we should aim for. Non-ideal theories enable us to achieve that goal.

Rousseau's maxim assumes that we know what it means to be human. Theories of justice, therefore, start with what we know about human nature and then seek to construct a set of principles that builds on that understanding. It is in this context that Rawls's discussion of Rousseau's conception of human nature is illuminating: 'The principles of human nature are like a function: given social and historical conditions, they assign the kinds of character that will develop and be acquired in society' (Rawls 2007 p207). This also implies that as we learn more about human nature we may have to review our ideal theories

Rawls's view then is, whilst human nature is fixed, the way it is articulated is shaped by the nature of society. This is consistent with his conception of the basic structure. The basic structure of society (as we will discuss more fully in the next chapter) has a pervasive role in shaping our political culture (2007 p2). Furthermore, given that the role of the social contract is to ensure that the background conditions which shape the basic structure are fair, it follows that our ideal theory becomes the means whereby we transform our political culture so that it is consistent with agreed fairness norms.

But if ideal theories of justice are a response to existing circumstances, does it then not follow that they are inevitably of limited value? Thus Hobbes' *Leviathan* provides a strong case for an absolute monarch but has little to say about the value of constitutional democracies. Presumably Hobbes, like Rawls, regarded his theory as applying across generations – yet clearly, we no longer would agree that an absolute monarch is the way to create a just society. Of course, Hobbes did not distinguish between ideal and non-ideal theories, but it does suggest a problem for Rawls who is claiming that his theory is an ideal theory. If ideal theories are a response to a particular understanding that we have of the nature of the world, does it not follow that as that understanding changes our ideal theory needs to change with it?

This in turn prompts the question whether ideal theories are based on facts or fundamental moral principles? If they are based on the former, then we can assume that if the facts change then so too will our theory. If based on the latter, then we need to find a justification for basing our theory on the principles chosen. Rawls's principles of justice 'are a response to the facts of the human condition' (Cohen 2003 p235). As Rawls puts it: 'Conceptions of justice must be justified by the conditions of our life as we know it or not at all' (1971 p398). Cohen's argument is a meta-ethical response which claims that normative judgements are ultimately based on principles which are fact insensitive. As space is limited I will not address Cohen's critique of Rawlsian constructivism here. However, the question whether or not a change in facts about the human condition requires a rethink of our ideal theory does need to be addressed.

Dreben (2003) reminds us that Rawls's distinction between the rational and reasonable helps us here. Participants will tend to operate rationally; it is rational to support those decisions that further one's good. But participants also need to be reasonable, that is, they need to honour the principles that establish fair terms of co-operation even 'at the expense of their own interest' (2001 p7).

You start with intuitive moral, political considerations and see what they come to. You cannot ground them. And so the original position is always framed under the constraints of the reasonable. The distinction between rational and reasonable is absolutely crucial ... But you cannot define these notions ... all you can do is start with certain intuitive distinctions and see how you can push them and what work they will do. (Dreben 2003)

The original position needs to be seen in this light. Reasonable citizens will realize that there will be situations where their preferred political outcomes will be in conflict with the preferred outcomes of other, equally reasonable citizens. An ideal theory of a coherent liberal constitutional democracy is an answer to what Rawls refers to as 'a torturing question in the contemporary world, namely: Can democracy and comprehensive doctrines, religious or nonreligious, be compatible? And if so, how?' (1993 p485). The answer to that question depends on what the salient facts are. A response that is both reasonable and rational is, in a constructivist approach dependent on the facts on which the theory is founded. When Rawls developed his theory of justice the idea of national sovereignty was seen as an incontrovertible fact. Today the question of establishing the boundaries of national sovereignty and of questioning the very idea of sovereignty has become an acceptable part of political discourse. True there was a degree of interdependency but one of the consequences

of acknowledging the reality of the Anthropocene is that the survival of the human species depends on global co-operation. If it is the case that there is a need for global co-operation then that means there has been a shift in the facts that underpin our theory, which in turn means that our ideal theory will need to be reviewed and, if necessary, changed. Global co-operation in response to the Anthropocene may require a more nuanced understanding of both interdependency and sovereignty.

Given the methodology of reflective equilibrium we can argue that the nature of our ideal theory

rests upon the entire conception [of our understanding of the facts] and how it fits in with and organizes our considered judgements in reflective equilibrium ... justification is a matter of mutual support of many considerations, of everything fitting together in one coherent view. (Rawls 1971 p507)

Rawls goes on to say that by taking this view we are not required to formulate a meta-ethic but can simply get on with the job of developing a theory of justice.

This serves to illustrate a major problem with any ideal theory – on what basis are we invited to accept the principles on which the theory is based? Does the fact that we can look at the theory as a whole and see that it works provide adequate justification? Does it mean that our theories are constantly changing as our view of the world changes? Does it suggest that the idea of providing an ideal theory of justice let alone global justice may well be beyond us? Clearly, we need answers to these questions if we wish to make the claim that a particular ideal theory of justice should be endorsed.

Ypi (2010) draws on Plato's *Republic* to resolve this conundrum. She characterizes ideal theory as follows: 'Ideals embody the abstract representation of a polity run by perfectly just principles – principles that everyone would endorse after an appropriately fundamental assessment of the circumstances of justice' (2010 p358). This is consistent with Rawls's approach; however, we do not live in an ideal world. What then do we mean by non-ideal theory and what is its relationship to ideal theory?

Non-Ideal Theory

There are those argue that the problem with an ideal theory of justice is that philosophers like Rawls fail to take proper account of the real world. That position may be summarized as follows: 'the diagnosis of injustice does not demand a unique identification of the just

society' (Sen 2009 p100). Sen goes on to argue that we need to consider competing solutions to the problem of manifest injustice. In a similar vein Mills states:

Marx ... was famous for emphasising, as in the German ideology, the importance of descending from the idealizing abstractions of the Young Hegelians to focus on 'real active men,' not 'men as narrated, thought of, imagined or conceived,' but 'as they are,' in (class) relations of domination. (2005 p170)

The consistent theme of non-ideal theorists is that a non-ideal theory 'will help equip them with a theory of justice that can provide some normative guidance for real, non-ideal societies' (Farrelly 2007 p845).

The substance of that claim seems to centre on the notion that Rawls's ideal theory does not take into account the full range of human misery – but as Stemplowska correctly points out surely the true value of the theory is that it alerts us that we need to determine what is owed to people 'on account of inequalities outside their control' (2008 p332). This also brings us to the essential reason why ideal normative theories are important:

normative theorists should never dismiss the importance of knowing what a fully compliant society would be like: one of the roles of normative theory is to recommend more or less straightforwardly achievable changes in the circumstances we find ourselves in, but another is to judge what we have already achieved against a final landmark of where we ought to be. (p332)

Just as Newton needed to posit an 'ideal' pendulum in order to refine his theory of gravity so, it can be argued, Rawls needed to posit an ideal theory of society so the ideas of justice could be fully teased out. (Ismael 2016) Proponents of ideal theory argue that the value of an ideal theory is that it enables us to assess our normative practices against an appropriate benchmark (Ralston 2010) But we also need to look more closely at what constitutes an appropriate benchmark. For example whereas Ismael's example Newton's use of the pendulum lends credibility to Rawls's ideal theory, Rosenberg's example of developing an ideal theory of gasses casts fresh doubt on the appropriateness of Rawls's strategy. (Rosenberg 2016) Thus Rawls provides us with a means of assessing whether or not our institutions are in fact just. This is not to claim that ideal theory can be formulated in vacuo; it will always be a response in some form or another to what is happening in the real world, but equally non-ideal theories do tend to make assumptions about what an ideal world is like. An ideal theory which has no relevance or bearing on the real world would in Rawls's terms be regarded as utopian. But he regards an ideal theory that provides a guide to action as realistically utopian for 'it extends what are ordinarily thought of as the limits of practical political possibility' (1999 p6).

However, Farrelly explicitly rejects that claim when he states that that Rawls's theory is not 'adequately fact-sensitive to be considered *realistically utopian*' (2007 p845).⁴⁴

To respond to Farrelly we can start with Rawls's statement in *A Theory of Justice* regarding the relationship between ideal and non-ideal theories:

The intuitive idea is to split the theory of justice into two parts. The first or ideal part assumes strict compliance and works out the principles that characterise a well-ordered society under favourable circumstances. It develops the conception of a perfectly just basic structure and the corresponding duties and obligations of persons under the fixed constraints of human life ... Nonideal theory, the second part, is worked out after an ideal conception of justice has been chosen; only then do the parties ask which principles to adopt under less happy conditions. (1971 p216)

There is one constraint he sets himself: the resultant theory must be realistically utopian. The resultant theory will be probing 'the limits of practical political possibility'. The purpose of this exercise is to answer the fundamental question:

what is the most acceptable political conception of justice for specifying the fair terms of co-operation between citizens regarded as free and equal and as both reasonable and rational, and (we add) as normal and fully co-operating members of society over a complete life, from one generation to the next? ... [an idealized conception of justice is developed in order] to gain a clear and uncluttered view of [this] question ... by *focusing on the more significant elements that we think are most relevant in determining its most appropriate answer*. (2001 pp4, 8, emphasis added)

The italicized statement is important here. If we refer back to the earlier discussion that our ideal theories may need to be changed as new facts come to light then we can see that Rawls allowed for this. We need to remind ourselves that reflective equilibrium is an ongoing process so, whilst Rawls's theory may seem finished, it was then and always will be a work in progress. The advantage of an ideal theory is that it removes what may be described as the 'background noise' that distracts us from addressing the question of what constitutes justice as fairness. It is here too, that the relationship between ideal and non-ideal theory becomes a test bed to determine whether or not our ideal theory is fit for purpose, for if we cannot use an ideal theory as a starting point to develop both achievable and desirable policy recommendations then the ideal theory is little more than an idle curiosity.

Partial and Comprehensive Ideal Theories and Idealization

⁴⁴ Although Mills (2005) and Farrelly (2007) also attack Dworkin's ideal theories, as I am only concerned with what they have to say about Rawls I have removed their references to Dworkin's work. I would add my defence of Rawls could, with comparatively minor modifications, serve as defence for Dworkin's ideal theory.

It is self-evident that we live in an unjust world but this need not lead us to conclude that we therefore do not need an ideal theory of justice but an action plan. As Sen puts it: ‘A theory of justice must have something to say about the choices that are actually on offer, and not just keep us engrossed in an imagined and implausible world of unbeatable magnificence’ (Sen 2009 p106). However, a careful reading of Rawls’s discussion of the relationship between non-ideal theory and ideal theory suggests that ideal theory does indirectly yield recommendations. Valentini summarizes the distinction between ideal and non-ideal theory as a paradox for it can be argued that:

1. Any sound theory of justice is action guiding.
2. Any sound theory of justice is ideal.
3. Any ideal theory fails to be action guiding. (2009 p333)

So it would seem that the fundamental distinction between ideal and non-ideal theory has become blurred. I believe that the paradox is a product of the phrase ‘action guiding’. I noted above that Stemplowska (2008) distinguished between ideal and non-ideal theory by claiming that non-ideal theory makes recommendations that are both achievable and desirable, whereas ideal theory does not. What an ideal theory does do is describe the social world in terms that we find desirable. What an ideal theory does not do is detail the way that desirable state may be achieved. Thus we can argue that an ideal theory is action guiding in the sense that it enables us to develop non-ideal theories which are both achievable and desirable. Indeed this is Rawls’s starting point. From the outset he argues that where the basic structures do not comply with the demands of justice we have an obligation to take action to ensure compliance (1971 p3). The role of ideal theory is to enable us to identify what, in an ideal world, would be the basic structure for a fair society. The role of the non-ideal theory is to identify ways in which that ideal may be realized. Yet his suggestions lack specificity; he acknowledges that his discussion regarding the implementation of a theory of justice in the real and imperfect world is sketchy (1971 §39). But it is clear from that discussion that where there are practical reasons why a society cannot embark on full compliance then ‘it may be necessary to forego part of these freedoms when this is required to transform a less fortunate society into one in which all these basic liberties can be fully enjoyed’ (1971 p217). Rawls therefore sees a partial ideal theory as a step on the way to realizing ideal theory.

The criticisms of the ideal nature of Rawls’s theory highlight that this is an area where more work is required. By introducing the concepts of partial ideal theory and idealization we can

go some way to demonstrating that those criticisms may be countered. We can illustrate the challenges posed by translating Rawls's theory into practice by looking at a tent.



The shiny brochure that accompanies tents such as these describes an ideal camping experience. Yet when you find your 'ideal' campsite you are faced with the reality that the ground is rarely flat so pitching your tent the way it was in the showroom may well be a challenge. But let us assume that you are able to find a smooth piece of soft ground. Your troubles now really start in earnest. As you proudly unpack your tent you find yourself confronted with a bewildering array of tent pegs, aluminium poles, guide ropes and an incomprehensible envelope of material which, you assume, is the actual tent. Of course there are instructions. These tend to be written by someone who translated the instructions from Portuguese; of course as English was not their first language it appears to have been translated with the aid of Portuguese–German dictionary and a German–English dictionary. After a number of false starts you eventually erect something that vaguely looks like the tent on the brochure. You airily assume that the bits left over are 'spares'. But at this point there is always a helpful camper who advises you where you have gone wrong and helps you reassemble the tent so that it indeed looks like the brochure and of course there is nothing left over.

Now when you think about your tent you can begin to imagine how it came to be created. Firstly, someone had the idea that creating a portable shelter was a good thing. They may well have studied traditional structures – Mongolian yurts or perhaps Indian wigwams. Similarly, Rawls studied the work of other political theorists, cherry picking the good ideas and rejecting those ideas that were simply not relevant to his generation. Even though your tent may look at home in the twenty-first century it is still a refinement based on generations of experimentation.

Now consider the components. Each of these, too, is the product of a long evolution of ideas. You need a light fabric that is wind and rain proof, a frame that is light and sturdy, tent pegs that can provide anchor points in a variety of soils and guide ropes that can be adjusted to enable the tent to be stable. Similarly, the justification for Rawls's theory 'rests upon the entire conception and how it fits in with and organizes our considered judgements in reflective equilibrium ... justification is a matter of mutual support of many considerations, of everything fitting together in one coherent view' (1971 p507).

Now just as the technology of tents is continually being improved as new technologies open up new possibilities, so with Rawls's theory of justice. The two principles of justice remain a constant but the way these are advanced in the various institutions is a process of constant evolution. The transition from an ideal theory to one of practical reality relies on a host of partial ideal theories which shape the institutions that constitute a well-ordered society.

This brings us to the term 'idealization'. The term is used to describe basing an ideal theory on false assumptions. It may seem odd to base an ideal theory on false assumptions but the merit of the approach can be illustrated by looking at the rather mundane problem of curriculum design. Typically, there are three elements in any curriculum: inputs, outputs and an account of how the outputs are derived from the inputs. When designing a curriculum, you need to make some assumptions about the students and teachers who will be using that curriculum. The set of assumptions that you make will significantly influence the design of the curriculum. Typically, one would assume that both students and teachers are literate, that the teachers have some knowledge about the subject, that the teachers and students are motivated to study this curriculum and that there are adequate resources in the school to enable the subject to be taught. This is very much an idealized view. Once the curriculum has been designed you trial it in a number of schools. You now fine tune the curriculum so that it can still work in the real world of schooling, a world where literacy levels among students and teachers vary widely, and where teachers may be allocated to teach a subject without having any knowledge or even interest in that subject. There will be some schools where there are simply no resources allocated to it. Somehow you should have enough flexibility in your curriculum design so that the curriculum can cope with those realities. I would argue that a good curriculum is designed as if it will be taught under ideal conditions. During the implementation phase one works with teachers to show them how the transition may be made from the ideal curriculum to the non-ideal realities of daily school life.

By refuting Farrelly's refutation of Rawls's ideal theory, we can identify how partial ideal theories can act as scaffolding for Rawls's comprehensive ideal theory. Farrelly's central objection is that Rawls's theory is 'not adequately fact-sensitive to be considered realistically utopian' (2007 p845). The particular objection is that when one assumes full compliance the constraints of a realistic utopia are violated. But are they? Rawls argues that 'A legal system is a coercive order of public rules for the purpose of regulating their conduct and providing the framework for social cooperation' (1971 p207). The clear implication here is that a failure to comply will result in the coercive powers of the laws being exercised. As previously discussed, the principles of justice provide a justification for building into the basic structure the right to coerce. Under normal circumstances one would argue that to force people to comply is a violation of the principle of liberty, but clearly Rawls recognized that the one liberty that would be denied would be the liberty to undermine the principles of justice.

Ironically one of Farrelly's arguments in support of his proposition that Rawls's theory violates the idea of a realistic utopia may be construed as demonstrating the robust nature of Rawls's ideal theory:

Various supporters of the Rawlsian project have also proposed some modifications. So some tinkering with Rawls' comments about the family gives you liberal feminism (à la Okin, 1989), some tinkering with Rawls' assumption about society being closed gives you global justice (à la Beitz, 1979), some tinkering with the assumption that all people fall within the normal range of functioning gives you an account of just health care (à la Daniels, 1985) and some tinkering with Rawls' assumption that society is culturally homogeneous gives you a liberal account of multiculturalism (à la Kymlicka, 1989).

But there comes a stage where those inclined to defend Rawls must realize that the sheer volume of qualifications they make in defence of his theory *itself* constitutes a reason for rethinking the viability of Rawlsian justice. What is surprising about the Rawlsian canon is that, despite all the tinkering with Rawls' theory – to equip it to address patriarchy, global poverty, health care, multiculturalism and reasonable pluralism – Rawls himself did not change (at least substantially) the content of his theory. (Farrelly 2007 pp847–848)

There is another way that one can look at these so-called tinkering. The 'tinkering' is in effect the attempt to translate the ideal theory into a practical response to the non-ideal world. It amounts to constructing a partially ideal theory dealing with a particular aspect of society that seeks to build on the two principles of justice.

Let us consider the 'tinkerings' one by one. If we start with Okin's (1989) account of liberal feminism we can readily see that her prime concern is to determine how we may make the

transition to justice as fairness in a situation where there is gender-based inequality. Her work is a practical account that demonstrates that as long as gender inequality persists we will not be able to fully implement the principles of justice (Okin 2005). The way Rawls constructs the theory of justice the question of gender does not arise; the principles of justice do not differentiate between men and women. Some of the concerns about Rawls's ideal theory seem to arise from the fact that he is concerned with a political conception of justice and as such the principles do not 'apply directly to the internal life of the many associations within it [society], the family among them' (Rawls 2001 p163). However, Rawls introduces that discussion as follows: 'It may be thought that the principles of justice do not apply to the family and that therefore they cannot secure equal justice for women and their children. This is a misconception' (Rawls 2001 p163). So, although the theory of justice does not deal with the internal life of the various associations within a society that does not mean that there is any institutional justification for discrimination on the basis of gender.

Although questions of gender apply to all of us they are a partial ideal theory of justice. We can agree that without gender equality we will never achieve a just society. The fact that Rawls is, by and large, silent on questions of gender does not invalidate his theory. Here we need to acknowledge that he was a creature of his time. To do justice to his theory we need to consider whether we can develop a partial ideal theory that is consistent with his main theory. If we can, and Okin demonstrates that we can, then we will need to incorporate that particular ideal theory as part of the scaffolding.

Simmons' introduction of the term 'transitions' provides us with a good reason for claiming that objections of the type that Farrelly raises are not fatal to Rawls's theory. Simmons' idea of 'transition' can be summed up as follows. In terms of practical politics, we are dealing with competing alternatives. Our choice among those competing alternative policies should be based on answering the question: which alternative seems to have the greatest likelihood of resulting in full compliance with the ideal theory? The transition principle requires us to commit to policies that are, on the balance of probabilities, most likely to result in the 'elimination of *all* institutional injustices' (Simmons 2010 p21).

Simmons' detailed account of the logic of viewing non-ideal theory as transitional is as follows:

Consider next ideal theory's supposedly essential task of making comparative judgments about the relative justice of various nonideal conditions ... If we

understand nonideal theory as genuinely transitional, relative to ideal theory's integrated goal, it simply is not necessary for nonideal theory always to yield such judgments before endorsing actions or policies. There might, for instance, be only one action or policy (P) that is morally permissible, politically possible, and likely to be successful in reaching a social condition (C) from which the ultimate achievement of perfect justice is more likely than it is from the status quo. But if so, then in order to endorse P, nonideal theory need not first determine that C is a 'more just' social state than the status quo (or than any other imaginable social state). C might well be *less* just than the status quo in terms of their relative resemblances to a perfectly just basic structure and still be *more* just in transitional terms. If it is necessary to take one step backward in order to take two steps forward, Rawlsian nonideal theory will endorse that step 'away from' resemblance to the ideal. (2010 p23)

The last point is of particular significance. We can argue for example that in time of war there may be a need to impose restrictions on civil liberties. The problem is that once lost those civil liberties are hard to re-instate. The unfettered exercise of power can be addictive.

To date we have discussed the question of transition in terms of deciding which policies are likely to yield full compliance; what we have not addressed is the very real situation where we may choose a course of action which, in the short term at least, seems to move us further away from the ideal. Rawls anticipates this for he describes an instance where one might tolerate slavery as a step towards a more perfectly just society (1971 p218).

The importance of the relationship between ideal and non-ideal theory is that ideal theory gives us a rationale, a benchmark against which one is able to judge non-ideal theory or partially ideal theories. Sen resists this claim – he argues that Rawls's transcendental approach is no help 'in comparative assessments of justice and therefore in the choice between alternative policies' (Sen 2009 p100). This resistance may in part be due to his choice of metaphor. He uses the example of an ideal work of art and goes on to claim that knowing what an ideal work of art is does not enable us to determine who is to be preferred between Picasso or van Gogh. But surely that misses the point? We can settle this objection without resorting to Gombrich⁴⁵ (Gombrich 1984). Knowing that both Picasso and van Gogh are highly regarded artists does not mean that I cannot hold a subjective preference between the two.

A more useful example would be a bushwalking metaphor. Imagine that you have been set the task of arriving at destination B from point A. You are required to complete your journey in just six hours of daylight and as the distance between B and A is a mere 10 kilometres you

⁴⁵ Gombrich's *The Story of Art* (1984) is perhaps the best known introduction to art.

really cannot see any problem. You have in your possession a map of the terrain to be traversed. You also can see on your map where you want to finish your day's walk. Clearly you have a number of options. You can go back to your school days and reason as follows – the shortest distance between two points is a straight line so I will draw a straight line on the map and follow that. You have now planned your ideal journey. That ideal journey, more often than not, is unrealistic as it takes no account of the topography. If you use that straight line as your benchmark, chances are that when you deviate from the straight line you will do so for a good reason. Furthermore, whenever you do deviate your objective is to get back to line BA as quickly as possible. Now let us suppose that instead you are placed at point B and told that you have to go to point A and you are merely told that you will recognize point A when you see it. This is the sort of recipe that will get you wandering for forty years through a desert. The only basis for planning a route is that it gets you away from B. You really have no way of choosing among different options – your hike becomes a case of the art of muddling through. You will probably attempt to identify a route that makes for comfortable walking or one that ensures that there is a ready supply of water, but whichever option you choose you have only the benefit of hindsight to guide you. Effectively that is the consequence of following Sen's option – his theory of justice identifies short-term objectives but does not offer us a comprehensive ideal version. As he states in his preface, the 'aim [of his theory] is to clarify how we can proceed questions of enhancing justice and removing injustice, rather than to offer resolutions of questions about the nature of perfect justice' (Sen 2009 p ix) Just like our bushwalker, he assumes that we will recognize injustice when we see it and take steps to deal with it.

Indeed, the capability theory which Sen advocates provides us only with a partial ideal theory (Robeyns 2007). The danger of constructing a theory based on the art of the possible is that there is no guarantee that what is possible will produce the best of all possible societies.

There is, however, one objection to ideal theory that I have not dealt with. That relates to the question of scarcity:

Perhaps the most pressing failure of Rawlsian moderate ideal theorizing is that it fails to take *scarcity* seriously. This is a particularly troubling problem for Rawls' theory because he serially orders his two principles of justice. Such ordering yields impotent prescriptions for real societies that face conditions of scarcity. (Farrelly 2007 p848)

Since I too raise this as an issue in the discussion of the just savings principle, I want to address it specifically here in order to demonstrate that the question of scarcity can either be treated as part of non-ideal theory or can be accommodated within ideal theory as I propose.

Farrelly raises a real issue. Rawls acknowledges that issue by framing his theory in terms of Hume's circumstances of justice. However, there is a very real question of what constitutes scarcity. There are those who would argue that the idea of scarcity is a product of a particular mindset. That in fact traditional societies, dependent on local economies, do not regard themselves as experiencing scarcity (Norberg-Hodge 2011).

The critique that Farrelly makes of Rawls is, firstly, that Rawls assumes that implementing an ideal theory of justice is cost neutral. In particular he claims that when Rawls argues that the implementation of the principles is possible in a situation of moderate scarcity he assumes that: 'These are conditions such as sufficient economic and technological development, sufficient natural resources and an educated citizenry' (Farrelly 2007 p849). But does he? Farrelly provides no evidence that this is in fact what Rawls does. In fact if anything the reverse may be true, for in *The Law of Peoples* (1999, p119) Rawls argues that all that is required to realize just institutions is human resources, resources to which every society has access. Farrelly's real concern is with the difference principle. He assumes, or at least so it seems, that distributional justice is concerned with highly developed technological societies. But the difference principle does not make any assumptions about the technological development of a particular society. All it assumes is a situation of moderate scarcity.

Farrelly's translation of Rawls's position shifts Rawls's argument from an ideal theory to a non-ideal theory and clearly goes well beyond what Rawls asserted. Thus, when describing what the parties do and do not know behind the veil of ignorance Rawls states: 'they do not know its economic or political situation, or the level of civilization and culture it has been able to achieve' (1971 p118). Farrelly appears to have superimposed Rawls's theory on contemporary American society and assumed that any society aspiring to implement the theory of justice would need to have reached a state of social and economic development congruent to that prevailing in North America.⁴⁶ But, apart from the idea of moderate

⁴⁶ Thus on page 851 he cites the following costs as evidence that Rawls's theory is unrealistic: 'Here are some of the staggering costs, for the year 2002 alone of funding the various agencies necessary (arguably) for protecting the basic "negative rights" (e.g. life, liberty and property) of Americans:

- Defence: 410.8 billion dollars.
- Homeland Security: 30.5 billion dollars.

scarcity, there are no economic or cultural prerequisites for developing a theory of justice. All that the parties need to know is ‘whatever general facts affect the choice of the principles of justice’ (Rawls 1971 p119).

Farrelly’s reason for rejecting the difference principle seems to be based on Rawls’s assertion that ‘the contracting parties are deliberating about what their place would be in a society that exists in the circumstances of justice under *reasonably favourable* conditions’ (Farrelly 2007 p849). This, I argue, is a reasonable summary of what Rawls asserts. But Farrelly goes on to make the unwarranted claim that these ‘reasonably favourable conditions’ require ‘sufficient economic and technological development, sufficient natural resources and an educated citizenry’ (p849). This is not an accurate reading of Rawls. In fact, in *The Law of the Peoples* Rawls asserts ‘that every society has in its population a sufficient array of human capabilities, each in sufficient number so that the society has enough potential human resources to realise just institutions’ (1999 p119). Now Farrelly can of course reject that idea; and that is exactly what he does. He justifies that rejection on the grounds that ‘it is more than just a coincidence that the world’s most stable constitutional democracies are also those that enjoy the highest levels of economic and technological development, are rich in resources and have an educated citizenry’ (p850). We will call that feature economy, technology, resources and education or ETRE. Farrelly claims that Rawls’s reasonably favourable conditions refer to ETRE; and the particular form of ETRE that one finds in advanced western democracies. Now the problem for Farrelly is that the original position is about establishing society as a fair system of social co-operation. If we refer to the three essential features of that social co-operation we can readily see that any polity irrespective of ETRE can implement the principles of justice. If a society is ‘guided by publicly recognized rules and procedures which those cooperating accept as appropriate to regulate their conduct’ (Rawls 2001 p6) then we can claim that they have satisfied at least one of the criteria necessary for a just society. The next step is that the terms of co-operation are fair and are reasonable for anyone to accept; such terms include the concept of reciprocity. Finally, it is to each person’s rational advantage to co-operate. Not one of these conditions is dependent on ETRE – if anything I would argue that ETRE suggests that the less advanced a society the greater its ability to implement the principle of justice. As a society becomes more advanced the out of sight, out

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- Health and Human Services: 69.2 billion dollars.
 - Justice: 21 billion dollars.
 - Environmental Protection Agency: 7.6 billion dollars.
 - Judicial Branch: 5.3 billion dollars.’

of mind phenomenon kicks in. For example, on average the citizens of Perth, Australia consume 350 litres of water a day. Yet water inflows to its storage systems average 15.6 litres per day (Wright 2018). The problem is that this is not self-evident, and our technology enables us to create the illusion of an abundance of water. For people to be both reasonable and rational in an advanced technological society an advanced form of ETRE is critically important for there is a need to give people the tools to understand the conditions which make co-operation necessary.

But this is not the claim that Farrelly is making. He seems to be wanting to argue that there exists a causal relationship between ETRE and the implementation of the theory of justice. He seems to be claiming that ETRE creates stable democratic government. However, it could equally be the case that implementing justice as fairness would create a stable and efficient form of government that would make ETRE possible. We could also draw attention to the Indian State of Kerala which in many regards has come closer to meeting Rawlsian standards of justice. Yet it has done so without an advanced form of ETRE. Kerala has a demonstrated commitment to education, although it is not an education that is characterized by a reliance on technology. We could also consider Costa Rica. Although a comparatively poor country, it has abolished its defence force and spent that money on education and improving the quality of life for its residents. Neither Kerala nor Costa Rica can be regarded as rich countries. Neither country can be regarded as well-ordered in the Rawlsian sense but I believe one could make a strong case that both come closer to Rawls's ideal society than many an advanced democracy. Farrelly's claim that countries are non-democratic because they are poor is therefore by no means self-evident; it is a contested claim. Thus, when Farrelly draws our attention to the costs associated with the basic structure as it exists in the USA he is making a number of unwarranted assumptions about Rawls's theory of justice and indeed about the basic structure.

Firstly, Farrelly is claiming that Rawls assumes that implementing his theory of justice is costless or at very least cost neutral. Rawls does not assume that at all. What his theory does do is to set priorities in spending. The critical point to remember about justice as fairness is that, precisely because it is fair, expenditure on compliance measures will be reduced. A just system is stable and in equilibrium when the benefits associated with compliance 'are sufficiently strong to overrule the temptations to violate the rules' (Rawls 2001 p435).

Secondly, Farrelly argues that the original position is structured so that it ‘requires us to assume that we will be members of the least advantaged group in a society that exists in reasonably favourable circumstances’ (2007 p850). Rawls does not. The principles are settled ‘by an agreement reached by free and equal citizens engaged in co-operation, and made in view of what they regard as their reciprocal advantage or good’ (2001 p15). It is true that, in establishing the principles of justice, rational and reasonable people will allow for the possibility that they may be the most disadvantaged. Equally they should allow for the possibility that they are advantaged or indeed are anywhere on the spectrum of advantage to disadvantage. It is only if they do that they can be confident that the resultant principles will be accepted by all. Rawls does not vary from this view either in *A Theory of Justice* or in *Political Liberalism*. Given that this is not what Rawls claims, how does Farrelly arrive at this rather peculiar formulation?

Farrelly arrives at this conclusion by arguing that it is a logical consequence of the maximin rule: ‘the maximin rule tells us to rank alternatives by their worst possible outcomes; we are to adopt the alternative the worst outcome of which is superior to the worst outcomes of the others’ (Rawls 1971 p133). This is not the same as assuming that we are members of the least advantaged group; rather it is an insurance policy. It is a matter of prudence. A society which is built on this principle is likely to be more resilient for it frames policies not on the naïve assumption that all will go well but rather so that we are safeguarded against the worst possible circumstances.

It would seem that the cornerstone of Farrelly’s argument is that it costs money to implement a just society. Certainly, we can agree that it is important that the parties in the original position have a sound understanding of the way resources may be effectively managed and indeed we will discuss this in some detail when we address the just savings principle; but they do not need to know how their particular community is situated with respect to access to natural resources nor the way other communities are exploiting their resources. The original position is designed to arrive at a set of principles *irrespective* of ETR.

The objections that Farrelly mounts to Rawls’s ideal theory seem to boil down to the fact that, as Farrelly cannot imagine how to make the transition from an ideal theory to a non-ideal theory, it follows that there must be a problem with Rawls’s theory of justice. This failure to be able to imagine how Rawls’s theory of justice may be used as an effective tool to

make the transition to a truly just society is also what prompts the challenge that ideal theory is ideological:

the so-called ideal theory more dominant in mainstream ethics is in crucial respects obfuscatory, and can indeed be thought of as in part ideological, in the pejorative sense of a set of group ideas that reflect, and contribute to perpetuating, illicit group privilege. (Mills 2005 p170)

Here the objection seems to be derived from the fact that Rawls does not explicitly address problems such as the class nature of society or other forms of oppression. But does he need to? Is there any way that Rawls's theory can be implemented without also addressing the various ways the existing social order frustrates and denies fundamental equalities?

If Rawls's theory is ideological in the sense that it describes and defines an ideal society as a possible benchmark to guide practical politics then that will be a significant step forward. Arguably one of the problems with the existing policy-making process is that it is not grounded in any overt commitment to a set of overarching principles about what an ideal society should look like (Bull and Töns 1985).⁴⁷

Understanding Ideal Theory: Concluding Remarks

Rawls's ideal theory of justice is a comprehensive political theory – it is not a comprehensive moral theory, just a comprehensive political theory. That distinction is important for it seeks to identify a basis for political organization that all can subscribe to without having to surrender their comprehensive moral perspective. The challenge is to construct a non-ideal theory that will enable us to implement the principles of justice. This is by no means a trivial problem. For whereas in the original position we are concerned with developing a theory behind a veil of ignorance, when it comes to practical policy we are no longer behind a veil of ignorance. We now have to deal with the reality of transforming the basic structure so that it conforms to the principles of justice. Change brings with it costs and benefits. Those that benefit the most from the status quo also stand to lose the most. But even more worryingly is the reality that our perceptions of what is just and normal are shaped by the existing basic structure. Brock suggested that an acceptable alternative to Rawls's two principles was 'that we should all be adequately positioned to enjoy the prospects for a decent life, as understood to include what is necessary to be enabled to meet our basic needs and those of our

⁴⁷ In the previous chapter I discussed public reason and the problem that Rawls did not seem to adequately take cultural diversity into account.

dependents' (Brock 2009 p51-52). This is of course a far more modest claim than that demanded by the two principles of justice. So why would we make that claim? Why would we not agree with Rawls? If Rawls is right it is due to the impact that the basic structure has on what we perceive to be normal and reasonable. This in turn implies that we may well need to take an incremental approach to the implementation of Rawls's ideal theory. This is what would be demanded by the application of reflective equilibrium and it does seem that this is what happens in practice.

Here we can draw on the experience of the women's movement. Just over 200 years ago Jane Austen was only too aware that it was unwise for a woman to demonstrate her intellect, 100 years ago women fought for and finally won the right to vote, and 50 years ago barriers to employment were beginning to be demolished. It has been a gradual process in which every hard-won victory has been consolidated before taking on the next challenge. Implementing the principles of justice will likewise be a long and protracted struggle.

But we also noted that constructivist theories such as that of Rawls are in a very real sense captives of the set of facts on which they are based. The metaethical debate regarding facts and principles can be left aside, but what cannot be ignored is that if a constructivist theory is based on facts then when those facts change the theory too may need to be adjusted.

In considering this question we need to remind ourselves of the discussion in the prologue of the Anthropocene. Those who, like Steffen, argue that the start of the Anthropocene should be placed in the late 1950s create a major problem for ideal theories. Steffen's argument is based on the fact that the late fifties saw exponential growth at a rate that is unique in human history (Steffen, Persson et al. 2011). Whilst there always have been periods of rapid exponential growth, what sets the 1950s apart is that this growth occurred in just about every measurable indicator, whether that was the number of McDonald's outlets or rate of desertification. Yet at the time that Rawls was writing his theory these exponential trends were far from obvious; it is only now that they have become evident. We can compare it to a canoeist steadily paddling down a smooth flowing river. She notices some slight turbulence but it seems nothing that she cannot handle – rivers do not always flow smoothly – but instead of emerging from the turbulence she notes that it is getting worse and before she knows it she finds herself attempting to shoot rapids. She is now in a situation where her experience counts for little.

Rawls's original position was designed for a world where the circumstances of justice, that is, moderate scarcity, were determined by individual political entities. Therefore, it was perfectly reasonable and sensible to attempt to construct a theory of justice for a closed society. For much of the twentieth century and indeed all of the preceding centuries the capacity to realize one's life plans was determined by the domestic polity. Yet now, from the perspective of the twenty-first century, it is clear that this is an illusion. Yet a global basic structure, such as it is, has been built on the assumption that, as long as we are able to create a stable world economic order, peoples will be able to live in peace and polities will be able to meet the needs of their citizens. So although political philosophers like Nancy Fraser (2008) argue that there is a need to re-imagine justice in a post-Westphalian world, her discourse is largely silent on questions of ecology and environmental justice. We are looking at framing our political discourse through the rear-view mirror of past experiences when we should be looking at framing it by imagining the possible futures that are being played out. Just as a canoeist when faced with the possibility of changing conditions will seek to walk the course from the security of the river bank prior to attempting to shoot the rapids, so should we imagine and explore the possible futures that await.

It is for this reason that an ideal theory is of critical importance. Rawls thought to capture the challenges of developing a constitutional liberal democracy by freezing it at a moment in time when we could explore it at our leisure; his objective was to identify how we could cooperate even though we all have different comprehensive theories of the good. Whether his account is the best possible account of a just society is not at issue here. Instead the argument is that it is incomplete. Again, we need to freeze the world at this moment in time, a moment when we have a broad consensus regarding the implications of the human impact on the planet. A Rawlsian will not wish to let go of the idea of justice as fairness. So how may we create a fair and just world that ensures that the planet can continue to sustain us and provide for us?

Where we succeed will depend in no small measure on how well we understand the role the basic structure plays in shaping political legitimacy. We need to understand both the domestic and global basic structures if we are to implement a just society and it is to this that we turn next.

5. THE BASIC STRUCTURE

In this chapter I seek to tease out some key ideas associated with the basic structure of society. To understand the basic structure we need to consider the sequence of events in Rawls's hypothetical social contract deliberations. The contract that is agreed to from behind the veil of ignorance posits an instrumental role for the basic structure namely its role is to facilitate the realization of the two principles of justice. This in turn means that the precise content of the basic structure is not fixed; for as we saw when discussing ideal theory, as our knowledge of the world changes then the way we understand the basic structure may need to change as well.

Rousseau's *cris de coeur* that people, although born free, are everywhere in chains resonated with political philosophers. In one sense it was nothing new. The idea that the state needed to justify any actions that it takes to restrict individual freedom has a long pedigree; it is arguably a consistent theme in political philosophy. Yet the statement that people are born free and are everywhere in chains can be regarded as the fundamental challenge of and for liberalism. It was on the one hand a challenge to the absolutism that characterized pre-1789 Europe and on the other a demand for a justification for the state's authority. The state, through its laws, restricts personal freedoms. It is that restriction that needs to be justified. Thus, when Rawls opens his theory of justice with the statement: 'justice is the first virtue of social institutions as truth is to systems of thought' (1971 p3), he is placing himself firmly in that liberal tradition, as it is our social institutions that are responsible for distributing the burdens and benefits arising from social co-operation: 'For us the primary subject of justice is the basic structure of society, or more exactly the way the major social institutions distribute fundamental rights and duties and determine the division of advantages from social co-operation' (1971 p3). His conception of the basic structure is therefore pivotal to understanding his theory of justice.

In what follows I will discuss the basic structure under five headings: the basic structure and global justice, the instrumental nature of the basic structure, its pervasiveness, its coercive role and its relationship to sovereignty.

The Basic Structure and Global Justice

It may seem self-evident that ‘since the primary subject of justice is the basic structure of society and since there is no global basic structure, the scope of justice is domestic’ (Abizadeh 2007 p318) However, this is but a preliminary step in Rawls’s theory:

I shall be satisfied if it is possible to formulate a reasonable conception of justice for the basic structure of society conceived for the time being as a closed system isolated from other societies ... *It is natural to conjecture that once we have a sound theory for this case, the remaining problems of justice will prove more tractable in the light of it.* (1971 p7, emphasis added)

Thus, Rawls’s primary objective is to gain a better understanding of what constitutes a political conception of justice. As we shall see, the basic structure has an instrumental role. It follows therefore that if there is no global basic structure it may be necessary to design a global basic structure that is concerned with distributing fundamental rights and duties and determining the division of advantages from global social co-operation. The form this should take will be discussed in Chapter 7.

The role that the basic structure plays in Rawls’s theory is complex. The contract is developed behind the veil of ignorance and used to arrive at the two principles of justice. At this stage of the argument there is no basic structure; all that has happened is that the parties have agreed to the terms of their co-operation. If the sequence of events is followed through logically the next step would be for the parties to design a set of institutions that will enable them to implement the two principles of justice. It is here that there is a sleight of hand on Rawls’s part. If we look back at the description of the basic structure as cited above we note that Rawls incorporates the following in the basic structure: ‘the political constitution with an independent judiciary, the legally recognized forms of property, and the structure of the economy, ... as well as the family in some form, all belong to the basic structure’ (2001 p10). We are well acquainted with this set of institutions; they are part and parcel of contemporary western constitutional democracies. But surely there is a step missing here? If we are still considering an ideal theory of justice, it may well be possible to arrive at a social structure which satisfies the two principles of justice but does not incorporate all, or indeed any, of the features of the basic structure with which we are familiar.⁴⁸

⁴⁸ The exploration of alternative social models is a common genre among science fiction and fantasy writers. An example that would seem to espouse ideas of which Rawls would approve is Eric Frank Russell’s 1951 short story ‘And Then There Were None’ (Russell 1973). He describes a society which is essentially a form of anarchic liberalism. People are free to do as they please, which is facilitated by a barter system.

This is far from a trivial issue. If justice is the first virtue of social institutions then the aim of the original position is to enable citizens, from behind a veil of ignorance, to determine what they understand justice to be and subsequently design a set of social institutions that is consistent with that conception of justice. Is it possible to design such institutions from behind a veil of ignorance? I think not, for if we remind ourselves of how Rawls described the basic structure, surely at least some of these require some knowledge of the world. Indeed, we can claim that the idea of ‘legally recognized forms of property’ is culturally specific. There are many cultures which do not have a concept of private property or for that matter intellectual property.⁴⁹

If the basic structure is developed *after* citizens move from behind the veil of ignorance, then it follows that the primary goods and the basic structure are developed in response to whatever citizens find when they move from behind that veil of ignorance. But we are dealing with a hypothetical scenario; no-one has been behind such a veil so does it really matter? It only matters because if we are agreed that the basic structure is articulated only *after* the two principles of justice have been negotiated and identified then it follows that the content of the basic structure is not fixed. However, what cannot be in dispute is that any basic structure will incorporate a set of rules whereby the polity is to be governed.

I would argue that it is more appropriate for Rawls to be agnostic about the precise form of the basic structure; all that is required is that it is consistent with the two principles of justice. How else can we interpret the statement: ‘that the basic structure establish certain equal basic liberties for all and make sure that social and economic inequalities work for the greatest benefit of the least advantaged against a background of fair opportunity’ (Rawls 1993 p261)? The implication here is surely that we need to develop institutions that realize the two principles of justice; the exact form that these may take may vary from polity to polity.

The above quotation also sums up the relationship between justice and the basic structure. Principles of justice in the absence of a basic structure are mere words on a page. Equally a

⁴⁹ John Lehman (2006) eloquently sums up the nature of this problem. Although he is referring to intellectual property this could equally refer to private property more generally: ‘This paper proposes that part of the problem is a basic incompatibility between modern western views of intellectual property and traditional Chinese ethical and social thought’ (p1) In discussing ideal theory, we referred to the fact that Sioux did not acknowledge the authority of the US government but that too has a great deal to do with the fact that Sioux (and indeed other indigenous peoples) have a well-formed history of intellectual and social thought in which conceptions of western ideas of private/intellectual property jar.

basic structure without some guiding set of principles offers no guarantee that it will be just. The two ideas complement each other. All societies⁵⁰ have a basic structure of some sort – they may not have a written constitution but there will be a shared set of understandings of how people are to work together. We tend to see that social co-operation as occurring within a domestic setting; and indeed, for most of us our immediate concern is the way we co-operate with our co-nationals. That concern stems from the fact that our co-nationals are bound by the same basic structure as we are. If our legislature passes a law banning smoking in the workplace that impacts only on our co-nationals. Hence, we see the basic structure as dealing with the way domestic society is organized. This in turn leads to the assumption that, ‘since the primary subject of justice is the basic structure of society and since there is no global basic structure, the scope of justice is domestic’ (Abizadeh p318)

Were it that simple. It is by no means the case that all questions about justice can be contained within national boundaries. As Fraser puts it, people are becoming increasingly aware ‘that the social processes shaping their lives routinely overflow territorial borders’ (Fraser 2008 p13) We can no longer claim that the domestic basic structure provides us with an exhaustive account of the way the basic structure shapes background justice; it has been reduced to a significant element but by no means the only element in shaping background justice. Yet this is precisely why it is important that we have a sound understanding of Rawls’s basic structure for a closed society. For if we understand what, in an ideal situation, comprises the way the basic structure is designed we will be better placed to determine what to do about situations where social processes are not contained within national borders. Therefore, an idealized account such as Rawls’s gives us the opportunity to dissect how, in an ideal world, the basic structure can function to shape and direct our lives.

The Instrumental Nature of the Basic Structure

⁵⁰ At first glance this may seem counter intuitive. For example how can we talk about a basic structure in a society where there is significant diversity and fundamental conflict? To appreciate this we need to go back to game theory. In the game of life there is both co-operation and conflict. Where there is significant diversity and fundamental conflict we will find that there may well be multiple basic structures operating. Let us assume a society where there are n groups each with their own unique idea of what ought to be the content of the basic structure. This in turn implies that they are objecting to the basic structure that is in place. This leaves them with essentially two choices: they either arrive at some sort of modus vivendi or they embark on civil war. (This is exactly what happened in Yugoslavia).

In *Justice as Fairness* Rawls describes society as a co-operative venture for mutual advantage; it is the basic structure that enables that co-operation to be realized. Rawls, therefore, sees the basic structure as the means whereby the main political and social institutions enable that co-operation to be realized.

It is clear from the original position that the purpose of developing a social contract is to determine principles to ensure that the burdens and benefits arising out of social co-operation are distributed fairly. The first role of the basic structure is therefore instrumental. It serves as the means whereby the burdens and benefits arising from co-operation are distributed.

If we are looking at the world from a global perspective, then we can readily see that, even if every polity operated according to Rawls's principles of justice, this would still not necessarily lead to a just world. Let us assume that every polity is well-ordered in the Rawlsian sense. Yet as was argued in the previous section it is clear that this will not be sufficient. Fraser is by no means the only person to have noted that the impact of domestic decisions is not always confined within national borders. Given that this is the case it would seem that justice would demand that all those impacted by a decision have a right to be involved in the making of that decision. Within the domestic context the basic structure describes how that involvement is managed. In democratic society we delegate our elected representatives to make decisions on our behalf. But at the global level it seems that there is no mechanism whereby we can safeguard our rights in foreign contexts when they are adversely impacted by a decision.

There is another aspect that is rarely considered. If we assume that all polities are well-ordered in the Rawlsian sense, and furthermore that the discrepancies between the standards of living among nations is much as it is today, we can also argue that there will be instances where there may be a moral entitlement to a global redistribution of wealth. Nozick argues that private property, as long as it is legally acquired, is legitimate. (Nozick 1974) If we were to trace the origins of national wealth would we not encounter many situations where that wealth is based on illegitimate means? At the very least we cannot be completely sanguine that our current wealth is a product of legitimate domestic efforts. In *The Law of Peoples* (1999 §16.2) Rawls rejects Beitz and Pogge's argument that the difference principle should be applied globally. In reviewing Rawls's reasons Singer writes:

In *A Theory of Justice* Rawls argues for a system of justice in which 'no-one is advantaged or disadvantaged in the choice of principles by the outcome of natural

chance or the contingency of social circumstances.’ Now, however, he declares his theory *indifferent* to the consequences of something as contingent as which side of a national border one happens to live. These two positions cannot be reconciled. (2002 p177)

Now although I will be returning to this question of global inequality, for the present it is important to note that the instrumental role of the basic structure at the domestic level is to settle questions such as what is the nature of a legitimate political regime? What are the grounds of political obligation and what is the basis of rights? Rawls’s argument is that the principles of justice provide the answer to these questions. Given that we deal with questions of political legitimacy and the obligations that are imposed on us it follows that in the first instance our concern is with those people who are part of our co-operative venture.

Thus we can argue that our obligations to our fellow citizens are generated by the institutions of the basic structure and that they are very different to the obligations and duties we owe to our fellow human beings. What this discussion does highlight is that we need to distinguish between the ‘site’ of justice and the ‘scope’ of justice. The two are not necessarily identical. The basic structure is the means through which a system of social co-ordination or interaction could become a fair system of social co-operation. This then is the ‘site’ of justice. But that does not mean that questions of justice are limited to our fellow citizens, citizens who are party to the social contract. Rawls’s theory of justice is only concerned with what justice demands within a polity. Rawls’s justification for restricting his theory of justice is that once that task has been completed it may be possible to cover not only all other persons but also animals and the rest of nature (1971 p15).

The Pervasive Impact of the Basic Structure

The basic structure shapes the way the social system produces and reproduces a certain form of culture shared by persons with certain conceptions of their good. (Rawls 1993 p269)

Thus, the role of the basic structure is not just to set the terms of co-operation. It also serves the complementary function of shaping the political and indeed social culture. We can argue that the basic structure is the social equivalent of a Faraday cage; it sets the boundaries of one’s life chances – the set of life chances are contained and defined by the basic structure: ‘[citizens] enter that social world only by birth and leave it only by death ... If citizens of a well-ordered society are to recognise one another as free and equal, *basic institutions must educate them to this conception of themselves*’ (Rawls 2001 pp55–56, emphasis added). The

importance of the basic structure here is that it serves as a means of maintaining the background conditions of justice so that society does not drift away from its principles. ‘Since a public conception of justice needs clear, simple and intelligible rules we rely on an institutional division of labour ... to preserve background justice’ (Rawls 2001 p54).

What Rawls is describing, and justifying, here, is the way the basic structure shapes and determines the political culture. Just as a Faraday cage does not exclude all forms of electromagnetic interference, so too the basic structure is not hermetically sealed but it does serve as a barrier; it serves as a means of legitimating the way affairs are conducted.

The basic structure may also act as a ‘moral filter’. The possibility that we may unwittingly have benefitted from the ill-gotten gains of our colonial past is rarely raised. Nor indeed is the inequality that is a product of our inheritance laws. Questions of this sort rarely venture onto centre stage. It may well be that we cannot afford to enquire too deeply into the status quo for the whole fabric on which our societies are based may begin to unravel. For the questions do not stop there. Young notes that Rawls’s account of the basic structure overlooks three important questions associated with process: ‘the social division of labour, structures of decision making power, and processes that normalise behaviour and attributes to persons’ (1990 p91) Young’s argument is that it is not enough to create a fair distribution of the burdens and benefits arising out of social co-operation – we also need to look at the social processes that are used to achieve that distribution. I will be arguing in chapter 7 that the failure to take proper account of these three questions is what makes translating Rawls to a global sphere more problematic than it need be.

If we presume that the way skills and abilities are distributed among any given population can be represented by a bell curve, then we would expect that the outcome of any distribution of burdens and benefits will produce a similar bell curve. If we find that there are some demographics disproportionately represented, we will need to question whether the distribution is in fact fair even if it corresponds in every other regard with Rawls’s theory. Income is perhaps the easiest example to take. If the outcome of a distribution is such that women, people with a disability or people from minority ethnic backgrounds are clustered at the bottom end of the bell curve we would need to ask serious questions.

It really becomes a question of what is ‘normal’. In a society where men are supposed to be the breadwinners it will be ‘normal’ for women to be under-represented at the high-income

end of the bell-shaped curve. In a society where people do consider people's abilities but are fixated on their disabilities it is hardly surprising that it is seen as perfectly normal and equitable that people with disabilities are excluded from some occupations. Now it would seem that this is covered by the principle of justice, which says that offices and positions are to be open to all under conditions of fair equality of opportunity. Clearly there is no principle conflict with Rawls but rather the purpose in raising this is that there are subtle and unobvious ways opportunities may not be fair and equal, ways that Rawls did not appreciate and indeed ways which we do not fully appreciate. Thus, whilst the principle of equality of opportunity is clearly articulated, there is a need to ensure that the basic structure does not blind us to the way equality of opportunity may be systematically denied. As Young puts it: 'Issues of justice such as these concern the way institutions, discourses, and practices distinguish the normal and the deviant, and the privilege they accord to persons or attributes understood as normal' (1990 p93) The danger that Young alerts us to is that in our definitions of what constitutes normality we may well be blind to the fact that our institutions systematically deny equality to significant groups of people (Nussbaum 2006). Or to put it another way, our institutions can define what is normal.⁵¹ There may well be ways of addressing this problem: 'justice cannot be indifferent to the lives that people can actually live' (Nussbaum 2006 p13) Nussbaum may well be right that the real problem for Rawls is his adherence to the Kantian concept of the person: 'without extensive modification of the political conception of the person, Rawls cannot imagine primary goods as including the needs for care that characterise citizens with severe mental impairments, whether lifelong or temporary' Young's analysis of the problem of what constitutes normal goes much deeper than that – it basically refers to the way we define normal. It may refer to people from minority religious sects, or people who choose to live an itinerant lifestyle or indeed any other life choice that individuals may make. Whilst the way we define what constitutes 'normal' may have an impact on how distributive justice is applied, the question of normality is not of itself one of distribution.

⁵¹ Perhaps the best example of this in practice concerns Judge Jeffries. A woman appeared before him accused of being a witch. Her counsel argued that there was no such thing as a witch and so he argued that the case should be thrown out. Thanks to John Aubrey, Jeffries gained immortality with this argument: 'There must be witches, for there are laws against witches and it is inconceivable that there would be laws against things which did not exist.' The fact Aubrey (1970) thought it sufficiently memorable to quote suggests that even in the seventeenth century they were well aware of fallacious reasoning.

But there is another concern. As Young puts it: ‘How shall we evaluate morally the structure of occupational distinctions, the definition of tasks within them and the relations among people occupying differing positions within a production, distribution or service enterprise?’ (1990 p93) Rawls is largely silent on the question of occupational distinctions, the fact that your role in an institution impacts on the degree of autonomy you have. Young has opened up a substantial debate about procedural justice within the context of a well-ordered society; a debate that regrettably I cannot fully engage in, other than to draw some conclusions that are of relevance both to the formulation of a domestic theory of justice and a global one.

Rawls refers to the set of institutions that constitute the basic structure as one system of social co-operation. Rawls sees the social contract as the means whereby the burden and benefits arising out of social co-operation are fairly distributed. Rawls discusses this in some detail and determines that

In a property-owning democracy ... the aim is to realise in the basic institutions the idea of society as a fair system of co-operation between citizens regarded as free and equal. *To do this, those institutions must, from the outset, put in the hands of citizens generally ... [the] means for them to be fully cooperating members of society on a footing of equality.* (2001 p140, emphasis added)

In advocating the merits of a property-owning democracy Rawls seems to have overlooked the fact that if our economy is pyramid shaped then that will tend to militate against all citizens being fully cooperating members of society on a footing of equality. Within such a hierarchical structure we will see (as we in fact do) the emergence of elites who are not on an equal footing with all other citizens. It is difficult to justify income and decision-making differential based on one’s occupation.

Consider Young’s example of educational institutions. To function these institutions do not just employ teachers, but they employ secretaries, school accountants, counsellors, caretakers, cleaners, teachers, senior teachers and principals. All of these people are needed for the school to function, yet they do not all get the same income. This model is replicated throughout our property-owning democracies. But surely if this is a co-operative venture then everybody is equally important? So why not pay everyone the same wage? Yet part of our political culture⁵² is that we see pay differential as normal. We may regard our society as

⁵² It may be claimed that this is part of our culture. The boundary between culture and political culture can easily become blurred. I suspect that what tends to happen is that political culture can morph into culture. The most obvious example concerns the way democracy organized. In 2016 I was in charge of polling booth for the Federal Election. As officer in charge my brief was to ensure that there were no delays – long queues meant poor organization. Later that year I witnessed the USA Presidential

egalitarian, but a society in which some people have access to greater resources than others cannot be egalitarian. This is reflected also in the decision-making processes that we take as normal. We see nothing wrong with a structure where a small number of people make major policy decisions for the whole organization. Rawls undoubtedly will counter that he has introduced the difference principle and an ideal theory of justice so that this problem will not arise. But we do not live in an ideal society; furthermore the pervasive influence of the basic structure is such that it has the effect of blunting efforts to implement the principles of justice.

Why do I draw attention to this aspect of the basic structure? It impacts both on the way we view our relations with other polities but also how we view what is normal and fair. If we accept that inevitably in our economy some get paid significantly more than others and some people will be excluded from the decision-making process, then the pervasive nature of the basic structure means we will begin to define fairness in terms of the way we organize our economy. Nor is it inevitable that we should organize ourselves in that manner. There is a global co-operative movement which is based on democratic decision making throughout the organization.⁵³ Furthermore we can look at the way countries in the Third World are beginning to respond to the developed world's conception of normal. Here the response is to claim that traditional social structures did not entrench wealth and furthermore any wealth differentials were comparatively minor. Nor is this view of social and economic distribution confined to the Third World – there is a long history of such movements in the West. 2017 was the 500th anniversary of Luther's revolt but he drew on a long history of protest against the church. What is important to note is that the pervasive nature of the basic structure means that it defines what is 'normal' and thus shapes our expectations of how society ought to be organized. This will also account for the resistance to global justice – normality is defined as a world of self-governing nation-states.

In Rawls's discussion of the basic structure in *Political Liberalism* we are invited to imagine a situation before such a basic structure is established. At this primordial stage the

election. An expatriate American explained that she got quite teary when she saw the long queues. To her it exemplified democracy at work to me it exemplified bad management. Two radically distinct views of democracy in action – political culture or just culture? It is an open question.

⁵³ The Mondragon Corporation is possibly one of the oldest co-operatives in the world (<http://www.mondragon-corporation.com/en/about-us/>) but these approaches are not confined to co-operatives – Ricardo Semler runs his factory on democratic lines. (Semler 1993). Semler, R. (1993). Maverick! : the success story behind the world's most unusual workplace. London Century,.

background conditions are such that people enter voluntarily and freely into agreements regarding the basis of social co-operation. Initially they may be fair; everyone is familiar with the terms and conditions of their co-operation. There is an understanding that the burdens and benefits arising from that social co-operation are fairly distributed. But over time the background conditions change. Society grows to the point where it is no longer possible for everyone to be actively involved in the decision-making process. Agreements are no longer agreements between equals. This results in the evolution of a basic structure that can no longer be characterized by agreements that are fair and equitable. There is no reason to suppose that the reason the fairness of these agreements eroded was people acting unfairly or unscrupulously. Rather Rawls argues that the background conditions have eroded to the point where they result in ‘maintaining unjustified inequalities and restrictions on fair opportunity. Therefore, we require special institutions to preserve background justice, and a special conception of justice to define how these institutions are to be set up’ (1993 p267). The role of the social contract is to ensure that the background conditions are fair; its role is to make the necessary adjustments to preserve background justice.

We also need to ask whether we should expand the basic structure to incorporate social media. Rawls cannot be taken to task for making no reference to social media; it only emerged after his death. As I am writing this I am aware that in the USA there is currently an investigation concerning the way social media is dividing the country. This is not merely about influencing people to vote for or against a particular candidate. It also enables a foreign power to stir up internal division. For example, on 21 May 2016, the Heart of Texas used its Facebook page to organize a rally in Houston. Houston was treated to two groups of Americans confronting each other in front of a public library, one objecting to Muslims, the other supporting Muslims. In addition, there was a sizeable police presence. The organizers, the so-called Heart of Texas, were not there. There was a good reason for this. The Heart of Texas did not exist; it was the *nom de guerre* of some internet trolls operating out of St Petersburg, Russia.⁵⁴ This example suggests we need to consider whether we should regard the media as part of the basic structure. In addition, it is yet another example of a need for some sort of global social contract.

The Coercive Role of the Basic Structure

⁵⁴ I have taken this from a CNN report (Lister and Sebastian 2017).

Rawls is largely silent about the role that coercion plays in the basic structure. This is evidenced in the fact that the index of his works has no reference to coercion. Therefore, his views on the role that coercion plays are largely inferred. I will be arguing that there are two forms of coercion at work. Firstly, it can be argued that the pervasive character of the basic structure may be viewed as a form of coercion. Indeed, this is the assumption that drives much of the narrative of Rawls's work: 'the institutions of the basic structure have deep and long term social effects and in fundamental ways shape citizens' character and aims, the kinds of persons they are and aspire to be' (1993 p68). In other words, people are socialized into defining themselves and their futures in terms of the basic structure; the idea is that the basic structure is perceived to be so fundamental that it is difficult to conceive of acting in ways that are inconsistent with the basic structure. But surely this is of itself a form of coercion – a bird in a cage may be well treated, but it is nonetheless imprisoned.

Secondly, and this follows on from the pervasive nature of the basic structure, there is a built-in assumption that as long as the state abides by the principles of justice it is entitled to enforce those principles. As coercion is such a pervasive tool of statecraft, its use is rarely questioned. Hence there is a tendency to assume that where people do not abide by the laws the state has the legitimate right to enforce compliance.

The Faraday Cage

In describing the pervasive role of the basic structure, we referred to it as not unlike a Faraday cage. This may well be a reason why Rawls is virtually silent on the question of coercion:

When the basic structure of society is publicly known to satisfy its principles for an extended period of time, those subject to these arrangements tend to develop a desire to act in accordance with these principles and to do their part in institutions which exemplify them. A conception of justice is stable when the public recognition of its realization by the social system tends to bring out the corresponding sense of justice. (1971 §75)

In Rawls's ideal world people understand that the basic structure is designed to work in their best interests; hence there is no need to be coerced. We can sum up Rawls's reasoning as follows:

1. We are all born in a particular society and are subject to the institutions of that society.
2. Our capacity to realize our life plans is dependent on those institutions.

3. A fair system of justice ensures that all of us have an equal opportunity to realize our reasonable plans of life.
4. In a well-ordered society ‘everyone is presumed to act justly and do his part in upholding just institutions’ (1971 p8).
5. Therefore, the need to coerce people is rare.
6. In those rare cases where it becomes necessary to ensure society is well-ordered, the state is justified in using coercion to enforce compliance to the demands placed on us by those just institutions.

But the nature of any coercion is rather civilized: ‘The public conception of justice provides a mutually recognized point of view from which citizens can adjudicate their claims of political right on their political institutions or against one another’ (Rawls 2001 p9). Rawls goes on to say that ‘This leads to the ideal of democratic citizens settling their fundamental differences in accordance with an idea of public reason’ (1993 p98). In Rawls’s ideal society, where there is a divergence of views concerning the principles of justice that may be implemented, Rawls seems to suggest that this will all be settled without the need to coerce people to comply against their will.

The publicity condition stipulates in the first instance that ‘society is effectively regulated by public principles of justice’ (1993 p66). Not only are those principles public but they are known to all and accepted by all and are known to be so. This is an important criterion. We need to be satisfied that the limitations on our freedom or our capacity to act as we may wish are shared by all – the very nature of the principles of justice acknowledge that there are limitations on my freedom to act but that this burden is shared equally. The publicity condition then becomes an important safeguard against the arbitrary exercise of state coercive power.

Secondly there is a shared understanding about the way ‘political and social institutions generally work’ (1993 p66). The assumption here is that as part of the basic structure decisions made by institutions are informed in part by ‘conclusions of science and social thought *when these are well established and not controversial*’ (p66, emphasis added). But what do we do when we are dealing with conclusions that may be regarded as tentative or controversial? Indeed, these are surely the main points of friction in any society. Rawls acknowledges that there will be situations where ‘even after free discussion, all will not

arrive at the same conclusion' (1993 p58). It is of little comfort that he refers to situations such as these as 'the burdens of judgement'.

Although Rawls acknowledges that in any democracy there are strongly and deeply contested views about the nature of the world and the impact that understanding should have on public policy, the way those competing views need to be resolved is by an appeal to public reason.⁵⁵ Environmental policy is one example where the proponents of various policy alternatives hold deeply contested views. One can argue that it may be possible to resolve this through the judiciary. The judiciary is trained to apply objective standards to controversial issues and as such may be well placed to resolve such contested issues.⁵⁶

Sands (2015) argues that the judiciary is well placed to act as an independent arbitrator. It worked in the Netherlands because the government had already entered into a global emission reduction treaty. If the two principles of justice are enshrined in the constitution or some other aspect of the basic structure, then it may well be possible for the courts to operate in the way Sands suggests. The reason we need to be somewhat circumspect about how they are incorporated into the basic structure concerns the idea of reflective equilibrium. A fundamental aspect of Rawls's theory is the idea that we need to be open to change and modification; incorporating the two principles of justice in the constitution may be creating an unwelcome straitjacket.

The third condition concerns the full justification of the public conception of justice. This refers to the fact that we fully understand how we have arrived at our conception of justice, and that that understanding will imply a commitment to justice as fairness and an understanding of how the two principles of justice enable us to realize justice as fairness.

These three conditions of publicity bring Rawls to a consideration of coercion:

⁵⁵ As I pointed out in Chapter 3, there is an assumption throughout Rawls's work that the capacity to distinguish between the rational and reasonable is simply part of what it means to be human. This in turn has meant that he saw no need to incorporate within the basic structure the need for people to have the opportunity to learn how to reason.

⁵⁶ Sands described how this could work within the existing political framework Sands, P. (2015). Climate Change & Rule of Law: Lecture by Philippe Sands QC chaired by Lord Carnwath, UKSC, , <https://www.youtube.com/watch?v=eef1tK8mtEI>.

The other distinctive aspect of the political is that, while political power is always coercive power, in a constitutional regime it is the power of the public, that is the power of free and equal citizens as a collective body. (1993 p68)

He goes on to reiterate the importance of the three conditions of publicity when he states: ‘if the basic structure relies on coercive sanctions, however rarely and scrupulously applied, the grounds of its institutions should stand up to public scrutiny’ (p68) The basic structure then relies, as a last resort, on coercive force to enforce compliance. The fact that this may be rarely exercised is not of consequence; both domestic and international coercive force remains an existential threat.⁵⁷

Coercion as Public Power

There is another aspect to coercion that we need to consider. We have seen that Rawls recognized that there would be points of disagreement regarding public policy:

in a democratic society public reason is the reason of citizens who, as a collective body, exercise final political and coercive power over one another in enacting laws and amending the constitution ... political power, which is always coercive power, is the power of the public. (1993 pp214–215)

Disagreements are therefore resolved by the citizens, who as the body politic have coercive power. A key question then becomes who should be party to those decisions? Miller (2008) argues that all those who will be coerced by the decisions should be part of the decision-making process. This would seem to imply that it is not possible to confine the theory of justice to a closed society. If society A builds a dam across a river, thus restricting the flow of the river to society B, then society A is in effect coercing society B to accept reduced river flows. This in turn would mean that society A cannot make that decision without involving society B in the decision-making process. When it comes to global environmental concerns it would seem that there is a prima facie case for arguing that a theory of domestic justice which does not have a well-articulated view of how it relates to other polities is incomplete. This is also why *The Law of Peoples* is not fit for purpose, for by our action we can have a negative impact on any polity – irrespective of whether it is a decent liberal society, a burdened society or an outlaw society. Surely, in assessing our duty not to coerce another

⁵⁷ This also highlights the importance of civil disobedience. When citizens believe that institutions operate in a manner contrary to the principles of justice then they have a duty to disobey, for by that disobedience they alert other citizens.

society, it makes no difference what the domestic arrangements of that society are. In this instance justice is truly blind.

The need for the coercive powers of the state to be exercised is therefore limited by the extent to which discussions about policy directions are carried out in the public sphere. The practical problem is that the agora in modern democracies is simply too large to accommodate everyone so inevitably there is a need to delegate – to invest in a third party the power to make binding decisions on your behalf (Gosepath 2001). In such a situation the only protection that you have is that there are in place robust principles which can act as a constraint on those making decisions on your behalf.

The principles of justice then serve two complementary functions; on the one hand they determine the scope of legitimate decision making and secondly they define the boundaries of coercion

Sovereignty and the Basic Structure

In discussing the pervasive nature of the basic structure I made the point that the domestic basic structure may need to be nestled within a number of basic structures. Here I want to raise a particular weakness with the way Rawls avoids using the terms ‘nation’ or ‘state’. The justification for his use of ‘peoples’ as opposed to ‘nations’ or ‘states’ is less than convincing (1999 §2). This may be gauged by the fact that the various responses to *The Law of Peoples* ignored the distinction and responded as if he was referring to states.

Arguably, by judiciously avoiding any reference to states or nations Rawls may have placed the credibility of his claim that his theory is realistically utopian in jeopardy: ‘Political philosophy is realistically utopian when it extends what are originally thought to be the limits of practicable political possibility’ (1999 p11).

The basic structure is to be understood in terms of a closed society. Today we are familiar with the fact that we live in an interdependent world. Yet in the immediate post-war period the idea that nation-states exercised absolute control over what happened within their borders was still the dominant view.⁵⁸ Arguably at the time Rawls was writing, nation-states as largely closed societies united by one language, culture and history were more mythological

⁵⁸ It can be argued that we have not fully given up on this idea. The rise of right-wing nationalist movements is in part driven by a desire to reclaim national sovereignty.

than accurate. The various European languages were essentially a version of the dialect spoken in the capital cities. In many countries the authority of the national government was inversely proportional to the distance from that government. Yet the idea of nations as sovereign closed societies was the dominant view. International law dealt with relations between states but within a state the government or in a federation, governments ruled supreme.

In the world of today there is still a tendency to believe that convenient fiction. However, even if we regard the idea of a closed society as unproblematic there is still the question of what we do about states with more than one tier of government. One would have to presume that Rawls was familiar with the United States system of governance. It is a federal system and the various jurisdictions that make up the United States operate at either the local level, state level or federal level. All of the jurisdictions can be said to incorporate the three features of the basic structure:

1. They establish the terms of social co-operation.
2. They are all pervasive in shaping the political culture.
3. Each jurisdiction has some powers of coercion.

We also note that there is a tension among the various tiers of government; a tension that is often resolved by testing the rights and responsibilities of the various tiers by an appeal to the judiciary. There is nothing particularly unique about the United States of America – most modern polities have at least two tiers of government. So, we can argue that the practical reality is that in thinking about implementing the principles of justice we need to acknowledge that there are multiple basic structures to which justice as fairness applies.

In the light of that reality why does Rawls assert

That a world government – by which I mean a unified political regime with the legal powers normally exercised by central governments – would either be a global despotism or else rule over a fragile empire torn by frequent civil strife as various regions and peoples tried to gain their political freedom and autonomy. (1999 p36)

Consider the cases of India, China, Russia, Indonesia, Brazil, the USA and Canada. We can certainly identify centrifugal tendencies in many of these nations, yet arguably these tendencies will not inevitably result in collapse. China is perhaps the most enduring example here. Since China was unified by the Qin dynasty in 221 BC it has managed to maintain its empire to the present day. True there were extended periods of near anarchy but it seems that

the default position for China is a large federation. What we can say about all of these federations and even historic empires such as the Roman and Ottoman empires is that as long as they had the means to maintain a unified political regime they were stable – there is no *prima facie* reason to suppose that it is impossible to establish a globally unified political regime.⁵⁹ Rawls’s discussion of the role of boundaries illuminates this discussion somewhat. He argues that a people will take responsibility for their territory, environmental integrity and the size of their population. He goes on to say that it is the people’s responsibility to ensure that the territory can continue to support them in perpetuity (1999 pp38–39). This is consistent with this statement: ‘the fundamental organizing idea of justice as fairness, within which the other basic ideas are systematically connected is that of society as a fair system of co-operation over time from one generation to the next’ (1993 p15).

We could argue therefore that in making the transition from theory to practice what we need to do is to ensure that discrete governmental units exist which can ensure the maintenance of a fair system of co-operation over time. Indeed, it is becoming abundantly clear that the world that Rawls describes no longer exists – the pervasive nature of the basic structure is no longer confined to the nation-state and there are powerful social processes that overflow national borders. Nor are these social processes necessarily initiated by state actors – there are a range of extra-national institutions both private and public which help shape our lives.

What we are witnessing is the paradoxical situation where communities are enmeshed in a network of multilateral treaties with a global reach. Yet at the same time communities are demanding greater self-determination.⁶⁰ In addition there is growing awareness that their capacity for self-determination is constrained by their need to be aware of the impact local actions are having on the world as a whole. Arguably we are moving into an era where domestic policies are increasingly shaped by the idea that we must think globally but act locally.

Concluding Remarks

⁵⁹ My purpose in drawing attention to diverse, multilingual and multicultural polities is to highlight that when such entities fail size may be a factor, but not necessarily a determining factor.

⁶⁰ As I am writing this Catalonia is seeking independence from Spain. It has its own language, it has an economy that is much larger than at least one other state in the EU (Denmark), it has a history of independence as convoluted as that of Poland, yet it is denied independence – there do not seem to be any objective criteria at work, just political expedience.

In considering the basic structure as the subject of justice our aim was to take a closer look at what one could mean by the basic structure. We saw that Rawls has three distinct meanings. Firstly, it is used in an instrumental sense. The basic structure determines the terms of co-operation. The reason given for entering any co-operative arrangements is that it is in our interest so to do.

Secondly we considered the pervasive character of the basic structure – it sets the political culture. It sets the boundaries of political legitimacy and as such has an important influence on our realistic plans of life.

Thirdly we discussed the role that coercion plays. It is clear that Rawls considered coercion a last resort to ensure compliance; he was confident that the benefits of creating a stable well-ordered society were such that coercion would not be necessary. However, we also noted that the pervasive nature of the basic structure may of itself be regarded as a form of coercion. Here the concern is essentially that the pervasive nature of the basic structure can lead to a distrust of heterodoxy, making it more difficult for a polity to respond to challenges.

Finally, we considered the problem of a realistic utopia – given that existing polities tend to have a number of basic structures within them is there any reason not to extend Rawls's framework to the world as a whole?

If we consider the three roles of the basic structure we can see how they may well serve as a means of developing a global system of justice. In the next chapter I will argue that the principle of just savings when coupled with the idea of the Anthropocene provides a justification for all polities to enter into a global social contract. Based on this discussion this would mean that there is a need to describe the sort of features a global basic structure would need to have in order to implement such a contract. We can also see that the pervasive nature of the basic structure means that it will serve as a feedback mechanism, meaning that it will influence the domestic conception of justice. Finally, we noted that coercion in a well-ordered polity is very much a last resort. Hence, it is by no means necessarily the case that a world government is a prerequisite for a global social contract.

In the light of this discussion it may be argued that, far from being a stumbling block, the basic structure can form the foundation block for a theory of global justice. This is further evidenced when we consider the role the just savings principle plays in Rawls's theory.

6. JUST SAVINGS

The central argument in this thesis is that just savings enable societies to maintain the material basis that makes social co-operation both necessary and possible. It is further argued that given what we know about the interdependent nature of the global environment it follows that each and every society has a vested interest in not only safe guarding the material base of their own society but in ensuring that each and every society lives within the ecological limits of the planet and that we acknowledge the importance of managing the global commons in the interests of all polities.

The just savings principle can easily be regarded as peripheral to Rawls's theory of justice. After all he devotes a mere twenty pages to this principle (see Paden 1997). Furthermore by the time he came to write *Political Liberalism* he had refined his theory to the point where the just savings principle was embedded in the theory: 'the fundamental organizing idea of justice as fairness, within which the other basic ideas are systematically connected is that of society as a fair system of co-operation over time from one generation to the next' (Rawls 1993 p15). It is nonetheless an important concept.

The role of just savings in Rawls's theory may be summed up in these two quotations:

Each generation ... must put aside in each period of time a suitable amount of real capital accumulation. This saving may take various forms from net investment in machinery and other means of production to investment in learning and education ... a just savings principle tells us how great the level of investment should be [from this] the social minimum is determined. (1971 p252)

saving is demanded as a condition of bringing about the full realization of just institutions. (1971 p257)

It takes but a moment's reflection to see that this idea does not just apply to Rawls's theory of justice, but it may be regarded as a principle of all practical politics. The individuals that make up a society have a finite life but the society of which they are a part goes on. Hence the formulation in *Political Liberalism* is perhaps a better reflection of the role savings plays in the life of any polity.

Regardless of whether one uses the original account of the just savings principle or the formulation Rawls adopts in *Political Liberalism*, I argue that the concept of just savings for Rawls means that the idea of justice for a closed society is simply not possible without a

congruent global theory of justice. The reason that Rawls developed his theory for a closed society was ‘to gain a clear and uncluttered view’ (2001 p8) of the problem of justice. The proposition that I will be considering here is that, once Rawls established that uncluttered conception of justice, the essential next step is to determine how that is going to be realized in an interdependent world.

As we have discussed, Rawls’s theory of justice is based on those ‘principles it would be rational to adopt given the contractual situation. This connects the theory of justice with the theory of rational choice’ (1971 p16). Whether a choice is rational depends on the choice problem one faces. In the original position ‘the only particular facts which the parties know is that their society is subject to the circumstances of justice and *whatever that implies*’ (1971 p119, emphasis added). I have emphasised the last three words to draw attention to the importance that the idea of the circumstances of justice plays in Rawls’s theory. He goes on to state that the ‘parties are presumed to know whatever general facts affect the choice of the principles of justice’ (1971 p119). Arguably therefore if there are ‘general facts’ which are different to those Rawls considered then there is a need to review the principles of justice in the light of that information.

The problem is of course that we are not privy to the general facts which Rawls considered in framing his theory of justice. For example Nussbaum contends that ‘social justice must also be responsive to the world and its most urgent problems’ (2006 p1) Nussbaum goes on to discuss three unsolved problems: impairment and disability, nationality and species membership. Do these three unsolved problems refer to matters of fact or are they perceptions which may well be in dispute? The problems that Nussbaum raises open an ontological question which Rawls seems to want to address by using Hume’s conception of the circumstances of justice. In what follows I will be highlighting some difficulties with that concept and proposing a way in which a nuanced view of the just savings principle can address that problem.

Section 22 of *A Theory of Justice* opens with the statement: ‘the circumstances of justice may be described as the normal conditions under which human cooperation is both possible and necessary’ (1971 p109). What are those conditions? Rawls follows Hume in arguing that ‘the circumstances of justice obtain whenever persons put forward conflicting claims to the divisions of social advantages under conditions of moderate scarcity’ (1971 p110). Under conditions of moderate scarcity it is possible to have one’s claims satisfied. The fact that

there are competing claims means that we need to find some fair way of adjudicating among competing claims.

The other precondition, that it is possible to have one's claims satisfied, assumes that a citizen's basic needs, that is, the needs for survival, are met. Rawls sees this as an essential precondition that needs to be satisfied before one can embark on a discussion concerning the principles of justice (1993 p7).

So once we are in a situation where our basic needs are met and where there are competing claims to the divisions of social advantage under conditions of moderate scarcity we need to determine how those competing claims may be adjudicated. In considering moderate scarcity Rawls distinguished between objective and subjective circumstances which make co-operation both possible and necessary. We can argue that moderate scarcity is essentially a 'goldilocks' zone' concept: that in which resources are not so scarce we cannot satisfy everyone's simple needs (survival) but not so abundant there need be no competition for their use. In these circumstances co-operation makes sense.⁶¹

The objective circumstances assume that people have roughly similar mental and physical capacities and that the natural environment can satisfy all their basic needs if they are willing to co-operate and distribute those resources equitably. The subjective circumstances refer to a conflict of interests brought about by the fact that people have competing life plans, and have a diversity of comprehensive accounts of the good.

In *Political Liberalism* Rawls deals with the way these conflicting claims may be adjudicated. He advances the idea of public reason as a means whereby some of these claims may be settled:

even though our comprehensive doctrines are irreconcilable and cannot be compromised, nevertheless citizens who affirm reasonable doctrines may share reasons of another kind, namely, public reasons given in terms of political conceptions of justice. (1993 p487)

⁶¹ For the purposes of this discussion I am assuming that the idea of scarcity is unproblematic. There is a growing awareness that this is far from the case. Some argue that our economic institutions have artificially maintained a situation of scarcity. Such an artificial creation of scarcity is in violation of the second principle. See Hoeschele, W. (2010). The economics of abundance a political economy of freedom, equity and sustainability. London, Farnham: Taylor and Francis.

Thus, as far as the theory of justice is concerned Rawls has dealt with two related, but distinct problems. The principles of justice are designed to enable us to address objective circumstances of justice. They provide the means whereby our competing demands on limited resources may be reconciled. The idea of public reason accounts for the subjective circumstances.

The idea of the circumstances of justice makes intuitive sense. We can readily understand that, in situations where the demand for a set of goods outstrips supply, there is a need to find a fair and equitable way to distribute those goods. The principles of justice, when applied, ensure that the burdens and benefits arising out of social co-operation are distributed fairly.

Rawls puts forward at least three ‘essential features’ of such an equitable distribution. Firstly, there is the idea of acceptance. The rules and procedures whereby goods are to be distributed are accepted by all as appropriate. Secondly there is the idea of reciprocity; the terms of distribution are adhered to by all. Thirdly, all participants recognize that the mode of distribution is to their rational advantage (2001 p6).

The idea of just savings is introduced as a problem of justice between generations. Rawls’s argument is that each generation must make provision for future generations. Once ‘just institutions are firmly established ... a society meets its duty of justice by maintaining just institutions and preserving their material base’ (1971 p255). He anticipates that there will come a time when the just institutions are so well established that no further saving will be necessary.

The idea of just savings is largely ignored in the literature. It would seem Rawls himself abandoned it too for he does not refer to it in either *Justice as Fairness* or *Political Liberalism*. Instead it is incorporated as a fundamental principle that a society should be ‘a fair system of co-operation from one generation to the next’ (2001 p4).

The idea of preserving society’s material base is important. But it is not just an important consideration for a well-ordered society in the Rawlsian sense; all societies need to preserve their material base. In Chapter 4 I discussed Farrelly’s (2007) objections to Rawls’s theory. One of Farrelly’s concerns related to the costs associated with implementing Rawls’s theory. The legitimate point that Farrelly made was that there are costs associated with implementing any public policy. If it is the case that all societies need to have sufficient funds to be able to enact their policies, then it follows that societies do not merely ensure they preserve their

material base; they also need to monitor any potential threats that may undermine their capacity to preserve their material base.

In Chapter 3 I referred to the following Collingwood quotation cited by Rawls: ‘The history of political theory is not the history of different answers to one and the same question, but the history of a problem more or less constantly changing, whose solution was changing with it’ (quoted in Rawls 2007 p103). That problem was, by and large, contained within national borders. When Rawls chose to develop his theory of justice for a ‘closed society’ he was drawing on that tradition. The domestic basic structure shaped the way the burdens and benefits were distributed; citizens, as a sovereign people, were able to determine how that distribution was to be effected. Injustice was arguably a product of institutional obstacles that prevented some people participating on a par with others either because they had been denied access to the resources they needed to participate fully or because of institutional hierarchies that denied them the requisite standing to participate as equals. Fraser (2008) goes on to argue that in a globalized world the causes of injustice become considerably more complex and are not merely a consequence of distributional inequity. Part of that complexity may be attributed to the fact that liberal democratic sentiments are far from universal, meaning that one may search in vain for common ground on which to base a public reason argument.

Yet this is precisely where the idea of just savings may assist in making that first tentative step towards a theory of global justice. If we accept that all societies recognize the need to maintain and preserve their material base, then if there is a common threat it might just be possible for societies to co-operate to address that common threat. This is by no means a revolutionary concept. There are precedents for people with diametrically opposed views about justice co-operating to defeat a common enemy – we only need look at the various twentieth-century independence movements.

The argument in this thesis is that the threats posed by the Anthropocene are such that they might make human life on the planet impossible. Faced with a threat of that magnitude, I argue that it is in all of our interests to co-operate to minimize and perhaps even eliminate that threat.

However, the idea of public reason as described in Chapter 3 seems to suggest that the only differences that are problematic are those which arise from our competing comprehensive theories of the good. Rawls refers to disagreements over what we could call matters of fact as

‘the burdens of judgement’. Public policy is about setting a course for the future. It is only with hindsight that we can have any confidence that an action resulted in a particular set of outcomes. ‘Conflicts arising from the burdens of judgement always exist and limit the extent of possible agreement’ (1993 p487). This aside is the only reference that Rawls makes to disagreements about the natural world and their impact on the way we coordinate our efforts to ensure that the burdens and benefits of social co-operation are fairly distributed.

Yet when discussing the Anthropocene, we are dealing with matters of fact, matters about which people hold competing and conflicting views. The Anthropocene is the view that human activity is having such an impact on the environment and the world as a whole that we can claim that a new geological epoch has begun. This is a contested claim – however, a number of papers have been produced that claim that irrespective of what we call it we are now in a period where our behaviour will determine whether or not we have a future or whether we are on course for a major environmental collapse. (Diamond 2005, Will Steffen 2007, Gibson-Graham and Roelvink 2009, Ian Zalasiewicz 2010) For much of Rawls’s working life it seems as if disagreements about the natural world could not have had a decisive impact on the capacity of a polity to implement the principles of justice; there was nothing about factual judgements regarding the nature of the world that could prevent a society becoming well ordered. However, there were some early indications that disagreements about the natural world could have a serious impact on the capacity of polities to be well ordered. The impact of Carson’s *Silent Spring* (1962) resulted in a world-wide ban on DDT. In 1974 Hardin introduced the tragedy of the commons argument (Hardin 1974) and the Club of Rome published *The Limits to Growth* in 1972 (Meadows et al. 1972). All of these highlighted fundamental concerns about the way we looked at the world. Yet those ideas have been slow to gain traction. It is too early to say whether or not labelling the current epoch the Anthropocene will have any more impact. The reason I am advancing the Anthropocene as the basis for a global social contract stems from Nussbaum’s observation that ‘Social contract theories typically stipulate that justice makes sense only when people are so placed that it pays for them to exit from the state of nature and make a compact for mutual advantage’

In this instance that quotation should be rephrased as follows: ‘Social contract theories typically stipulate that justice makes sense only when nations are so placed that it pays for them to exit a commitment to absolute national sovereignty and make a compact for mutual

advantage.’ I readily concede that we are a long way from nations surrendering their absolute sovereignty, but I do believe we are at a stage where that view is no longer capable of being dismissed out of hand.

In *A Theory of Justice* Rawls assumes that the objective situation is one of moderate scarcity; basic needs are already being met. It is only when that is the case that one can begin to consider the principles of justice (1971 p110). Furthermore Rawls uses the idea of the just savings principle to ensure that at the very least a situation of moderate scarcity is maintained; it is only when ‘just institutions are firmly established ... a society meets its duty of justice by maintaining just institutions and preserving their material base’ (1971 p255).

This is a key assumption – in a situation where people’s basic needs are not capable of being met then the theory of justice becomes a dead letter. But those basic needs are not fixed. We may argue that once water, food and shelter is provided the basic needs are met but Rawls does not use that as his baseline. Rather he refers to primary social goods: ‘rights, liberties, and opportunities, income and wealth’ (1971 p79) as the expectations that we have of the basic structure/government. He defines those expectations ‘as the index of these goods which a representative individual can look forward to’ (1971 p79). However, those expectations are not expressed in the general terms that Rawls uses. The sort of expectations that we have are more specific – we expect our government to deliver on our need for energy at a reasonable price, we expect that the food we buy is fit for human consumption, we expect to have access to fast internet speeds and reliable telephony. Our catalogue of expectations is shaped by where we live. Nor is it necessarily the case that people living within the same nation share identical expectations. All we can say in general terms is that domestic political stability depends on the capacity of the government to deliver on our reasonable expectations. What constitute reasonable expectations may well vary from polity to polity, but when the government is unable to satisfy those reasonable expectations we will find that the risk of public unrest and political instability is heightened. Current research tends to focus on political instability in underdeveloped nations, nations that do not have the institutional resilience characteristic of more developed nations. Nonetheless the root of the problem is the same. The complexity of the challenges of the Anthropocene is such that conventional ways of addressing these problems appear to make little or no impact. The problem for politicians is that year upon year people are experiencing first-hand the adverse impacts of the

Anthropocene. As these problems and challenges show no sign of going away, confidence in our institutions is eroded with the danger that our systems will simply collapse.

For Rawls the role of justice is defined by two contradictory forces. Firstly all parties to the social contract have an identity of interests because by co-operating they all have a chance to a better life than would otherwise be the case. Secondly there is a conflict of interest for we are all competing for the same set of limited primary goods. Hence the role of the principles of justice is to reconcile these two conflicting trends. However, the principles of justice are designed for a closed society, a society where external forces have minimal influence. If that were the case, the savings principle would be an effective tool. However, the nature of the Anthropocene is such that there is a need to develop a global social contract. Given that human behaviour is having a global impact it follows that even if we develop public policies that seek to reverse that impact we will still be impacted by the decisions other polities make. This is particularly a pressing issue for many Pacific Island polities – whilst there are some things that they can do to avert rising sea levels their problem is the extent of the rise depends on the actions of other polities. (Barnett 2001) This situation is not unique to them the coastal defences that are being built to save Venice will, on some projections, be insufficient. Before we can examine what such a contract should look like we need to take a closer look at the Anthropocene.

From 1950 onwards there has been a major acceleration in the impact that we have had on the global environment. There are a number of indicators which show an exponential growth. Many people would be aware of the growth in atmospheric CO₂ but Steffen et al incorporate 24 different graphs from fertilizer consumption to McDonald's restaurants, population and decline of global bio-diversity, and each graph is showing much the same steep exponential curve (Steffen, Persson et al. 2011).

The problem of exponential growth is largely ignored in the world of practical politics. Yet continuing to do so will impact adversely on sustainability. One of the reasons that the problem is ignored in practical politics is that we do not know, and indeed cannot know, what the precise limits to growth are. To make the problem of exponential growth more vivid the following story is often used. Imagine you have a test tube containing microbes, and every second the population of microbes doubles. At 59 seconds the test tube is half full; the question is when will the test tube be full? The answer is of course at 60 seconds. The problem with this illustration is that we leave the discussion there; it is after all a very vivid

account of the way exponential growth operates. But now think of yourself as one of the microbes in that test tube. Because you are inside that test tube you will be aware that the population is increasing and that every second there is clearly less space. But critically you do not know when you are at the halfway point; you will not know at what stage you will need to intervene to reduce the population. This is the situation we are in.

The problem that we are facing is well summarized by Nicholas Sarkozy:

If we do not want the future of our children and grandchildren to be riddled with financial, economic, social and environmental disasters which are ultimately human disasters, we must change the way we live, consume and produce. We must change the criteria governing our social organizations and public policies. (2010 p2)

Sarkozy wrote this as a foreword to the report *Mismeasuring Our Lives* (Stiglitz, Sen et al. 2010). The report is a major step forward, but one of weaknesses is that there is still an assumption that nations can address these problems on their own.

So although the evidence is compelling that we have become a major force in shaping the biosphere, political discourse continues to be shaped by geopolitical categories: states regions, blocs and continents. Moreover we pay more attention to the decisions that are made in the capital cities of the great powers. Indeed the dominant way of thinking about the world is in terms of a global economy where sovereign states determine or more precisely are encouraged to have the illusion that they are in charge of their own destiny.

Because our political discourse is shaped by geo-political boundaries we rarely take into account situations where those boundaries straddle biomes. That this creates problems can be readily demonstrated. We do not accept that other states can interfere in domestic decisions so if a country chooses to build a nuclear power station that is its decision and its decision alone. Yet given that when there is a major nuclear accident the impact is felt globally, it would seem that there is a *prima facie* case for arguing that all people on the planet have a legitimate interest in that decision. The issue is not confined to nuclear power stations. In recent years we have seen how Indonesian land owners in Borneo have instigated major forest fires to clear the land for the production of palm oil. The smoke from these fires has had an adverse impact on people in Singapore and Malaysia. The loss of rainforests, not just in Indonesia but also in the Amazon basin, impacts on the capacity of the planet to mitigate the effects of climate change. If we add to this list the numerous other activities that

exacerbate climate change we can see that the notion of national sovereignty exacerbates the negative consequences that flow from living in the Anthropocene.⁶²

Consequently, we need to create political solutions to these environmental problems, and to do that, we need to focus on the way we are all affected by each other's decisions.

Political Philosophy is Fact Dependent

Political philosophy is a normative enterprise. Kymlicka (Kymlicka 2002) argues that underpinning all plausible political theories is the idea that each person matters equally. Kymlicka's overview of various political philosophies appears to be predicated on the belief that we start by developing a set of basic principles which are developed without any reference to empirical facts but arrived at through a process of reflection. The next step is to determine how these basic principles are to be applied. Here we do need to consider empirical evidence.

But we can consider the question rather differently. Asking how we are to live, that is, to start by developing a set of basic principles, is asking the wrong question. As humans evolved our morality evolved with us. It can plausibly be argued therefore that foundational moral questions are grounded in facts about the human condition. If we take this view then it follows that as our knowledge about the human condition changes the normative responses to that knowledge can also change.

If one accepts the claim that our political philosophy is fact dependent, then it follows that the way we present those facts will have an impact on the sort of political philosophy we will construct. Describing the world in terms of geo-political boundaries is factually correct. We can therefore construct a political philosophy that is concerned with describing how people may behave within those boundaries and how those boundaries impact on the relationships that they have with others. This is pretty well how political philosophy is conducted at present. However, the Anthropocene challenges the view that it is sufficient to consider the world in terms of nation-states. The Anthropocene highlights the need to add a layer of complexity and take account of biomes. This is a far more complex task for not only is our knowledge of biomes limited (we still know very little about the biomes in the oceans) but there will be disagreements about where the boundaries between biomes ought to be drawn.

⁶² International co-operation is already happening: the various climate change agreements are an important starting point.

However, by considering the world in terms of biomes we will need to prioritise a different set of questions. For example, Rawls's two principles of justice can be regarded as applying to both a world of polities and a world of biomes. But his just savings principle will have very different implications depending on whether we accept the world as an interdependent network of biomes or as a network of nation states.

For those wedded to a world described in terms of nation states Rawls's discussion of the Just Savings Principle is unproblematic. When Rawls refers to putting aside a suitable amount of real capital accumulation. Our instinct is to view that injunction in terms of monetary reserves. On the other hand if we look at the world as a collection of biomes we would be looking at the just savings principle in terms of environmental sustainability. Furthermore we now need to take into account the impact our actions have not just on people in other nations but also on biomes in uninhabited parts of the world.

But considering just savings in terms of sustainability is by no means straight forward. As Stiglitz, Sen et al. (2010) demonstrate, there are a multiplicity of ways of measuring sustainability. Simply describing the world in terms of biomes will not necessarily make that task any easier.

A World of Biomes

Viewing the world as a network of interconnected biomes will help people to acknowledge the ecological arbitrariness of political boundaries. These boundaries can be said to track differences in language, religion, ethnicity and culture. These boundaries have a major impact on our lives and consequently it is appropriate that we frame discussions regarding domestic justice in terms of existing nation-states. However, over the last hundred years or so there have been major changes. Increasingly all nation-states are characterized by linguistic, religious and ethnic diversity, and part of the challenge for contemporary politics has been to accommodate that change. In adding biomes, we are adding another level of complexity. Thus in response to Rawls's question of how we can create a stable and just society that is profoundly divided by reasonable though incompatible religious, philosophical and moral doctrines, we may have stumbled on another approach that can unify them: their shared need to ensure the ecological sustainability of their particular biome or biomes.

Introducing the idea of biomes also sets us on the path of developing a theory of global justice. For unlike geopolitical boundaries the boundaries of biomes wax and wane due to the

impact of migratory biota, or the role that the biomes of the oceans play. Dr Helen Sharman, (Lloyd. 2015) the first British woman in space, described how, in their down time, the astronauts on the space station would gather at one of the viewing windows. On the first day they tried to identify their homelands, then the various continents, but eventually they all were looking at was the Earth as a whole. She went on to say that one thing all astronauts have in common is that, once having seen Earth from space, they find it difficult to get caught up in territorial disputes. They tend to see the world as one large ecosystem.

It is this perspective that Singer captured in his book *One World* (2002). Starting with putting an image of the Earth from space on the cover, Singer explores the ethical questions arising out of regarding the world as one system. He starts by asking the question: ‘To what extent should political leaders see their role narrowly, in terms of promoting the interests of their citizens, and to what extent should they be concerned with the welfare of people everywhere?’ (2002 p3).

Singer leaves us in no doubt where he stands on this issue for by page 185 he is exhorting all of us to support organizations which help people in need wherever they may be located. But Singer does not take the critical next step. His response to people in need is altruism – a disinterested need to consider the problem of others. However, considering the world as one ecosystem implies that our own welfare is inextricably intertwined with the welfare of others.

This is where referring to the current epoch as the Anthropocene becomes a powerful idea in the framing of political discussions. The implication of viewing the world as a collection of interdependent biomes is that people will get a greater understanding that they cannot have a disinterested view about how people in other biomes ensure the long-term sustainability of that biome. Indeed one of the features of the early twenty-first century is that concern about our impact on the environment has generated a growing recognition not just that nations need to co-operate in mitigating those impacts but that they have a duty to do so.

Global Co-operation

One of the reasons that the dominant political discourse has not recognized the centrality of the environment is that many of the signs of stress on our ecosystems occur well away from the centres of power:

Disadvantaged people are largely victims of middle- and upper-class pollution because they usually live closest to the sources of pollution – power plants, industrial

installations, and in central cities where vehicle traffic is heaviest. Usually they have no choice. Discrimination created the situation, and those with wealth and influence have political power to keep polluting facilities away from their homes. Living in poverty areas is bad enough. High pollution makes it worse. (Kruvant 1975 p45)

This is true not just at the local level but globally as well – the wealth of the world’s largest economies has shielded their populations from a detailed understanding of the damage that is being done to the world’s ecosystems to create that wealth.⁶³ Whilst for much of the developed world the impact of the Anthropocene may be experienced vicariously, that does not mean that people are not concerned. On the contrary environmental degradation as a result of human activity has been growing exponentially to the point where not a week goes by without yet another environmental horror story hitting the news. The ‘Great Acceleration’ manifests itself in every indicator that we can consider: atmospheric CO₂, N₂O and CH₄ concentrations, ozone depletion, average surface temperatures, loss of forests and woodlands, or global diversity. Thus, we find that 80 per cent of our global fish stocks are exploited, that the rate of species extinction and the consequent loss in biodiversity is now so great that it seems that the trend may well be irreversible.

The damage that we are doing to the environment is manifest in other ways. At the time of writing there are regular press reports about the damage that plastics and our garbage is having on wild fisheries.

But it is not just fisheries. For millennia China relied on human waste to fertilize its lands for agriculture, yet to become a certified organic farmer you need to demonstrate that the waste from your septic tank is not diverted to your crops. Today we have ingested so many heavy metals that we are no longer fit for human consumption.

The steady accumulation of reports such as these serve to alert the general public that there is a genuine existential threat to humanity, a threat that politicians appear to be powerless to address.

A Perfect Moral Storm

The first decade and half of the twenty-first century has been marked by a growing awareness that ‘our national leaders need to take a larger perspective than that of national self-interest’

⁶³ Projects such as World Mapper are useful tools to bring home the impact that our lifestyle is having on the environment: <http://www.worldmapper.org/display.php?selected=322>

(Stiglitz 2006 p3) The World Social Forum of 2004 attracted over 100,000 people, united under the banner 'Another world is possible'. Stiglitz (2006) suggested that we enter into a global social contract. Although he referred to the importance of biodiversity and to carbon emissions, there is little evidence that Stiglitz appreciated the extent of the environmental crisis that we are facing. There has been no shortage of global fora where national leaders have met, made solemn promises and then went home to do nothing and returned some time later to make even more solemn pronouncements only to go home again to do nothing.

Gardiner (2011) argues that a concatenation of three factors have combined to create a 'perfect moral storm' that inhibits change. Although Gardiner was referring specifically to climate change, the three factors that he describes are not confined to climate change. The first two of these problems concern an asymmetry of power. We are living in a world where wealth is concentrated in the hands of a few. This phenomenon operates at two levels – there are a small number of wealthy nations with the wealth and power to favour their own concerns, to ride roughshod over the wishes of poorer nations. In addition, wealth is concentrated in the hands of a few individuals. These wealthy people exert considerable influence over the sorts of decisions that governments make.

The second asymmetry of power is intergenerational: the decisions that this generation makes will shape the prospects of future generations. Yet future generations have no political influence; they do not change governments. Moreover, those who may be adversely affected by any change in the status quo (by and large the wealthy and powerful) are able to use their wealth and power to sow doubt that change is required.

Gardiner's third factor is we do not have the theories to address the problems we face: 'existing theories are extremely underdeveloped in many of the relevant areas, including intergenerational ethics, international justice, scientific uncertainty, and the human relationship to animals and the rest of nature' (Gardiner 2011). The claim that I will be making is that the problem is not merely that our existing theories are under-developed but rather that we need to question the concepts and assumptions from which we construct our theories (Dalby 2007). Indeed what I am endeavouring to do is to re-imagine the political space in a globalizing world (Fraser 2008). One way to reimagine that political space is to incorporate biomes into that space – politics and political action now actively incorporates a recognition that a savings principle is not just about setting funds aside but it is about creating an environmentally sustainable future. The Brundtland Report's definition of sustainable

development as ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’ (WCED 1987 p?) is, in effect, a restatement of the just savings principle.

Implications for Political Philosophy

When discussing the role of political philosophy, I argued that political philosophy is predicated on the belief that we live in a situation of moderate scarcity. The Anthropocene has highlighted that we are placing that moderate scarcity at risk. Yet it is clear that those in the developed world are reluctant to act unless they can be reassured that they do not have to sacrifice any of their creature comforts. Our starting point needs to be an ontology that sees the biome as an a complex world of living and non-living things all interacting to shape the nature of our environment. The deeply disputed questions of political philosophy will now also be concerned with how we can organize society so as to ensure the integrity and longevity of the biome which we happen to inhabit. Furthermore, as we appreciate that there is a global interaction between biomes, we will recognize that for our own well-being it is essential that we co-ordinate our actions with those that citizens in other biomes take.

Rawls argued that an important role of political philosophy is to shape how people think of themselves as citizens, and of their basic aims and purposes as a society with a history – a nation. But he also argued that political philosophy is based on reason. The sort of history we are relying on is a history of societies located within nation-states. But this is not the only way to view history. We can equally view our history as a struggle to control nature to serve our own ends; a one-sided struggle in which we are outgunned. Just as feminism required a rethink of the way we approached our history so the Anthropocene requires a further rethink. Political philosophy’s role is not to rewrite history but it can prepare people to see themselves as members of a biome rather than just as members of a nation-state. In some instances, the biome will be coextensive with the nation-state, but there will be instances where the biome will be a local community or indeed there may be biomes that incorporate more than one nation-state.

It is tempting to see this challenge as breaking new ground, but rather it is restatement or a re-imagining of the sorts of issues that have always been part of political theory. It is asking how to incorporate our understanding of ecological issues in the way we frame public policy. The requirement to adopt and adapt a principle of just savings can be predicated on the belief that

if our species does not survive the ecological crisis, it will probably be due to our failure ... to work out new ways to live with the earth, to rework ourselves ... We will go onwards in a different mode of humanity, or not at all. (Gibson-Graham and Roelvink 2009 p322)

We need to remind ourselves that political philosophy has been here before. There was a time when the idea of liberal democratic constitutional government was seen as unnatural or unworkable. Yet it was the work of political philosophers that enabled people to reimagine the political world.

A New Political Philosophy?

Does this rethinking of the political world mean that we need to throw out our existing political philosophies and start afresh? I believe not. Kymlicka argues that Dworkin identified a unifying theme in all political philosophy, namely ‘the idea that each person matters equally is at the heart of all plausible political theories’ (Kymlicka 2002 p4). If that is the case then the ‘new’ political philosophy I am advocating would consist of reframing the arguments in terms that focus on ensuring that moderate scarcity is maintained both locally and globally.

If each person matters equally then it follows that we need to have the tools for assessing the impact that particular decisions have on people. The Anthropocene has already thrown up examples where particular decisions have impacted adversely on some people. For example the benefits of a carbon economy are manifest in the developed world – yet the burdens of that carbon economy impact on millions of people who have not enjoyed any or few of the benefits. Can that be justified? On the other hand, if political philosophies routinely demanded an environmental cost–benefit analysis we might well find that different decisions would be made.

I need to stress that this is not some twenty-first-century Luddite argument. A critical part of the way forward is to acknowledge that the Anthropocene describes how, in many cases unwittingly, we have transformed ecosystems. However, by describing the period as the Anthropocene, we are also acknowledging not just that we have the capacity to transform ecosystems, but that it now makes sense to ensure that however we transform ecosystems we do not undermine the capacity of the planet to support human life.

Implications for Rawls’s Theory

The principle of just savings is an acknowledgement that, whilst society is always a community of people, the actual people who make up the society are not constant. People die, people are born, people leave one domestic society to join another. So when we are considering principles of justice we are not considering what is just for a particular group of people at a given point in time, but rather we are endeavouring to establish principles that will apply to people regardless of when they enter society. We should also note that Rawls acknowledged that domestic societies are made up of many smaller societies and each domestic society forms part of a network of global domestic societies. This in turn implies that if our aim is a just and fair world then it is important that we ensure that the preconditions exist that enable individual societies within the global community to be just and fair.

Yet the idea of interdependence is missing from Rawls's theory of justice. The assumption throughout is that it is possible for a society to implement the principles of justice without the need to consider what is happening in other societies.

It is fair to say that up until comparatively recently the only impact other societies appeared to have on autarky was by dint of armed conflict. Up until about 1800 our capacity to have an impact on the rest of the world was limited to whatever we could achieve by a combination of brute force and human ingenuity. Where societies collapsed, that collapse tended to impact on the local population – there do not appear to be instances where the collapse of a society triggered a worldwide collapse (see Diamond 2005).⁶⁴

Whilst humans have always had the ability to have a significant impact on the environment, in the past in some ways that impact was only marginally different to the impact other animals have on the environment.⁶⁵ True we hunted various species to extinction. True we changed the landscape by changing the directions of rivers. But the difference between us and other animals in the impact we had on the environment was not so different to warrant special consideration when constructing theories of justice. After all, when elephants transform bushland into savannah we recognize that elephants are part of nature and nature can accommodate the impact that non-human animals have on the environment. For most of our

⁶⁴ I am not referring here to the decline of empires such as the Roman Empire – its collapse was due to political factors rather than a failure to take proper account of the limits of the natural world.

⁶⁵ Even major transformations such as the geo-engineering that was a feature of Imperial China had only a limited impact on the natural environment.

existence on the planet our activities could be accommodated within the natural narrative.⁶⁶ Thus when theories of justice were being formulated philosophers could be excused for assuming that there were no limits to the Earth's bounty, for we did not really have any evidence to doubt that that we could ever overstride those limits.

All that changed with the advent of fossil fuel technology. Human ingenuity enabled us to exploit the energy locked in the Earth: coal, gas and oil. These fossil fuels have enabled us not only to transform our environment but to live in ways that would have been inconceivable a mere hundred years or so ago.⁶⁷ We did not stop to think that the good times ushered in by an abundance of cheap energy could ever end, but we are now realizing that they are running out fast. It is becoming clear that many of the finite resources on which we have come to depend are almost exhausted. It seemed as if we had conquered nature; that abundant and cheap energy would enable us to usher in an age of plenty where all of our wants and needs would be met. Yet at about the same time as Rawls's *A Theory of Justice* was published evidence was presented that claimed that humanity was destroying our very habitat. The Club of Rome's report (Meadows et al. 1972) showed that the world's economic system was heading for collapse.⁶⁸ Although their findings were initially rejected as fanciful and unnecessarily alarmist, a recent study by the CSIRO demonstrated that we are tracking quite nicely along the pathway first identified by that 1972 report, that is, we are heading for complete global collapse by about the middle of this millennium (Turner 2009).

Now given the way Rawls has described the just savings principle, it follows that we have a responsibility to address this issue, for remember that 'a society meets its duty of justice by maintaining just institutions and preserving their material base' (Rawls 1999 p119). We can argue that when we embarked on this late phase in human development we had little idea that

⁶⁶ Essentially the natural narrative refers to the capacity for living organisms to adapt to changing conditions. Sudden disruptions can lead to widespread extinctions (e.g. the extinction of the dinosaurs). However, transformations that proceed gradually will enable most living organisms to adapt, e.g. Indigenous Australians lived in Australia for 40,000 years, and so-called 'fire stick farming' artificially transformed the environment without disrupting it. The last 200 or so years have been a very different story.

⁶⁷ It is no accident that science fiction became an established literary genre towards the end of the nineteenth century. The rapid changes that cheap sources of energy wrought on our lives gave writers a brand new set of visions to pursue.

⁶⁸ I need to add that Rawls may well have thought that he covered the sort of arguments raised by the Club of Rome in *Justice as Fairness* where he states that his theory is not predicated on continuous growth and that 'a well-ordered society is specified to all for this [i.e. a stationery state] possibility' (2001 p64).

the benefits of industrialization would threaten future generations. We did not fully understand the impact that heightened levels of CO₂ would have on the climate. However, as we become more and more aware of the impact our activities are having on the environment the more important the just savings principle becomes, for it becomes increasingly obvious that we cannot discharge our duty of justice fully unless we also co-operate with other polities.

So although Rawls designed his theory for a closed society, the foregoing implies that there is a need to work co-operatively with other societies. Our fate is bound up with the fate of other societies. For Rawls also saw it as the duty of each generation to 'preserve the gains of culture and civilization'. The problem is that societies have become so interdependent that this is becoming an increasingly difficult, if not impossible, task to achieve within the boundaries of domestic society. We can lead a simpler lifestyle, reduce our levels of consumption and we just might become internally self-sufficient, but we still share the one atmosphere with the rest of humanity.

The reality that we share one atmosphere is significant. Each society can have an impact on the climate. We now know that the rapid industrialization of the last 200 years is changing our climate. Climate change has been described as the perfect moral storm (Gardiner 2011). Gardiner (2011) discusses the problem of climate change in non-ideal terms. Yet he also describes what may be regarded as an ideal feature of climate change: 'whereas fossil fuel emissions have immediate and tangible benefits for present people, many of the most serious costs are likely to be substantially deferred to future generations' The concern here is not just that the fuel that we burn today will not be available to burn for future generations but rather that the climate impact of that activity will linger well beyond our lifetimes.

In addition to the intergenerational problem climate change also raises another equally important issue: climate change impacts globally. Its adverse effects are not limited to the people that generated the carbon dioxide emissions in the first place. Climate change affects all.

Given the structure of Rawls's discussion it is tempting to think that a particular society can maintain a fair system of co-operation from one generation to the next without considering its relationship with other societies. But just as in a river, each ecosystem impacts on the others around it, so too individual societies impact on the capacity of those societies around them to

maintain a fair and just system. The just savings principle demands that the domestic theory be complemented with a global theory of justice; without a complementary global theory the domestic theory becomes at worst incoherent and at best an idle curiosity incapable of being realized.

The problem for Rawls is that his ideal theory needs to be discussed in terms of the world as it is. Those general facts which limit the range of choices that are open to us need to be part of the discourse. In our case the impact that we have had on the environment needs to be part of the discourse. For the theory of justice to be realistically utopian it needs to take into account the way we have transformed the world.

In Rawls's original position the participants were concerned with what we could call the political imperative: how should our institutions be arranged so that the burdens and benefits arising out of social co-operation are fairly distributed? What Rawls largely ignored is what may be described as the biological imperative. The biological imperative means that we need to learn sustainably on the planet. If we cannot achieve this then we will face extinction. The question becomes what impact, if any, does the inclusion of the biological imperative have on the outcome of the conception of justice derived from the original position? Whilst the biological imperative will not have an impact on the two principles of justice as such, it does affect the interpretation we place on Rawls's idea of a property-owning democracy. It means that the freedom to manage and dispose of property as one wishes is constrained by the demands of the biological imperative.⁶⁹ The other question that the inclusion of the biological imperative raises is whether we will then stray from an ideal theory of justice to a non-ideal theory. To ensure that this remains an ideal theory of justice the biological imperative needs to be described with due care.

The participants in the original position will be given the following information about their society. They will know that the society inhabits an environment that has sufficient resources to meet their needs; there exists a situation of moderate scarcity. They will also know that the resources consist of two types: renewable and non-renewable. They will likewise be aware that if renewable resources are managed properly they will last indefinitely. They will be aware that there is always the possibility of natural disasters that upset the balance, but as they have no control over such disasters it follows that the most they need to do is to make

⁶⁹ Thus we find in most nations there are environmental protection agencies which restrict what one can and cannot do with one's private property.

allowance for the possibility of natural disasters. They will also be aware that there are natural resources that form part of the commons; these are the public goods that all need to pursue their rational life plans. Such public goods would include the provision of clean water, necessary infrastructure such as roads and sewerage, parks, woods and forests. The precise nature and description of the commons would vary from society to society and consequently the management of the commons as it applies to a particular society would form part of the ideal theory. For the purposes of the ideal theory the biological imperative may be summed up as those features of the natural environment which need to be managed so that at the very least a condition of moderate scarcity is maintained from one generation to the next.⁷⁰ To do this it follows that renewable resources need to be managed so that they remain renewable. This in turn implies careful management of the commons. With respect to non-renewable resources it implies that we cannot afford to create a society that is so dependent on the utilization of such resources that without them it would be impossible to meet the basic needs of the population.

Adding the biological imperative to the original position does not undermine the two principles of justice. What it does require is that we take a closer look at Rawls's discussion of private property. In *Political Liberalism* Rawls takes the position that it is unlikely that we can resolve the question of the right to private property but that it would seem to be 'more fruitful to look for bases of agreement [with respect to property rights] implicit in the public culture of a democratic society and therefore in its underlying conceptions of the person and of social co-operation' (1993 p339). Similarly in *A Theory of Justice* Rawls states:

the social system shapes the wants and aspirations its citizens come to have. It determines in part the sort of persons they want to be as well as the sort of persons they are. Thus an economic system is not only an institutional device for satisfying existing wants and needs but a way of creating and fashioning wants in the future. (1971 p229)

The full implementation of a theory of justice will result in the creation of a well-ordered society; that is, a society 'designed to advance the good of its members and [one] effectively regulated by a public conception of justice' (1971 p397). In such a society the wants and aspirations of citizens will be congruent to, and consistent with, that public conception of justice. Awareness of the constraints that nature places on realizing our wants implies that a

⁷⁰ There is always the possibility that we may be ushering in an age of abundance (Diamandis 2012).

political culture will be generated that recognizes that the two principles of justice are constrained by nature.

It may seem that including the biological imperative in the original position reduces the first principle – individual liberty seems to be trumped by the demand that we take into account the constraints of nature. Rawls would not share this view: ‘The essential idea is that we want to account for the social values, for the intrinsic good of institutional, community and associative activities, by a conception of justice that in its theoretical basis is individualistic’ (1971 p233). In Rawls’s theory therefore the individual’s aspirations are defined in terms of what is good for the community.

Knowledge of the biological imperative should not alter the conclusions the participants in the original position come to regarding the two principles of justice, for these are designed to determine the terms under which the burdens and benefits arising out of co-operation are to be distributed among the parties to the original position. But having established the two principles of justice, they turn their attention to the management of the commons.

Management of the commons under the biological imperative would become an aspect of the basic structure – the commons would form part of that set of public goods that need to be maintained to ensure that societies have a material minimum to maintain liberal or at the very least decent institutions.

Rawls at no stage discusses whether or not the participants in the original position are aware of the existence of other societies. To ensure that the biological imperative is appropriately addressed, the participants in the original position will be aware of the possibility that there are other societies. Furthermore they will need to have an understanding of the global commons and the importance that they are managed in everyone’s interests. However, given that they are concerned with developing a social contract where ‘the principles of justice behind coercive laws should be acceptable to a free and equal person whose conduct is regulated by them’ (Freeman 2007 p147), it follows that discussing what to do about other societies is not part of the original position. Furthermore the contract is designed for a society that people enter into at birth and leave only by death (Rawls 1993 p12). Whilst the same applies to the planet, the immediate society in which we are born has the greatest and most immediate influence on our lives.

However the biological imperative will require that these representatives consider the impact that their decisions have on the whole planet. In the first phase we continue to think of them as being a closed society. However, given that they are aware of the possibility that there are other, as yet unknown, societies it follows that, having determined fair terms of co-operation to apply within their closed society, they will need turn their minds to the other societies with whom they share the planet.

Given the way the original position is structured, one of the assumptions that the representatives will make is that any set of representatives when determining what would constitute fair terms of co-operation would arrive at the same conclusions. Thus in an ideal world we would be faced with a world of communities all of which are well ordered. This in turn means that each of these societies would have the same awareness of the need to maintain conditions of moderate scarcity over time and would seek to co-operate with other societies to achieve that end.

They would also realize that as long as there is only one society on the planet the principles as they stand will ensure that society will be fair. But they will also be aware that if there are any other societies on the planet then whether or not justice is sustained in the long run depends on the ability to develop a global social contract.

Whilst a cogent argument can be made for claiming that our realistic life plans are affected by what we can refer to as a global basic structure, the nature of the global basic structure is qualitatively different to the domestic structure. The institutions that make up the domestic basic structure are backed up by domestic coercion. But most importantly it is within the power of citizens to overthrow any established regime:

‘In raw numbers, movements generally achieve systematic change (i.e. in the +80% likelihood category) when they mobilize over 3.5 percent of the population. The Iranian Revolution, among the largest popular uprisings, achieved about 10 percent mobilization. In the US with 311 million people, this would mean 11 million people.’ ... ‘When more than 3.5 percent of the population engages in sustained, coordinated civil disobedience, few governments – dictatorships or democracies – remain in power.’ (Kerrigan 2012, quoting Chenoweth and Stephan 2011 and Chenoweth 2012)

Revolutionary change is invariably a product of the concerted effort of a few (e.g. Brinton 1952), which makes it all the more important that a polity is infused with a political culture

that places a premium on fairness.⁷¹ Thus the argument in *A Theory of Justice* is conducted against a backdrop of people power: a regime, irrespective of its nature, will not last if it is systematically unjust. Given that people have the power to effect domestic regime change, it follows that it is important that these citizens are committed to a theory of justice which is based on fairness. Rawls has developed a domestic theory which is not only fair but stable. It is all the more important that we consider how the integrity of the domestic theory can be protected against external influences.

Conclusion

I have argued that the just savings principle is used to maintain a material minimum to ensure that just or at very least decent institutions are preserved. It is further argued that our capacity to maintain that material minimum, depends in part at least, on what other societies do. Global co-operation is required in order that all societies, where ever they may be situated are in a position to maintain (or in some case establish) the material minimum required.

⁷¹ This is also consistent with Freeman's (2007) argument cited above: a tolerant and well-ordered society depends in no small measure on the capacity of a polity to meet the basic needs of all its citizens.

7. GLOBAL JUSTICE

My aim in this section is to reconcile two competing perspectives. On the one hand communities prize their autonomy. On the other there is a growing realization that humanity has created a number of problems that require global cooperation. The discussion becomes complicated because local autonomy does not necessarily equate to national autonomy the interests of the nation state do not always neatly coincide with those of its constituent communities. Similarly it is by no means the case that all co-operation needs to be global.

Global justice concerns the moral assessment and reform of global institutions. This definition of global justice underscores the influence that Rawls has had on the development of contemporary political philosophy. Little wonder that, when they came to address the challenges posed by the emerging new international order, philosophers looked to Rawls.

I too embarked on this journey confident that a Rawlsian conception of justice was the key to developing a viable theory of global justice. Rawls had acknowledged the limited scope of his theory of justice but expressed the hope that his theory of justice could provide the means whereby other questions of justice might be addressed (1971 p15).

It was generally expected that when Rawls addressed the question of global justice

He would deliver something like a globalized or international version of his own familiar domestic theory of liberal democratic justice, complete with a robust conception of human rights and a global or international difference principle to regulate economic inequalities worldwide. (Martin and Reidy 2006 p7)

Instead Rawls gave us *The Law of Peoples*, a theory designed to complete his domestic theory by providing an account of how liberal people should conduct their foreign affairs. *The Law of Peoples* is not a theory of global justice; if anything, it seems to amount to a repudiation of the use of his theory to develop a theory of global justice. Certainly, his response to both Pogge and Beitz leaves no room for doubt that the difference principle has no application beyond domestic society (1999 p115ff).

However, in constructing a Rawlsian conception of global justice, we need to note that Rawls claimed that the views of political philosophers are shaped by

Their particular political and social worlds and their circumstances and problems as they saw them. To understand their works then, we must identify those points of view

and how they shape the way the writer's questions are interpreted and discussed.
(2007 p105)

This in turn implies that Rawls likewise was influenced by his world; that world provided the prism through which he developed his theories. That world is a different world to the world of 2018. This Rawlsian theory of global justice is written not for the world of the 1950s⁷² but for 2018. In developing an ideal theory of global justice, I have been mindful of the fact that *The Law of Peoples* is a non-ideal theory of justice; it sought to deal with the way Rawls saw the world as it was in the latter part of the twentieth century. But the eight principles (p37) as well as the idea of developing cooperative organizations (p42 fol) all sit comfortably with the ideal theory of global justice proposed here.

Right from the outset Rawls acknowledged that *A Theory of Justice* is limited in its scope; it is a political conception of justice designed to apply to the basic structure of society: 'How far its conclusions must be revised once ... other matters are understood cannot be decided in advance' (1971 p15). His aim is 'to set out a framework of thought within which they can be approached' (2001 p12).

It is this framework of thought that I am using to construct a Rawlsian theory of global justice. I agree with Rawls that it is not a matter of extending the difference principle to cover all individuals on the globe. Rather if we use Binmore's definition of a social contract as a 'set of common understandings that allow the citizens of a society to co-ordinate their efforts' (Binmore 2005 p3), then we also have the basis for describing a global social contract. When we are considering global justice from a Rawlsian perspective then we are referring not to citizens but to governments. Government in this context can refer to a local, town, provincial or national government.

Binmore's definition is a significant departure from Rawls's conception of a social contract. For Rawls there are three key aspects to a social contract:

1. it consists of social co-operation guided 'by publicly recognized rules and procedures which those co-operating accept as appropriate to regulate their conduct' (2005 p6)
2. The idea of co-operation includes the idea of fair terms of co-operation.

⁷² Although *A Theory of Justice* was published in 1971, it drew upon a series of articles he wrote in the 1950s.

3. The idea of co-operation includes the idea of each participant's rational advantage or good. (2001 p6)

In developing a Rawlsian account of global justice, I will be arguing that the participants are sovereign states or communities with local autonomy. What makes the contract viable is that it is designed with the above three criteria in mind. The reason for choosing communities or states in preference to individuals is that we are concerned with a social contract that describes how communities relate to each other. The aim of the domestic contract is to define the principles that guide how individuals will co-operate, the complementary global contract defines principles that guide how communities will co-operate.

The Post-Westphalian World

To construct global justice from a Rawlsian perspective we will need to start with an understanding of the post-Westphalian world. In *The Law of Peoples* Rawls states that 'political philosophy is realistically utopian when it extends what are ordinarily thought of as the limits of practical possibility' (1999 p6). Those limits are not and cannot be fixed. Those limits are defined by our understanding and knowledge of the world at a unique point in time. Rawls's theory is bound by the prevailing limits of practical possibility, so we need to start by looking at that world a little closer.

Rawls was responding to an emerging world largely dominated by two possible political narratives – those based on one of the many strands of Marxism and those based on one of the many versions of liberal constitutional government. *Justice as fairness* is an attempt to provide us with an ideal account of liberal constitutional government.⁷³ He would have been aware of the questions associated with environmental responsibility and global justice, but his priority was to describe fair terms of co-operation. Once we have agreement about what constitutes fair terms of co-operation we are in a position to turn our attention to other matters. Now these 'other matters' are still far from being well understood, but we know a little more now than we knew in 1971. Yet this does not mean that by rummaging through Rawls's toolbox we cannot find the tools to construct a global theory of justice that is consistent with the conception of justice he developed over the course of his long career.

⁷³ That observation is based on Rawls's later writings. Erin Kelly's foreword to *Justice as Fairness* charts the evolution of his theory from one that can be described as providing a universal account of justice to one that seeks to articulate a liberal conception of justice.

Before we can consider a post-Westphalian world we need to have some understanding of what is meant by a Westphalian world. The 1648 Peace of Westphalia ended the religious wars that had been unleashed because of the Reformation. Underpinning the Peace of Westphalia was the idea that each state has sovereignty within its own borders and should be free to pursue its domestic affairs without interference. States were conceived as more or less economically self-sufficient units, distributionally autonomous and politically homogenous, unified actors. It has been argued that this account is itself an idealized version of the nature of states (Kedourie 1970). Nonetheless it does seem to correspond to how people tend to see states.

Buchanan (2000 p 7) argues that states may be economically self-sufficient but that does not necessarily mean that they are also distributionally autonomous. They do not have an unfettered choice about how wealth may be distributed within their borders (Buchanan 2000). Singer, too, draws our attention to the so-called 'golden straitjacket' where governments to attract the investment capital they need are reluctant to take any action that may make their country less attractive to foreign investors. The consequence is that 'instead of ruling ourselves, we are ruled by our own creation, the global economy' (Singer 2002 p11).

The other aspect of the Westphalian system has grown out of the concept of religious autonomy. The 1555 Peace of Augsburg settled the question of religious practice. The religion of the head of state determined the religion of the citizens (*cujus regio ejus religio*). This has morphed into the idea of shared national values. Buchanan describes it rather well: 'the idea of "political homogeneity" in effect denies the existence of distinct "peoples" with different conceptions of public order within states. From this perspective, intrastate conflicts are not viewed as falling within the domain of international law' (Buchanan 2000 p703). But the idea of political homogeneity is largely illusory. We are invited to assume that there is such a thing as a 'nation-state'. Yet as (Crawford 2006) documents, there is really no objective criterion why some geographic entities are recognized as states and others not.

The Westphalian world assumed that states have the authority and means to be responsible for their own affairs. Indeed, in rejecting both Beitz and Pogge's (Beitz 1978, Pogge 1989) attempts to extend his theory to the global domain, Rawls stated: 'The Law of the Peoples assumes that every society has in its population a sufficient array of human capabilities, each in sufficient number so that the society has enough potential human resources to realise just

institutions' (1999 p119). Therefore, a credible Rawlsian theory of global justice needs to demonstrate that this claim by Rawls is mistaken.

Now I can claim to have dented that belief with my discussion of the Anthropocene. I have suggested that in order to maintain a just society in a globalized world one needs some form of global co-operation. Although this argument is sound, it does depend on what may be regarded as a contested view of the world.

One of the most commanding themes in contemporary political thought – popular and academic – is the idea that states of emergency are being wielded by powerful actors to advance their own interests at the expense of less-resourced and more vulnerable groups. (Clark 2014 p28)

The danger, therefore, is that far from providing a rationale for global co-operation the Anthropocene becomes the justification for the more powerful states to impose their will on vulnerable smaller states. Clark goes on to cite international debates that see the solution to the Anthropocene in terms of geo-engineering. He states that

the possibility of a geotechnological pre-empting of dangerous climate change not only comes with profound risks and uncertainties: the mindset of a permanent state of emergency to which it belongs shores up existing imperial power – the power of global or planetary capitalism – at the expense of alternative, more progressive possibilities. (p29)

We can therefore argue that an awareness of the Anthropocene is not sufficient to engender a spirit of global co-operation. It can equally reinforce the belief that the developed world, thanks to its technological expertise, will not only solve the challenge posed by the Anthropocene, but should impose that solution on the rest of the world.

We also need to take account of the 'abundance movement'.⁷⁴ Promoted largely through social media is the belief that we are on the cusp of a new age, an age where all our basic needs can be met by emerging technologies. Listening to these prophets of abundance,⁷⁵ one is invited to believe that in the not too distant future our technology will be able to manufacture all our basic needs; we will be able to live where we will for we will be able to be completely self-sufficient. But irrespective of whether they are credible, the fact that there are people who believe them blunts the argument that we need to make major changes to the way we

⁷⁴ See Diamandis (2012). His account of abundance is somewhat more measured than most.

⁷⁵ They are prophets of abundance rather than prophets because it seems that they make a very good living out of spruiking the idea of abundance.

live our lives. Arguably in a world of abundance it is appropriate for us to ‘attach considerable value to collective self-determination: to be able to decide, together with our fellow citizens, what social goals to aim at, and what policies to pursue’ (Diamandis and Kotler 2012 p35) In such a world there would be no need for distributive justice; our motivation for living in social groups would not be the need to manage scarcity but rather fellowship. This does not make justice redundant, but in a state of abundance we may be looking at justice more in terms of Nussbaum’s capability approach.

Process in the Basic Structure

In discussing the basic structure, I referred to Young’s argument that Rawls neglects to pay attention to the question of process. She argues that Rawls appears to largely ignore that ‘the processes that produce distributive patterns are at least as important as the patterns themselves for making judgments of justice, as well as for understanding how to remedy injustice’ (Young 2006 p92). She illustrates this with reference to menial and servant labour. In the USA these occupations are largely held by people of colour and women. Rawls’s response would be to argue that this may be overcome by creating equal opportunity; presumably we will get to a point where the poorest paid jobs are equally distributed. However, that is not the fundamental problem here. The problem is that we have created what may be regarded as an occupational pyramid – with the bulk of least well-remunerated occupations forming the base of the pyramid and comparatively few well-remunerated occupations at the top. There are a number of consequences that flow from this. Firstly, decision making within a society is determined by where one sits on the pyramid – there is no requirement in Rawls’s theory that such decision making should be democratic. The obvious result is that distributive inequalities may be perpetuated *even in a well-ordered society*. Secondly, the nature of this structure is embedded in our culture to the point where it is seen as perfectly normal, with the result that we become blind to it. Thirdly it also provides us with a justification for global inequalities among nations.

The concept of justice as fairness is designed to ensure people have the means to pursue their life plans. We would expect that different plans yield different outcomes; there is no demand that everyone enjoys an equality of wealth as long as the gap between the rich and poor is no ‘wider than the gap of reciprocity allows, so that the least advantaged ... have sufficient all-purpose means to make intelligent and effective use of their freedoms and to lead reasonable and worthwhile lives’ (1999 p114). But just as at the domestic level it is the degree to which

the basic structure is well ordered that determines how just a society is, at the global level the basic structure will play a critical role in ensuring that all states have the means to pursue their own ends subject to their reciprocal obligations to one another.

However, as the discussion of the Anthropocene highlighted, the actions of sovereign states even when carried out within their borders can have unintended consequences beyond those borders. No longer is it sufficient to consider military intervention as the only way other nations impact on a state's ability to be truly self-governing. Linklater (1999) identifies seven spheres of justice which can have an impact on the state's capacity to act autonomously.

These may be summarized as:

1. The distribution of the world's resources. There was a time when countries tended to be internally self-sufficient. International trade was predominantly in luxury goods; life would go on were those supplies to be suddenly cut off as they were for example in 1492.⁷⁶ But 500 years later we live in a very different world. We live in a world where we have become reliant on technologies that are dependent on scarce resources like lithium for our mobile phone batteries, satellites to service our communication networks, and oil to fuel the transport that brings food into our cities. Indeed as the world is becoming more urbanized (an estimated 50% of the world's population lives in cities: (Cohen 2006,)) and nations are relying on technology to bring in the food they need. Therefore if that supply line is cut for any reason there will be major food shortages.⁷⁷ Surely at the very minimum one would expect that national autonomy would mean that the state is able to feed its citizens; but the more states rely on imported resources the less the state can claim autonomy.
2. The problem of transnational harm. For the past few years people in Singapore and Malaysia have had to put up the smoke from forest fires in Borneo. Similarly, we have learnt to our cost that the fallout generated from a nuclear accident is no respecter of borders. In addition, infectious diseases are no respecters of borders. To

⁷⁶ The fall of Constantinople in 1492 meant that the Silk Road was closed to Europe. This in turn ushered in the growth in maritime trade as European nations sought to find other ways to gain access to India and China.

⁷⁷ The 2010 eruption of Eyjafjallajökull brought this home. The disruption of air traffic meant that farmers in Africa could no longer send their produce to the UK. As a result of this one natural disaster there was a cascading series of problems that were beyond the means of national governments to solve.

safeguard citizens, states need to co-operate with other states. This in turn serves to undermine their autonomy.

3. Unequal access to participation in global institutions. The Bretton Woods Agreement led to the establishment of the World Bank, the International Monetary Fund (IMF) and the World Trade Organization (WTO). Although these institutions have an impact on every society they are effectively managed by members of the so-called G8.⁷⁸ The way these institutions compromise the capacity of nations to deliver social justice is well summarized by Brian Barry:

the net result of these policies [most notably those of the World Bank and IMF] is to hamstring the efforts of reforming governments to get anything significant done by way of equalizing the distribution of wealth and income or providing high quality public services to all of their citizens. (B Barry 2005)⁷⁹

Here national autonomy is compromised by the global financial structure; Singer's so called 'golden straitjacket'. In order to get the money they need to develop, countries need to reform their institutions as directed by the IMF or the World Bank. It is true that not all nations rely on these institutions but many do.

4. Managing the global environment is by far the biggest challenge. Domestic autonomy is challenged by the way we look after the global commons. We are now discovering that human activity can trigger earthquakes and volcanic eruptions (McGuire 2012).⁸⁰ The beginning of our understanding of the way human activity is placing all our welfare at risk was probably *Silent Spring* (Carson 1962). Carson documented the impact of DDT on birdlife with the result that DDT was banned.⁸¹ The biggest problem in managing the global environment is probably ontological. As yet we are a long way from a universal consensus regarding the nature of the world and our relationship to it. In the literature there is a tendency to refer to ecosystems and it is a perfectly reasonable way to look at the world. However, it can also be misleading if it results in a failure to recognize that all these ecosystems make up one earth system. The butterfly flapping its wings (Gleick 1988) is not just a far-fetched metaphor to

⁷⁸ The Group of 8 consists of the largest industrialized democracies: Canada, France, Germany, Italy, Japan, Russia, the United Kingdom and the United States.

⁷⁹ The way these institutions operate makes quite depressing reading. Barry is by no means the only one to document their failure (see Stiglitz 2002, Sands 2005, Collier 2007, Stiglitz et al. 2010).

⁸⁰ There is now a global online database documenting human-induced earthquakes (Wilson et al. 2017).

⁸¹ On a regular basis there are unsubstantiated reports that there is a move for its re-introduction.

understand chaos theory; it also describes the way events far removed from a particular polity can have adverse consequences.⁸²

5. Migration and resettlement. On the one hand, the implication of the principle of free trade is that it should allow for free movement of labour. However, that can create other problems. Free movement of healthcare professionals can result in some developing nations having insufficient professionals even though they have invested in their training.
6. Respect for cultural differences. This is perhaps the most contentious and difficult area. Cultural differences are not fixed and change in response to technological development but at the same time we cannot ride roughshod over cultural sensitivities. The problem is that our global institutions see the world through the prism of the Enlightenment. This in turn means that, even if those institutions have a perfectly adequate response to the problems that we face, the solutions tend to be constructed in a way that makes little sense to people from some cultures. Cultural diversity impacts on domestic autonomy in that if the proposed policies lie outside the dominant cultural framework then there is no way to make a coherent response. Colonial history is replete with examples where Europeans came in to ‘buy’ land from a people that had no concept of private property.⁸³
7. Speciesism tends to be discussed in terms of animal rights or in terms of the suffering that our activities impose on animals. There is by no means global consensus about how animals should be treated. In the global arena we are finding that environmental law as it concerns the way individuals treat animals is becoming contentious; in some instances (e.g. whaling) some countries view international agreements as an unwarranted intrusion on domestic practices (Bodansky 1999).

These seven spheres have the potential to yield conflicting policy directions. They create global pressure points where disagreements are not readily resolved. However, this is not an insurmountable problem. In Chapter 3 I discussed the way Rawls uses public reason to resolve conflicts in the domestic setting. Rawls argued that, once the two principles of justice

⁸² The challenge of climate change is the example par excellence. As this is a global problem it can only be solved by global action; the tragedy is that everyone feels the impact whether they are a net producer of CO₂ or not.

⁸³ The impact that the colonial past has on the present is a topic that merits an extended discussion of its own. Once we establish an ideal theory of global justice, a theory that describes fair terms of co-operation we can look at the non-ideal theory concerning its implementation. It is at this stage where I will expect that historic claims of injustice will need to be settled.

are agreed to, then conflicts may be readily resolved. Public reason ‘specifies at the deepest level the basic moral and political values that are to determine a constitutional democratic government’s relations to its citizens and their relation to one another’ (1999 p132).

In constructing a Rawlsian ideal theory of global justice we can see how public reason may be used to resolve international conflicts. We must presume that each polity wishes to be autonomous. That clearly is analogous to the assumption on which Rawls bases his theory of justice, for he assumes that the contract is between people who are free and equal; that is, they are all autonomous individuals who acknowledge that there are benefits arising out of co-operation. We can then consider the seven spheres as a problem of reciprocity. In each instance states recognize that if there were no other states on the planet each of the seven spheres could be dealt with by referring to the two principles of justice. The problem is that we are now dealing with many states and there is no guarantee that all subscribe to the two principles of justice.

When Rawls came to determine how his theory of justice could be extended to the field of international relations, he determined that ‘a Society of Peoples is reasonably just in that its members follow the reasonably just Law of Peoples in their mutual relations’ (1999 p5). He had categorized the world’s states as reasonable liberal peoples, decent peoples, outlaw states, burdened societies and benevolent absolutisms (p 4). The extension of the social contract to international relations was confined to the first two. With respect to the other three, as people are excluded from participating in the decision-making process, Rawls felt that the domestic social contract could not be extended to them. This was a fatal error; it can seem to reduce much of *The Law of Peoples* to an irrelevance, however, as Rawls states ‘the Law of Peoples is “universal in reach” in that it can be extended to give principles for all relevant subjects.’ (LOP p86)⁸⁴ Certainly, that is true but it is a world with multiple, sometimes overlapping jurisdictions. In terms of ideal theory the mathematics of fractals provides us with a Rawlsian model – each fractal complete and well ordered and replicated ad infinitum through the various jurisdictions. It is also high idealized and just as with fractal

⁸⁴ I would suggest that much of the discussion in §8 may be applied to a Rawlsian version of global justice. I am not alone in arguing that whilst Rawls is not a cosmopolitan his account of the relationship between peoples provides us with a plausible foundation for a global theory of justice. (See Wenar, L. (2006). "Why Rawls is not a Cosmopolitan Egalitarian." Rawls Law of The Peoples A realistic Utopia?: 95-113.

geometry one misplaced decimal point can destroy the pattern so in the real world those well ordered models of society remain elusive. (Pogge 2008)

Pogge ignores the requirement for a global basic structure to ensure that the burdens and benefits arising out of social co-operation are fairly distributed. This in turn would seem to commit Rawls to some form of world government, a commitment he rejects as leading either to some form of global despotism or some form of fragile empire as the various peoples seek autonomy (1999 p36). Instead he appeals to Kant's *foedus pacificum* (p84) as a justification for restricting the reach of *The Law of Peoples*. Pogge rejects Rawls's analysis and asserts that we now have enough evidence that a global world order united under the principles of justice 'is workable and no obstacle to stability and justice (Pogge 2008 p355) . I do not share Pogge's confidence. When Pogge made this assertion, he could hold up the EU and the USA as possible examples of large, stable federal systems.⁸⁵ However, the world has moved on yet again. The EU is facing the reality of one of its largest member states leaving. Furthermore, a significant number of members of the EU parliament have been elected on a platform of leaving the EU.⁸⁶ In the USA the Trump presidency is creating significant tensions – individual states have the resources to resist some of the President's initiatives. Neither can be regarded as stirring examples of successful federations.

What is becoming increasingly obvious is that local autonomy is prized. What is also becoming clear is that Rawls was right in avoiding the use of the terms 'state' or 'nation' when constructing his law of peoples. In the world in 2018 one does not have to look far to find a separatist movement of some sort. Whether we are referring to the ongoing rumblings of discontent from within the UK, the attempt at independence in Catalonia, the attempt to roll back central fiscal authority in Northern Italy, the recent break-up of Yugoslavia and Czechoslovakia, and of course the ongoing skirmishes in Asia, Africa and South America – all suggest that Rawls may well have been right that a federal system is simply beyond us. But equally this cacophony of demands for regional autonomy provides us with a clue as to

⁸⁵ Although even at the time he wrote his article there were those who were sceptical about the stability of the EU.

⁸⁶ Determining where individual member states stand on European federalism is by no means straightforward. All that can be said with any degree of certainty is that support for European federalism ranges from enthusiastic support to strong opposition (McElroy and Benoit 2007). Benoit, G. M. a. K. (2007). "PARTY GROUPS AND POLICY POSITIONS IN THE EUROPEAN PARLIAMENT." PARTY POLITICS 13(1).

what may well be possible, how Rawls's theory of justice may be applied and extended to cover the demands of global justice.

If we take the demand for local autonomy as a given then we have a parallel with the assumption on which the theory of justice is based. The assumption, as Rawls never fails to remind us, is that individuals want to live in a society that enables them to live as free individuals, and enables them to implement their realistic plans of life. His theory of justice, designed as it is for a closed society, does make one critical assumption – namely that the capacity of a society to implement the principles of justice is not hindered by the way other states manage their polities. We know he makes that assumption, for he states that every society can realize just institutions (1999 p119). Furthermore, he does not mention the problems identified by Linklater as the 'spheres of justice' among the eight principles he lists for justice among free and democratic peoples (1999 p37). Both these references suggest that Rawls did not consider the possibility that the implementation of the principles of justice could be frustrated by factors outside a polity's control.

Perhaps we should revisit Pogge's (1989) proposal that we extend the theory to the world as a whole. It would also overcome Singer's objection that *The Law of Peoples* and *A Theory of Justice* are in conflict. Singer points out that in *A Theory of Justice* Rawls

argues for a system of justice in which 'no one is disadvantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances.' Now [i.e. in *The Law of Peoples*], however, he declares his theory *indifferent* to something as contingent as which side of a national border one happens to live. (Singer 2002 p177)

Singer holds that these two positions are irreconcilable. Singer is mistaken. In the first instance *A Theory of Justice* deals specifically with a social contract between citizens – not all citizens, just those who share the same basic structure. We are only too familiar with situations where one's entitlements are determined by where one lives. In one country homosexuality attracts the death penalty; in another they can marry. In one country women are denied the right to abortion; in another they can have an abortion. In terms of Rawlsian justice what one can and cannot do in another jurisdiction is not at issue. What is just is determined by the principles of justice. These principles apply to the basic structure in your jurisdiction. This is not to deny that a moral conception of justice knows no boundaries, but rather because Rawls's theory is a political conception of justice we can legitimately argue that its provisions are constrained by national boundaries.

As we saw in Chapter 3 the role of public reason in Rawls's theory is to provide the means to resolve conflicts without demanding that the parties surrender their comprehensive doctrines. We can endeavour to do something similar on a global scale. We have established that Linklater's seven spheres amount to at least seven discrete challenges to domestic autonomy. The degree of significance of each of these challenges may well vary across polities but nonetheless they do amount to a palpable threat to domestic political autonomy. We need to develop a global basic structure in response to those threats.

I wish to argue that, following from the discussion in the previous chapter, all states irrespective of what their domestic arrangements may be would be sympathetic with the idea of sustainable development as defined in the Brundtland Report: 'sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs' (WCED 1987 p1)). If our global theory of justice is designed to define the terms of co-operation using this definition of sustainable development as the basis, then it would seem that we have a sufficiently neutral concept on which to base our global theory. (This is not to deny that the burdens of judgement will present a problem, but it can form the basis for an ideal theory of global justice.)

Rawls identifies five different aspects to public reason:

1. the political questions to which it applies
2. the persons to whom it applies
3. its content as given by a family of reasonable political conceptions
4. the application of these conceptions in discussions of coercive norms, and
5. the principle of reciprocity (1993 p442).

As discussed in Chapter 3 these five aspects make up what may be described as the political conception of justice. Public reason is designed to inform discussion in what may be regarded as the public political forum. That forum at the domestic level consists of 'the discourse of judges in their decisions ... [and] the discourse of government officials' (1993 p443). In addition, he argues that legislators, both when running for office and when in office, structure their arguments and policy platforms by reference to the two principles of justice.⁸⁷

⁸⁷ Rawls is referring here to his ideal theory where the basic structure is based on the two principles of justice.

It cannot be assumed that one can use public reason to resolve all disputes. Rawls acknowledges the complexity involved with developing practical policies based on the principles of justice. One of Sen's criticisms of Rawls's theory of justice is that it does not help us in 'comparative assessments of justice and therefore in the choice between alternative policies' (Sen 2009 p100). Rawls anticipated this difficulty and provides us with an account of what he calls 'the burdens of judgement and to accept their consequences for the use of public reason in directing the legitimate exercise of political power in a constitutional regime' (1993 p54).

The burdens of judgement essentially deal with practical problems that we face in arriving at an appropriate policy decision. Rawls discusses this in terms of the domestic situation. In the domestic setting he states that any problems associated with reasonable pluralism 'can be overcome only by the oppressive use of state power' (1993 p54). Clearly if we migrate this problem to the global sphere then we do not have the capacity to use state power to overcome problems associated with a diversity of opinions. However, it is not merely the fact that there is no global coercive power that is the problem. In the domestic situation Rawls argues that differences may arise because 'most people hold views that advance their own more narrow interests ... or people are irrational and not very bright' (1993 p55) and consequently this results in conflicting opinions. Now merely translating these causes for differences of opinion to the global stage does not eliminate them – if anything they become more complex. At the domestic level Rawls asks: 'we want to know how reasonable disagreement is possible for we always work at first within ideal theory' (1993 p55). When it comes to determining disagreements at the global level we may need to start with the non-ideal situation in which we find ourselves.

The seven spheres of justice identified by Linklater are, in part, a product of our history. If we consider the history of the twentieth century with reference to the leaders that took their nations either to independence or revolution we will note that almost without exception they were well-educated. Not just well-educated but most had studied in Europe.⁸⁸ The relevance of this fact to our argument is that we can safely assume that the people who will be making decisions about the direction their country will take are far from stupid, nor are they unable to see that it may well be short-sighted to pursue national interests over the wider interests of

⁸⁸ Mao Zedong was one of the rare exceptions educated exclusively within China, but Zhou Enlai had been educated in Paris.

humanity. That is the good news. The bad news is that international agencies like the IMF and World Bank seem to be placing the needs and concerns of the developed world first.

Brian Barry is by no means the only one to document the way the IMF works:

Countries are also compelled to sell off their public services to the highest bidder – usually a foreign company which proceeds to make its profits by supplying essential public services only to those who can afford its prices, while making no effort to ensure that supplies are even available in poor areas that do not promise the prospect of a good return on capital. (Barry 2005 p29)

If this strategy is obvious to a western commentator, is it not equally likely that the educated elite in the developing world will have noticed the same thing? Is it not equally likely that they will have done the maths as Piketty (2016) did in determining to what extent the western lifestyle is the product of a rich legacy of slavery and colonialism? What this means is that for the purposes of practical politics the West starts with a trust deficit. That trust deficit is further undermined when it comes to human rights rhetoric. The developed world is very quick to point to human rights abuses in the less developed world yet is silent on the way supranational organizations systematically deny human rights to about 50 per cent of the global population, as I will discuss further below.

At the domestic level we can use ideal theory as a means for justifying the use of the state's coercive powers to overcome disagreements, if and only if at the same time we have applied public reason in determining its policies. Consider discussions surrounding same-sex marriage. There are segments of the community for whom this very idea is anathema. They use all the constitutional means open to them to resist the introduction of same-sex marriage. However, once a government has observed due process and legalized same-sex marriage, then the government can claim it is legitimate to use its coercive powers to implement that decision, for example, by forcibly removing people who seek to disrupt a same-sex marriage ceremony.

Given that I am not arguing that there should be global coercive powers to implement any global theory of justice it becomes important to consider how public reason, when translated to global justice, can shape the discourse so that there will not be any need to rely on coercive powers to implement global policies. To do this we do need to start with an ideal conception. We need to assume that in constructing a global social contract all the parties are reasonable and 'have an enduring desire to honor fair terms of co-operation and to be fully co-operating members of [global] society' (1993 p55). Once we accept this premise we need to consider

the challenges that are presented by the application of public reason, the so-called burdens of judgement.

As discussed in Chapter 3 with reference to the domestic situation these may be grouped under six headings. Firstly, there can be legitimate disagreements about the empirical evidence. Secondly, we may have legitimate disagreements regarding the way we weigh up different factors in arriving at a decision. Thirdly, there is the reality that there is a degree of indeterminacy about our concepts. This last idea requires some explanation. The idea of indeterminacy may perhaps be best explained with the following metaphor. Imagine you are standing on the edge of the ocean. You want to learn more about the ocean but all you have is a little bucket. So, you take a sample of water from the ocean. You analyse that water, you count the life in that bucket and then endeavour to develop theories about the ocean. Whilst the water from your little bucket can tell you a great deal, the theories you develop about the ocean are at best tentative. In understanding the impact we are having on the planet, we are not unlike the person standing on the shore with his little bucket attempting to understand the nature of the ocean. You can make some excellent guesses but ultimately you know that the possibility exists that your theories are in error. These three are of particular relevance to the problem of climate change, creating what may be referred to as the moral storm of climate change. If, for the purposes of this argument, we leave aside those people who dispute the reality of anthropogenic climate change, we are still a long way from framing suitable policy responses. But it must not be supposed that climate change is the only issue – part of the problem appears to be that the Enlightenment project has set unrealistic expectations of our capacity to understand the problems that we face. Fourthly is the fact that our responses to situations are in part informed by previous experiences. It is here that the great acceleration described by Steffen, Persson et al. (2011) is significant; when the pace of change quickens, past experiences can get in the way of our understanding of how to address the problems we face. Fifthly, there are normative considerations about which there can be legitimate differences without violating the principles of justice. This is particularly true in the global sphere. Finally the sixth consideration Rawls refers to as the fact that any system of social institutions

is limited in the values it can admit ... in being forced to select among cherished values, or when we hold several and must restrict each in view of the requirements of the others ... Many hard decisions may seem to have no clear answer. (1993 p57)

When Sen argues that a transcendental theory is not a great deal of help in selecting among alternative policies, he seems to be implying that it is possible to develop a theory that overcomes the so-called burdens of judgement. But these burdens of judgement are not restricted to transcendental theories. They will apply to any theory of justice; they are a reality of practical politics and no matter how we may wish for it to be otherwise there will always be some problems that do not admit of an unambiguous solution.

What an ideal theory of justice does provide is the means of ruling out some choices as violating the basic principles of justice. Yet the problem that the post-Westphalian world throws up is the fact that the participants in that public forum of political decision making do not all operate within the same political arena. We can demonstrate that the seven spheres of justice⁸⁹ impact on the autonomy of individual nations, but that alone is not enough to frame a set of policies to address this. It is for this reason that we need to start with an ideal theory of justice, one that all peoples can subscribe to, irrespective of the nature of their government or their domestic beliefs about the role of government.

It is not realistic to structure a global theory of justice on liberal principles for these are not universally shared. This is evidenced by the fact that, although most polities are signatories to the Universal Declaration of Human Rights, the interpretations of their consequent obligations can vary widely.⁹⁰ Yet the fact that interpretations differ is not necessarily a bad thing. There was a time when the idea of universal human rights was well beyond the limits of practical possibility; the fact that the concept of human rights now forms an accepted part

⁸⁹ These were: 1. Resource distribution, 2 Transnational harm, 3, Unequal access to global institutions, 4 the global commons, 5 migration, 6 cultural differences, 7 speciesism

⁹⁰ The debate about cultural relativism and human rights has been prominent among Anthropologists perhaps best summed up by Preis (1996): 'Forty-eight years have passed since the American Anthropological Association (AAA) issued Melville Herskovits' now well-known rejection of 'the applicability of any Declaration of Human Rights to mankind as a whole'. The statement explicitly emphasized that '[t]he rights of Man in the Twentieth Century cannot be circumscribed by the standards of any single culture, or be dictated by the aspirations of any single people'; a situation which would 'lead to frustration, not realization of the personalities of vast numbers of human beings'. The following year, Julian H. Steward reconfirmed this position in rather undisguised terms: '[W]e are prepared to take a stand against the values in our own culture which underly [sic] such imperialism'. Since then, anthropologists' opposition to, or at least peripheral interest in, human rights formulations has remained somewhat commonplace both inside and outside of the discipline. Indeed, if one could point retrospectively to the major intellectual contributions of social anthropology in the twentieth century, it would consist of '[t]he observations that other people's truths are contained in their own classifications and understanding, and that our own culture offers no self-evidently privileged standard of verity ...' This perspective has pervaded the discipline as an ethical undercurrent despite the emergence of different schools of thought and various theoretical directions.'

of political discourse has pushed the boundaries of what constitutes practical possibility a little bit further out. It alerts us to the reality that the limits of practical politics are not fixed; they vary from generation to generation.⁹¹ But this also means that in considering global justice one can start with a comparatively parsimonious view in the knowledge that over time as that view is consolidated the boundaries can be extended further out.

We know that globally we are dealing with polities that have grown out of a rich diversity of comprehensive moral and religious theories. Central to the idea of public reason is an argument that runs as follows. All citizens accept the idea of constitutional liberal democracy. Citizens know that the idea of a constitutional liberal democracy is not in conflict with their beliefs. Public reason deals with ‘fundamental political justice: ... constitutional essentials and matters of basic justice’ (1999 p135). Therefore committing to public reason does not require abandoning one’s comprehensive moral or religious theories.

We can rightly point to the global sphere and claim that, given there is no universal commitment to liberal constitutional democracy, it follows that there is no basis for public reason. Unless we can find a universally shared normative criterion on which to base global public reason, there is simply no common ground on which to base a normative global structure. In constructing a Rawlsian theory of global justice, I argue that the idea of just savings provides such a universal normative foundation.

However Pogge’s lecture on Global Justice ⁹²provides us with the basis for a global theory of justice that can be endorsed by people wherever they happen to live. My reservations concerning the Anthropocene were simply that, although it poses a threat to the future of humanity, it can be ignored – we have an impressive track record of ignoring unpleasant truths; we seem to have an infinite capacity to rationalize real problems out of existence. The moral argument advanced by cosmopolitans will be accepted by some but in the main that argument is framed in terms of what is happening to distant strangers. The problem for political philosophy is that it is not enough to come up with a sound argument; one also needs to ensure that the motivation to act exists. Pogge has developed an argument which I believe provides the additional motivation for people to take action.

⁹¹ The idea of realistic utopianism is by no means new. It is arguably foreshadowed in Burke’s *Reflections on the Revolution in France* (2014) where he argues that political change should come in a steady, orderly way.

⁹² <https://www.youtube.com/watch?v=0z2S4wY4kYo&t=605s> posted 2013.

Pogge's Human Rights Argument

Pogge's (2013) argument is designed to demonstrate that most citizens share responsibility for human rights violations. Given that his lecture was delivered to an audience in the USA his reference to 'most citizens' was aimed at US citizens. However, it is equally clear from his analysis that 'citizens' could refer to any citizens in the developed world. He arrives at this conclusion by referring us to article 25 and 28 of the Universal Declaration of Human Rights:

25:

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

And

28:

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

By limiting his argument to just these two articles he overcomes some of the problems associated with human rights discourse (see footnote 79). Throughout this thesis I have alluded to the problem of lack of consensus on the content of global justice. I claimed that the state of the global justice debate is well summed up by Nagel when he states that 'concepts and theories of global justice are in the early stages of formation, and it is not clear what the main questions are, let alone the main possible answers' (Nagel 2005 p113).

The argument Pogge presents is not designed to provide a full-blown account of global justice but rather an attempt to address what is universally acknowledged as a major shortcoming in the international order: poverty. Furthermore, he bases his argument on just two articles of an international declaration which almost all of the world's sovereign states have pledged to uphold. It is my contention that by coupling Pogge's human rights argument with the Anthropocene/just savings argument we have the foundation for a Rawlsian conception of global justice based on public reason.

Throughout his discussion Pogge distinguishes between negative duties and positive duties. With respect to human rights we have a requirement to abstain from actions which impinge on human rights. We do not have a positive duty to combat human rights abuses. This is an important distinction. One of the problems with global justice discourse concerns the right to interfere in the domestic policies of other countries. If we are aware of human rights abuses, do we have a duty to intervene? It would seem that Rawls is unambiguous on this point: he states that we have 'a duty to assist other peoples, living under unfavourable conditions that prevent them having a just or decent social and political regime' (1999 p37). However, that is not without its problems. It can lead to what Tasioulas (Tasioulas 2005) characterized as 'global justice without end'. It can also serve as a smokescreen whereby the 'aid' becomes the means whereby the country is, in effect, taken over.

The negative duty on the other hand is far less problematic. The negative duty demands that we avoid taking action that can either exacerbate or lead to human rights abuses. The injunction to do no harm is a moral universal principle that people, regardless of their culture, would agree to.

It follows therefore that if we can demonstrate that global institutions routinely and foreseeably violate article 25 then we can argue that we would be required to either reform those institutions or if that were not possible demand that they be abandoned. It is virtually the first point that Rawls makes: 'laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust' (1971 p3). Therefore, from a strict Rawlsian perspective, if supranational institutions are unjust, then we have a duty to reform or abolish them. Even if we restrict the discourse to the duties and obligations applying to a closed society it would follow that such a society should not be party to such supranational institutions.

Furthermore, if we can demonstrate that the present rules that apply to the world economy foreseeably produce massive human rights deficits then we have also demonstrated that the current rules/institutions are unjust and need to be changed or reformed, or at a very minimum we should withdraw from those institutions. If it is the case that those supranational institutions are so deeply embedded that withdrawing is not an option, then we have a duty to reform them so that they are no longer unjust.

Therefore, it is critical for Pogge to make the case that the current world institutions are in fact unjust. The evidence that Pogge (2013) presents is that, out of a world's population of 7 billion, 868 million are chronically undernourished, that is, their calorie intake is less than what is required for a sedentary lifestyle, 2000 million lack access to essential medicines, 783 do not have safe drinking water, 1600 million lack shelter, 1600 million lack electricity, 796 million adults are illiterate, and 216 million children between the ages of 5 and 17 are in paid employment outside of the home. Furthermore, a third of all deaths may be attributed to health problems that are a product of chronic poverty.

Of course, those facts of themselves do not demonstrate that supranational institutions are unjust. Nor does the fact that 25 per cent of the world's population holds 90 per cent of the world's income demonstrate that we are dealing with institutional injustice. Furthermore, we can point to the fact that the poor are better off today than they were some fifty years ago. Does that not mean that our institutions are doing a good job? However, as Pogge points out, global economic growth has favoured the wealthy over the poor; had their income kept pace with economic growth then chronic poverty would have disappeared. But even that fact does not demonstrate that the global institutions are responsible. We can find many underdeveloped countries that have bucked the poverty trend; does that not show that local factors shape poverty? Pogge concedes that local factors influence poverty but that of itself does not refute that global factors exert an influence. The question remains open – it is entirely possible that global institutions are responsible for ensuring that poverty persists and that they therefore need to be changed.

We can demonstrate that there is a problem by considering the impact the Bretton Woods three pillars of global justice have on the way the world economy actually functions. The Bretton Woods pillars have evolved into the World Trade Organization (WTO), World Bank and International Monetary Fund (IMF). Whilst there was a time that we held out the pious hope that these three institutions would be the basis for global justice, that hope has long since been dashed. Economists like Stiglitz have shown that these institutions have been responsible for decisions that favoured the wealthy developed nations over the underdeveloped nations: 'All too often the IMF forged policies which, in addition to exacerbating the very problems they sought to address, allowed these problems to play out over and over again. (Stiglitz 2002 p19)

To understand why that should happen we need to turn to an explanation offered by Steinbeck (1939). *The Grapes of Wrath* dealt with a period in American history when farmers from central USA were forced off their land by foreclosures. As their farms were repossessed they were consolidated in large properties. One of these dispossessed farmers decides to take action. He discovers that someone is operating a bulldozer on his land so he takes his gun and intends to shoot him. When he confronts the bulldozer operator he discovers that he too has been dispossessed. The tractor driver explains that this is the only way he could put food on the table for his family. So our shooter asks who gave him the order to clear the land, for clearly that is the person he needs to shoot. But he discovers that that person, too, is only doing what he is told. As he explores the chain of command he discovers that there is no-one to shoot – these are all basically normal, good people trapped in the rules of game over which they have no control. I would like to suggest that is how we need to see the operation of the WTO, IMF and World Bank – they were institutions set up with good intentions but when their actions led to bad results there was a tendency to blame other factors and simply persist with administering the institutions.⁹³

I suspect that part of the problem with the Bretton Woods strategy may be that the architects of the agreement based their thinking on what seemed to work in their domestic economies. The misquoted what is ‘good for GMH is good for America’⁹⁴ provides an important clue. The misquotation dates from the early 1950s and encapsulates the belief that large corporations were a force for good. What was seemingly ignored was that corporations like GMH worked in a regulatory environment that ensured that fair wages were paid and labour conditions were fair. Remove the coercive power of the state and you encourage corporate strategies which prioritize the interests of corporations above the interests of the community.

Given that so called ‘trickle-down economics’ has manifestly failed, why have leaders in the developed world persisted with the strategy? Stiglitz has been far from a lone wolf crying in the wilderness. Nor can we sheet home the blame to ideological differences: whilst Marxists have been critical they have not been the only critics. Pogge (2013) points to a number of

⁹³ This is one of the major challenges of making reforms. The mindset is exemplified by Simpson (2005). He argues that there is nothing wrong with neo-liberal economics (the so-called Chicago School), but it is a failure of government to implement it fully and not compromise on the free market ideology.

⁹⁴ In 1953, President Eisenhower nominated GM’s CEO Charles Wilson to be Secretary of Defence. During his confirmation hearings he stated that ‘for years I thought what was good for the country was good for General Motors and vice versa’. This has been popularised as what is good for GMH is good for America (see Wikipedia 2018).

factors that have caused the present system to persist even though it clearly is not delivering. For example, the WTO was formed to remove protectionist policies – creating a global free market would give developing countries a chance to compete. Yet protectionism has a history of failure – the developed countries still have barriers to some products and subsidize their industries, so that developing nations cannot compete. Hence the domestic industries of the poorer nations tend to be underdeveloped.

Part of the WTO is the so called Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). On the surface it is a perfectly fair and equitable way to protect intellectual property. Companies argued that, after having invested heavily in research and development to produce new products, their patents should be protected and enforced. Thus, every nation that signs up to the WTO is also required to sign up to TRIPS. The problem is that this has severely disadvantaged developing nations especially in the area of pharmaceuticals and seeds. I will return to the questionable nature of the TRIPS agreement below. For the present suffice to say that the health problems experienced by many in underdeveloped countries can be addressed if their governments can afford the medicines. If those medicines are only available at inflated prices, prices that the bottom 10 per cent of the world's population cannot afford, then clearly we have a system that is weighted against the poor.

Tax avoidance is a problem that plagues all countries. In the previous chapter I established that there is a cost associated with implementing the principles of justice. Governments meet those costs through taxation. If we have a global system that enables those corporations or individuals who have income to avoid paying some or all of the taxes that are due then the government has fewer funds at its disposal to meet the needs of the population. For the majority of citizens, the extent of their tax avoidance depends on how creative they are with their accounting methods. However, this is not true for large corporations. They can avoid taxes at little cost. Suppose my company produces widgets in India. Having produced my widgets, I now need to sell them at a profit. Luckily, I know that consumers are ready and willing to buy my widgets. But that will mean I will be taxed in India on my profits. Furthermore, I will also be taxed on the profits I make in Canada. Fortunately I have an accountant who can solve these problems. Firstly, I establish Widgets Inc in the Cayman Islands. It is perfectly legal for a person to own more than one company. In Canada I set up the Acme Widgets Company and of course in India I own Kohinoor Widgets – very much the

jewel in the crown as far as my little business is concerned. Kohinoor Widgets enters into a contract with Widgets Inc to sell all of its product to it. Widgets Inc regrettably drives a hard bargain and Kohinoor is lucky to break even, but at least there are no taxes to pay. Kohinoor in the Cayman Islands manages to sell all the widgets to the Acme Widgets Company. Yet again I find myself outwitted and discover that the price Acme pays for the widgets is a fraction of the costs. Fortunately, I own all three companies and, whilst the Canadian and Indian enterprises have made next to nothing, at least the Cayman enterprise has made a substantial profit. Even better for me is that the Cayman Islands collect very little tax, a tax that my company, as a good corporate citizen, is more than willing to pay. Sadly, my enterprise struggled in both India and Canada so not only did I not make any profits, I am eligible for government subsidies to keep my business going.

Morally what I have just described will be regarded by some as grand larceny yet it is perfectly lawful. Furthermore, we can argue that we should not expect multinational corporations to do anything else. For corporations are not states. Arguably states have an obligation to conduct their affairs in the interests of all. Corporations on the other hand have an obligation to return dividends to their shareholders. If a corporation has a number of subsidiaries in different nations, then sound business practice would be to structure your affairs so that you minimize your tax liability. In the above example we can argue that the reason tax was minimized was because of the legal fiction that the widgets actually went to the Cayman Islands. All that happened was that the Cayman Islands subsidiary bought the widgets and sold them on to Canada – the widgets themselves were exported direct from India to Canada.

All nations rely on tax revenue to provide for their citizens. Under normal circumstances both India and Canada could have anticipated getting tax revenue from the manufacture and sale of the widgets. Instead all the profits were, on paper at least, generated in the Cayman Islands where the rate of corporate tax is zero. Arguably it makes only a minimal difference in a developed nation like Canada. But India can hardly afford to lose any revenue. As the release of the Panama Papers has shown, tax avoidance is a major issue for all nations. The so-called ‘Panama Papers’ contained details of the scale of tax avoidance and money laundering that wealthy individuals and corporations use to avoid paying tax. Some of it was legal, some not. The public outcry it engendered indicates that people, irrespective of their nationality, regard

it as unfair and unjust that some people can avoid paying tax. We can further claim that closing such tax avoidance strategies would enjoy widespread popular support.

But what we do know is how that supranational structure has been applied not only to frustrate the attempts to recognise basic human rights but also more generally to shape the political environment.

Pogge's argument may be summed up as stating that we have a negative duty not to harm. Under the supranational order the human rights of almost 50 per cent of the world's population will continue to be violated. The resultant human rights deficit can be addressed by a change in those supranational rules. Therefore, if we support or tolerate these unjust policies, then we are culpable and share responsibility for the resultant human rights violations.

One would have thought that some action would have been taken, if only to change the global tax system to reduce or eliminate tax avoidance. Whilst Pogge framed his discussion in terms of human rights violations, one can readily see that people in all nations would welcome a concerted effort to reduce or eliminate tax avoidance.

As far as the IMF, World Bank and WTO are concerned the US government sets the rules. Not in a formal way but it remains by far the most important member of these organizations so the chances of making far-reaching changes without US support is minimal. We know that corporations lobby governments to ensure that they are not penalized by any government actions. Now it is difficult to evaluate how effective that lobbying has been. We do know that in the first five years of this millennium the fees charged by lobbyists increased by 100 per cent. (Alexander 2009) Clearly people would not be willing to invest in lobbying activities if they did not see it as a sound investment. The problem is that it is very hard to provide a cost-benefit analysis as researchers seeking to measure rates of return on lobbying expenditures 'are hampered in their efforts by two primary obstacles: (1) An inability to measure the monetary returns received by interest groups in exchange for lobbying expenditures; and (2) the difficulty of isolating lobbying expenditures devoted to a particular piece of legislation.' (Alexander 2009 p402) were able to quantify the value of lobbying by focusing on one activity that is in the public domain. We discussed earlier the fact that corporations can avoid tax by 'parking' their profits in the Cayman Islands.

A tax provision lobbied for by United States (U.S.) multinational corporations and passed by Congress in 2004 overcomes these measurement obstacles and provides a unique opportunity to quantify the returns to lobbying. The provision at issue, part of the American Jobs Creation Act of 2004 (AJCA), allowed U.S. corporations with multinational operations a one-time opportunity to deduct 85 percent of dividends received during a single year from a foreign subsidiary, thereby effectively paying tax on only 15 percent of this repatriated income ... by collecting lobbying data disclosed under the Lobbying Disclosure Act of 1995 ... Using this data, our study identified 496 firms reporting repatriations under the auspices of the AJCA ... Our data further revealed that those corporations that lobbied for the tax benefit spent \$282.7 million on lobbying expenditures and received \$62.5 billion in tax savings, resulting in an average return in excess of \$220 for every \$1 spent on lobbying, or 22,000 percent. (Alexander 2009 p404)

Of course we do not know whether this is an exceptional or typical result but it does confirm that investing in lobbying is an effective way in which corporations can protect their interests.

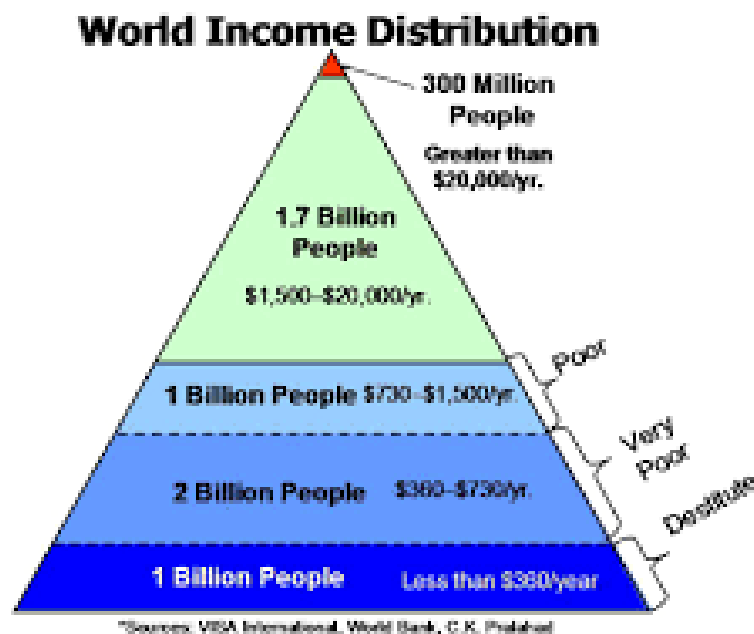
Pogge used Alexander's research to illustrate an American audience the influence that domestic lobbyists had on the influence not only of domestic decisions but geo-political decisions.. He reminded his audience that it was their government that was the chief architect of the supranational institutions. Therefore, if they supported or tolerated the unjust policies which led to an undermining of human rights then they were co-responsible. His solution was to demand that we abolish or reform the global institutions, but has he made his case?

Paul Collier (2007) has also exercised his mind on this problem. His description of the problem varies in one important respect: he does not claim that it is the supranational institutions that are the problem. He advocates the use of four instruments: 'aid, security, laws and charters, and trade'. It is not a one-size-fits-all argument but rather one which tailors actions to the various causes of poverty and inequality he has identified. He argues, inter alia, for a post-conflict governance charter. He makes the point that once a conflict has been resolved the developed world is reluctant to use their power to set up a new regime in case they get accused of infringing a country's sovereignty (2007 p178). However, if such a charter is developed before any conflict takes place and is agreed to by all nation-states then it would enable a nation to start afresh. Then Collier argues there will be less cause to be concerned about infringing national sovereignty.

The weakness of both Pogge's and Collier's responses is that they assume that it is sufficient to make the moral case for action. Indeed we may argue that they cancel one another out. Whilst I agree that there is a strong moral case for action on global poverty, the moral argument is insufficient. The problems described happen a long way from home; there will be

greater enthusiasm for political action to address domestic issues than those dealing with problems far away. This is not by way of justification; it is an articulation of *real politik*. Furthermore, we have two accounts of the causes of poverty. Pogge’s account makes the case that global institutions are the problem. Collier’s account seems to be at odds with that. The fact that they agree on the problem but provide differing accounts of the causes provides people with a further reason not to take action.

Yet both accounts are helpful in shaping an ideal theory of global justice. Firstly, we can recognize that Pogge’s argument that global institutions perpetuate global inequality does not just apply to the poorest of nations. It applies to all nations. No citizen enjoys paying tax but they enjoy it even less if they find that there are companies making billions of dollars in profits yet paying little or no tax. Anyone with a computer can Google images of global income distribution. Pogge’s argument that this distribution is a direct result of the way supranational institutions shape the global economy means that we can now develop an argument that it is in most people’s interests to do something about changing the way our economy is shaped. If the focus is on changing the rules so that wealth is distributed more evenly then it follows that one of collateral benefits will be that this time a rising tide will genuinely raise all boats.



World Income distribution source: <https://www.statista.com/chart/1657/32-million-people-control-41-percent-of-the-worlds-wealth/>

We can now couple this with Collier’s call to develop a charter so that we have a model that can be applied in anticipation of possible future problems. Clearly this is another way of

arguing for an ideal theory of global justice. In so doing we need to acknowledge that the problems we face are such that developing a model that is predicated on establishing a world government is unrealistic. A world government will simply not be created in time for that 1 billion people propping up the income pyramid (Collier 2007 p183). For the present we should be content with constructing an ideal theory of justice which will enable us to tackle the problems posed by the Anthropocene and address global poverty.

A Global Basic Structure?

In my discussion of the basic structure I cited Abizadeh: ‘since the primary subject of justice is the basic structure of society and since there is no global basic structure, the scope of justice is domestic’ Arguably one of the features of the post-Westphalian world is the emergence of a global basic structure. Pogge’s argument highlights that a proto global basic structure is in place. But just as Rawls’s theory of justice starts with an original position from which emerges the principles on which the basic structure should be based, so in considering a global basic structure we need to ignore such a proto global basic structure and start with an original position.

We need to consider the implications of the premise on which Rawls’s theory of justice is based: ‘laws and institutions must be reformed or abolished if they are unjust’ (1971 p3). All societies have laws and institutions; therefore if these laws and institutions are unjust then they need to be reformed or abolished. Rawls defined the basic structure as consisting of political, social and economic institutions (1993 p11). Therefore we can substitute ‘basic structure’ for the phrase ‘laws and institutions’ without changing either the sense or the meaning of that premise.

If, for the sake of the argument, we accept the proposition that there is no such thing as a global basic structure then that still does not mean that the scope of justice must be domestic. Abizadeh (2007) argues that the scope of justice is global because domestic decisions can have an impact beyond their borders. That certainly forms part of my argument but there is another argument that makes an even stronger case for a Rawlsian theory of global justice.

With few exceptions⁹⁵ philosophers would tend to agree with Nussbaum that global justice is one of the unsolved problems of justice. Given that one of the roles of the basic structure is to

⁹⁵ Kukathas (2006) is one who doubts the wisdom of pursuing the quest for global justice.

enable or facilitate the implementation of justice (see Chapter 5) it follows that, given our global interdependence, then even if there were no global basic structure it would be incumbent upon us to design such a structure to satisfy the demands of justice.

Yet there can be no doubt that there are global institutions. Unlike domestic institutions, sovereign states can choose to join these institutions or not. The global institutions are covered by international law and seem to operate in a universe of their own:

Important international treaties were not even being discussed in cabinet ... International law was a tightly guarded secret, monopolised by a small elite of foreign offices and civil servants, a handful of transnational corporations and NGOs such as Amnesty International and Greenpeace, a small number of academics, and an even smaller number of lawyers in private practice. (Sands 2005 p4)

Sands was referring to Britain in the late 1990s. It seems to be a credible account. Domestic political discourse tends to pivot around domestic not international policies. Foreign policy rarely figures prominently in election campaigns. When it does it is about what other nations are doing to us, not what we are doing to other nations. International issues tend to come to the fore when there is a palpable threat to national sovereignty. Sands' observation is confirmed by what we can infer from current politics. The Brexit debate and President Trump's idea of making America great again illustrate how ill-informed not only the general public but politicians are about the obligations that nations have under international law. The fact that for much of the population questions of international law are a mystery contributes to the view that globalization is the winter of our discontent (see Stiglitz 2002). We neither know nor understand the implications of the various treaties our governments have entered into. Indeed, one can argue that the current world order fails Rawls's publicity condition; there are no public principles of justice that citizens accept and know, and decisions do not reflect general beliefs about 'human nature and the way political and social institutions generally work nor do decisions reflect the sort of choices we would make when fully acquainted with all the facts' (1993 §4 pp66–67). The global basic structure has no guiding organizational principles. It has evolved in largely an ad hoc manner resulting in a system 'that might be called *global governance without global government*, one in which a few institutions ... dominate the scene, but in which many of those affected by their decisions are left almost voiceless' (Stiglitz 2002 p22, original emphasis).

We have a system that has some desirable features. It enables states to co-operate in matters such as transport and telecommunications, and to protect their citizens against terrorism and

international criminal organizations, to name but a few. But these institutions have developed in an uncoordinated manner, which has created unforeseen problems. This is perhaps best illustrated with reference to the problems with Indonesia's response to avian flu. The Indonesian government freely entered into a number of multilateral treaties. Firstly, it signed a multilateral free trade agreement which included TRIPS, an agreement to protect intellectual property rights. As Sands points out TRIPS is controversial in that it enables pharmaceutical companies to prevent poor countries from using generic medicines in treating complaints such as HIV/AIDS. Indonesia is also a member of the World Health Organization (WHO). One of the objectives of the WHO is to prevent the spread of disease. Few can argue with the goals of that organization. The WHO's strategy to prevent pandemics is to ask participating countries to collect samples of any new strain of influenza so that vaccines may be developed. Avian flu is a new strain of influenza. As a result when it was identified in Indonesia under the WHO agreement Indonesian health workers collected samples of the virus. These samples were supposed to be forwarded to the WHO so that a vaccine could be produced. The Indonesian health workers collected the virus refused to provide it to the WHO. The reason was simple. The virus was to be provided to a pharmaceutical company which in turn would create the vaccine and distribute the vaccine. However, the vaccine would become the intellectual property of the pharmaceutical company; hence it was subject to TRIPS. This in turn meant that Indonesians would not be able to afford to buy the vaccine. So, the Indonesian workers refused to supply the virus. Now we can argue that Indonesia voluntarily entered into the free trade agreement, and it also voluntarily signed up as a member of the World Health Organization. The health workers made a courageous decision; it was a decision not without its risks but, just as in the domestic situation, the decision to resist a particular law does not always result in the full force of the law being brought to bear on the dissident. So too in this case – particularly as there had been independent research indicating that TRIPS as it applied to the pharmaceutical industry lacked integrity.⁹⁶

We therefore have a situation where there is no force of law to bring to bear on Indonesia but at the same time Indonesia risks being sent to 'Coventry'. For just as there is no force of law to protect workers who ignore a direction from their trade union, compliance can be enforced

⁹⁶ This discussion highlights another feature of the concept of scarcity that is seldom mentioned when discussing the circumstances of justice, but which I alluded to in Chapter 6. This is the idea that scarcity is not necessarily an objective condition. Pharmaceutical companies create scarcity by limiting the supply of a drug. Similarly, telcos can create scarcity by rationing the way they provide telecommunications services.

in extrajudicial ways. Similarly, under the above circumstances Indonesia ran the risk of being excluded from benefits. Lawson (Lawson 2010) points out that the decision to withhold the virus samples was not made by the Indonesian government but by the field workers. This serves to highlight an important feature about global governance. Governments can enter into international agreements but whether these agreements will be adhered to will depend on whether the people charged with meeting obligations under the agreement believe that the agreement is fair and just.

When Stiglitz makes the claim that the problem is that we have global governance but not a global government he seems to be taking the Hobbesian view that 'the idea of global justice without a world government is a chimera' (Nagel 2005 p115). The view that Nagel presents is consistent with Rawls's reasons for rejecting the idea of global justice. Nagel goes on to argue that what people need is 'the assurance that their conduct will in fact be part of a reliable and effective system' (p116). This is another way of stating that it adheres to Rawls's publicity condition. But it does not follow that 'the only way to provide that assurance is through some form of law, with centralised authority to determine the rules and a centralized monopoly of power of enforcement' (p116).

But even though we can demonstrate that nations obey international law more often than not, the real question seems to be '*why* do they sometimes obey it, and why do they sometimes disobey it?' Is this an empirical or an analytical question? The short answer is that it is both. We can argue that it can be viewed as a problem of rational choice. This is the strategy that Binmore adopts in defending Rawls's conception of the original position. He claims that the theory captures 'the common deep structure of human fairness norms' (Binmore 2005 p15). He argues that the principles of justice match up 'with the fairness norms that they [we] actually use every day in solving the equilibrium selection problem in the myriads of small co-ordination games of which daily life largely consists' (p15). Binmore is not alone in arguing that, similar to Chomsky's (Chomsky 1981) notion of a deep grammar, we also have a 'deep morality or sense of justice'. That idea has intuitive appeal; especially in the light of the fact that we will find that the importance of concepts such as promise keeping seem to be found in all societies. Yet this does not explain why nations do not consistently conform to the demands of the treaties to which they are a signatory.

The reasons for defaulting may be attributed to the complexity of the network of treaties and international organizations to which nations may be committed. For example in the case of

the Indonesian health workers we can see that in the first instance they were committed to protecting people against bird flu. Likewise, they could see the merit in protecting intellectual property both for themselves and the world generally. It was only when conforming to these two sources of obligations resulted in a conflict that they needed to make a decision about whether or not to conform to both, only one or neither. Would a world government have made any difference? I doubt it. A domestic government, even with all the coercive force at its command, cannot achieve 100 per cent compliance, so why would that be any different at the global level?

In an ideal world a system of justice based on principles of rational choice would not need any coercion – people, or for that matter nations, would conform to the demands of justice. But in the real world we need to recognize that we do not always make rational choices. Even if we were committed to making rational choices the very range of choices open to us can make it difficult, if not impossible, to determine which of the choices open to us is the rational response to a given problem.

However, as we saw in our discussion of ideal theory, the role of an ideal theory of justice is to define the problem of justice in such a way that we can arrive at an understanding of what the principles of justice will demand in an abstract, artificial situation. The principles we arrive at will guide us through the problem.

A Global Original Position

In structuring a global original position, we need to start with the question: why should we embark on a system of global justice? Why is it not sufficient that we aim for domestic justice and use Rawls's *The Law of Peoples* to regulate the way we relate to other peoples?

The criticism that Singer makes of *The Law of Peoples* is that Rawls is 'indifferent to the consequences of something as contingent as which side of a national border one happens to live' (2002 p37) This is a powerful criticism. One of the conspicuous strengths of Rawls's domestic theory is that it seeks to overcome accidents of birth as significant determinants of one's life chances. Yet in *The Law of Peoples* he seems to have abandoned this idea. But that is a misreading of Rawls: 'The Law of Peoples assumes that every society has in its population a sufficient array of human capabilities, each in sufficient number so that the society has enough potential human resources to realise just institutions' (1999 p119).

The key phrase here is 'human resources'. It implies two things. Firstly, it appears to assume that all societies have one thing in common, namely they operate under conditions of moderate scarcity.⁹⁷ This is consistent with the way Rawls introduced his theory: 'A conception of social justice, then, is to be regarded as providing ... a standard whereby the distributive aspects of the basic structure are to be assessed' (1971 p8). He then goes on to argue that 'the circumstances of justice may be described as the normal conditions under which human co-operation is both possible and necessary' (p109). The assumption underpinning his theory is, therefore, that social justice is relevant in any society where human co-operation is both possible and necessary, that is, there is a situation of moderate scarcity. Differences between societies are therefore not caused by a lack of natural resources but by a failure to realize just institutions. Secondly, it implies the idea 'that every person has global stature as the ultimate unit of moral concern and is therefore entitled to equal respect and consideration no matter what her citizenship status or other affiliations happen to be'. Implies a moral, not a political conception of justice. Distributive justice concerns the basis upon which the burdens and benefits arising out of social co-operation are distributed this in turn implies that to establish a claim right to such a distribution means that one needs to establish that one is party to that social co-operation. Given that all societies have the capacity to realize just institutions, an argument for global intervention to realize just institutions is misplaced.

We can infer therefore that Rawls's response to Singer would be constructed along the lines that the domestic theory of justice is sufficient - if that is implemented then people will be able to implement their rational plans of life in the context of their own societies.

Rawls's idea that all peoples are capable of realizing just institutions is, I believe, critical to the development of any global theory of justice. It asserts that differences in life chances are a product of human institutions. Where they are a product of human institutions at the domestic level then clearly there is a need to reform domestic institutions. However, if it is the case that international institutions are frustrating people from realizing their realistic life plans then clearly there is a need to abolish or reform those global institutions.

Now the requirement to complement Rawls's theory of justice with a global theory does not arise because we are living in 'a rich world of one billion people facing a poor world of five

⁹⁷ I should modify that to refer to modern societies; one can mount an argument that hunter gatherer societies did not face moderate scarcity.

billion people’(Collier 2007 p4) Differences alone are not sufficient to claim that there is a need for a global theory of justice, unless of course we can demonstrate that these differences are a product of global institutions. Miller’s (2008) comparison between Ghana and Malaysia is but one instance where to claim the quality of life is a product of distributive inequality may be misleading. Just as differences between individuals do not necessarily point to an unjust domestic society, so differences among peoples do not necessarily point to a need for global justice. Differences at the global level can be discussed in much the same way as Rawls (1971 p87) dealt with the distribution of natural assets at the domestic level. For Rawls the issue was not that the distribution of an individual person’s natural assets and abilities was unequal but rather the way our social institutions entrenched inequalities – regardless of people’s natural assets or capabilities. We need to demonstrate therefore that there is a logical link between the capacity of a society to implement and maintain a just basic structure and the way the global order is organized.

The necessity for an ideal theory of global justice emerges quite naturally from the discussion regarding the just savings principle and the Anthropocene. I argued that the just savings principle implied that each generation had a responsibility to ensure that resources are used sustainably. We can look upon resources as natural capital – it is nature’s bounty on which we rely to fashion our lives. Undoubtedly there are problems with getting agreement about how the extent of natural capital may be measured, but for the purposes of an ideal theory it is sufficient to think of natural capital in much the same way as we do the conventional idea of capital. If a person manages to live off the interest generated by the capital that they own and furthermore manages to use the interest generated as a means of augmenting their capital then we can readily see that they will never exhaust their capital.⁹⁸ If we now translate this idea to the natural world the argument is essentially that for the last 200 years or so we have been using up the interest and have also been drawing down the capital. Clearly if we keep doing that for long enough we will eventually exhaust that natural capital and society will be heading for collapse. As Paul Ehrlich puts it:

It is time to admit that there are no monolithic solutions to the problems we face. Indeed, population control, the redirection of technology, the transition from open to closed resource cycles, the equitable distribution of opportunity and the ingredients of

⁹⁸ I am presuming that through the judicious use of the interest generated one can ensure that the net value of the capital remains constant, that is, inflation does not diminish the value of the capital.

prosperity must all be accomplished if there is to be a future worth having. Failure in any of these areas will surely sabotage the entire enterprise. (Ehrlich 1971 p1217)

The critical point that Ehrlich is making is that the various solutions that have been advanced to address the problems we face cannot be achieved in isolation. Pogge seems to be arguing for an equitable distribution of opportunity, while others have called for population control (Ehrlich himself being one of the notable advocates). Yet others have called for circular economies. In the Transition Town Movement (Hopkins 2008) people have sought to solve their problems by changing our technological dependence. Ehrlich is arguing that we have reached the point where we need to tackle all of these issues. This in turn seems to demand some sort of overarching ideal theory that can accommodate all these competing solutions. It takes but a moment's reflection to appreciate that in an interdependent world the implementation of the just savings principle has, in part at least, to be global in character.

Therefore, in constructing a global original position I will follow Rawls and claim that it needs to be constructed given 'the subject at hand' (1999 p33). So, as with the domestic situation, we are dealing with representatives, only this time they represent different peoples/societies/nation-states.⁹⁹ As with the domestic case, the parties only have the knowledge they need to be able to develop fair terms of co-operation.

So, in the global original position they will not know which state they represent but they will have some essential facts about the world. Thus, they will know about the Anthropocene and the risk it poses to the long-term viability of all states.

They will also know that there are a great many peoples. Furthermore, whilst they do not know which people they represent they will know that at present each people has sufficient resources to meet their basic needs.¹⁰⁰ They also know that managing the resources to ensure that their society can endure over generations demands a sound understanding of their environment. They also know that they do not have exclusive access to the resources locked up in the global commons, yet critically they are all dependent on the judicious management

⁹⁹ There are some inherent difficulties in clearly distinguishing among 'peoples', 'societies' and 'nation-states'. Rawls's theory is a political theory and as such applies to jurisdictions – the problem is that individuals may be subject to multiple jurisdictions – in my own daily life I am subject to three distinct jurisdictions: the local government authority, the state government and the national Federal government.

¹⁰⁰ This is clearly inconsistent with Pogge's account. However, Pogge attributes extreme poverty to the way global institutions are designed. It is reasonable to assert that in the absence of these global institutions people would have the capacity to meet their basic needs.

of at least two of the global resources – air and water. They also know that some resources are distributed unequally among the various peoples. Apart from these additional bits of information they know nothing about how they will be situated once they leave the original position.¹⁰¹

There is one fact that they can deduce without any outside help. They know that peoples are distributed across the planet and that the physical environment varies depending on where they live. Therefore, there is every likelihood that these various peoples will be at different stages of development. They would be able to deduce that by extrapolating from their own domestic experiences. Societies are rarely homogenous. In any society we will find that depending on the landscape people will grow different foods. Furthermore, they will have noted that within any society there are people who have developed a particular expertise. A community that is centred on fishing will also grow some vegetables but their skills in fishing are well advanced compared to their skills in growing vegetables. Hence, they would expect that the global technological advancement of peoples will be variable. However, they do not know how great the spread of that technological advancement is – they do not therefore know whether or not the difference between the most advanced and least advanced is large or small, but we would anticipate that there would be differences. Just as we appreciated that there are differences among individuals within a people, so we can expect there to be differences among peoples. Nor will they know whether a people's location makes a material difference to their capacity to implement the principles of justice as they may be locally understood.

Just as in the domestic theory the initial situation 'is defined in such a way that it is a status quo in which any agreements reached are fair' (1971 p104), so too for the global theory; it too strives to create an initial situation which allows us to use deductive reasoning to determine the principles of global justice. For a global theory of justice to be Rawlsian we need it to apply the same reasoning as is applied in the domestic situation. In the domestic situation we are concerned with a political conception of justice. A political conception of justice does not demand that an individual surrender their comprehensive theories of the good in order to participate in society. It is solely concerned with establishing the basis on which a fair distribution may be achieved. So at the global level we know that societies would want to

¹⁰¹ The way I have structured the original position may be regarded as a unique contribution this thesis makes; it seeks to design the veil of ignorance in much the same way as Rawls did for the domestic theory.

maintain their autonomy, their right to determine the way they run their own internal affairs. But we also know that we live in an interdependent world. So just as in the domestic situation individuals in order to realize their reasonable plans of life needed to co-operate, so too at the global level societies to realize their realistic life plans will need to co-operate.

The parties would have knowledge of the circumstances of justice as they apply to the planet. They would be aware that the resources of the planet are not equally distributed, that there will be some peoples that will have access to more of the planet's resources than others.

Those [peoples] who have been favoured by nature, whoever they are, may gain from their good fortune only on terms that improve the situation of those who have lost out. The naturally advantaged are not to gain merely because they [have access to valuable resources] but only to cover the cost of [exploiting these resources] and for using these [resources] in ways that help the less fortunate as well. (Rawls 1971 p87)¹⁰²

Just as in the domestic case we saw the role of justice as ensuring that institutions compensated for the fact that the natural distribution of talents and the contingencies of natural circumstances are unjust, so too in the global case we need to ensure the arbitrary manner in which resources are distributed across the planet does not unfairly advantage one people over another¹⁰³. They may also be aware that a wealth in resources can lead to the 'Dutch disease' – a situation where the wealth of resources means that the country's economic activity is focussed on exploiting the natural resources to the detriment of all other economic activity.

In the light of the foregoing what facts can they deduce about the global human condition? They should be able to deduce the following facts.

Given that not all societies are located in areas which are conducive to agriculture, it follows that the level of development will have been uneven. Those societies which were most conducive to agriculture, and which had indigenous animals that could be used as beasts of burden, will have had the chance to develop cities, and seats of learning. In short they can

¹⁰² The words in square brackets have been added to make the quotation relevant to global justice.

¹⁰³ Differences in nations' wealth and development might be due to natural causes or to human causes. In determining an appropriate response we will need to go back to Rawls's opening remarks with respect to the role of justice – if inequalities are the product of human institutions then these institutions need to be reformed or abolished for they are unjust.

deduce that, although human capabilities are uniform, opportunities for the development of these capabilities is likely to have been uneven.

They would also assume that, given that resources are unevenly distributed, trade would have emerged in these resources.

With respect to the atmosphere and seas they would be aware that actions taken to develop and promote the interests of a particular people can have long-term deleterious effects on such global resources.

They would be aware that the global commons are at risk from over-exploitation.

The knowledge of this set of facts would convince them that global co-operation is both possible and necessary. It is possible because each of the parties represents a people that is committed to ensuring that their society is able to implement fair terms of co-operation within their own society from one generation to the next. Given that commitment they will also recognize the necessity of co-operation since the resources that are needed may or may not be under their control. (The veil of ignorance means they have no way of knowing if they have sufficient resources or whether they need the assistance of other peoples.)

As with the domestic theory, the aim is to arrive at principles

which rational persons concerned to advance their interests would accept in this position of equality to settle the basic terms of their association ... [the result] is the best situation that he can reach by free exchange consistent with the right and freedom of others to further their interests in the same way. It is for this reason that this state of affairs is an equilibrium, one that will persist in the absence of further exchanges in the circumstances. No one has any incentive to alter it. (Rawls 1971 pp102–103)

If we substitute the reference to rational persons with representatives who seek to advance the interests of their state, we have a description of the initial position for developing a global agreement. As Rawls notes, an arrangement can be in equilibrium without being just, but conversely a just arrangement which is not in equilibrium will not be stable. In this context it is important to note that ‘almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time’ Louis Henkin 1979 p47).¹⁰⁴ The importance of this particular quotation is that it lays to rest the concern that has been

¹⁰⁴ I was alerted to Henkin’s work by Amy Maguire (2017). Amy explained that the idea that nations tend to conform to international law is regarded as a commonplace.

expressed by philosophers like Nagel that a global order requires a global government to enforce it. It can reassure us that global governance is a viable alternative to global government.

The fact that states comply with international law does not explain why they do so. Simmons argues 'that reputational concerns explain patterns of compliance. One of the most important findings is that governments commit to and comply with legal obligations if other countries in their region do so'(Simmons 2000 p819). Simmons was looking at compliance with IMF obligations but a moment's reflection suggests that her analysis could well apply to international obligations generally. For example, when discussing Indonesia's response to their TRIPS obligations, it was noted that the resistance to compliance did not come from the government but from the field workers. Similarly, we can note that the driving force for Brexit has come from grassroots concern about a loss of sovereignty. If citizens are aware that a theory of global justice is being explored in order to ensure that justice as fairness is protected at the domestic level, and that therefore it is necessary to cooperate with other peoples, then global governance is likely to be an effective tool. This presumes of course that there is an ongoing commitment to the publicity condition (1993 §4 p66). When citizens are well informed about the reasons international commitments have been made they are more likely to support them. (Rawls 2005 p71)There is also a collateral benefit in that over time it will foster an expectation in all polities that decisions are made consistent with the principles of justice.

In developing a global theory of justice there is a recognition that institutions need to be developed that will be congruent with the domestic institutions. The participants in the original position will know that there are domestic jurisdictions. As representatives, they will expect that the integrity of their domestic systems of justice will be respected. This in turn means that they will expect that there is a degree of congruence between the domestic theory of justice and the global theory. The common ground with which they enter this negotiation is that they need to find a way of ensuring the long-term continuity of their domestic society. Hence it follows that the principles of justice to which they can confidently commit their societies are those that determine fair terms of co-operation to achieve that goal. The distinctive feature of global justice is that it is teleological in character; it is designed to achieve the very specific objective of determining how all nations might design a common framework that protects all of their interests in achieving long-term domestic stability.

By the same token this does not imply that the political and social institutions that emerge as part of a global theory of justice will be identical to those at the domestic level. For a start the primary goods that apply at a domestic level may not be identical to those that operate at the global level.

As with the domestic theory, the concept of justice developed here is constructed in the most general terms. As in the domestic case, it is important that the predicates used are general for like the domestic theory the global theory exists outside of space and time – it should be constructed so that its validity can be demonstrated whether or not we are dealing with the non-ideal world as it was 300 years ago or 300 years from now.

The idea that global governance is sufficient is consistent with Rawls's discussion in *Political Liberalism* (1993 §7 p81ff). In that passage Rawls discussed what motivates a person to comply, noting that 'citizens have four special features which I take as aspects of their being reasonable and having this form of moral sensibility' (1993 p81).¹⁰⁵ States would share those features; there would be recognition that compliance is in their best interests.

Part of the original position will need to be a shared understanding of what constitute global primary goods. In the domestic theory primary goods are those things that a person needs in order to be a full and active participating member of society:

the list of primary goods rests in part on the general requirements of a social life, it does so only together with a political conception of the person as free and equal, endowed with the moral powers, and capable of being a fully co-operating member of society. (2001 p58)

It is not a straightforward matter to translate this account of primary goods to the global sphere. In the first instance we are now dealing with 'peoples' as opposed to individuals. 'Peoples' do not make decisions, they do not deliberate – individuals do so on behalf of the 'peoples'. Is there a political conception of 'people' that will enable us to determine what the primary goods would be?

To understand the political conception of a 'people' we need to start with the reason we are considering global justice in the first place. Global justice is the means to a particular end.

¹⁰⁵ It needs to be noted that, as I am advancing a Rawlsian conception of global justice, my purpose is to demonstrate how this account of global justice flows logically from Rawls's theory of justice. For the purposes of this discussion, I remain agnostic about the assumptions that Rawls made in support of his theory.

Individuals have recognized that without a social contract among peoples the capacity to implement the principles of justice at the domestic level will be placed at risk. Since no-one knows the particular people to whom one belongs, the representatives have to consider the possibility they represent a people which, although well-ordered, is facing tangible threats to its ability to maintain a situation of moderate scarcity. They will be looking for terms of co-operation at the global level that will enable them to maintain just societies. Just as in the domestic case their decisions are disinterested, so it is in the global situation – the choices are based on what is needed to ensure and protect the capacity of their society to maintain just institutions. Given that each representative shares that objective, it follows that, as in the domestic situation, there will be a need to compromise. It is through global social co-operation that the capacity for each society to implement just institutions which enable individuals to realize their rational life plans will be fully realized.

In determining the global primary goods we need to revisit the domestic primary goods. Rawls distinguishes five kinds of primary goods:

1. basic rights and liberties
2. freedom of movement
3. powers and prerogatives of office
4. income and wealth
5. self-respect (2001 p58).

The challenge is to identify a similar set of primary goods that would apply to states. By a judicious rephrasing of the domestic primary goods we can arrive at a set of global primary goods.

Basic Rights and Liberties Becomes: National Sovereignty

If there is one thing we should have learnt from the last fifty or so years is that imposing domestic institutions on a people is rarely successful in the long term. Arguably there have been instances where an attempt to impose a realistic utopian solution has not merely extended the political boundaries; they have been stretched to breaking point. There is simply no universal template for domestic justice – even if all societies were to adopt the two principles of justice, the way those principles would be implemented would take very different forms. That this is so is evidenced by the way various polities have implemented Marxism – China, Vietnam, Cuba and Russia all developed their own versions. What a global

theory of justice needs to provide is the capacity for each state to develop its own domestic institutions without deliberate external interference.

The key word here is 'deliberate' interference. Societies are not fixed. As people learn about the solutions that other peoples have developed in response to creating a just society they too will adapt and adopt some of these responses. In addition, they may recognize the need for universal education. This in turn could lead to the development of different responses to the problem of domestic justice.

This first primary good is based on the idea that universal domestic autonomy implies a recognition that we respect the right of individual states or communities to make their own decisions about how to shape their own futures but it is a reciprocal relationship. It implies that when the actions of a state or community impact on others they are in effect denying the domestic autonomy of their neighbours.¹⁰⁶

Freedom of Movement of People, Goods and Services

Given the state of the world as it is today this seems to be an unrealistic primary good. Rather than universal freedom of movement the current world situation is characterized by what may be regarded as the virtual universal creation of 'gated communities' the very antithesis of the freedom of movement of people goods and services.

A not insignificant part of the problem is that the first primary good is not acknowledged as a reciprocal responsibility – we have a global system where state sovereignty is routinely compromised; in such a system freedom of movement becomes yet one other means whereby state sovereignty is compromised.

Yet equally as Fraser has persuasively argued in the post-westphalian world justice will become increasingly identified as referring to the 'all-affected' that is the boundaries of justice will be defined by who is affected by the actions of individuals, corporations, or states. (Fraser 2008 p24) This in turn will have the effect of blurring the boundaries between polities. In the short term there will be tensions but as interdependency grows people will come to recognize

¹⁰⁶ This is an analogous argument to that developed by Caney (2005). Caney, S. (2005). "Cosmopolitan justice, responsibility and Global Climate Change." Leiden Journal of International Law **18**: 747-775.

the importance of this second primary good.

The representatives know that once the veil of ignorance is removed citizens will know to which people they belong. Freedom of movement becomes a security blanket – if people know that they can move then it will make no material difference to which people they belong. Everyone will know that regardless of where they live the opportunity exists to implement their realistic life plans.¹⁰⁷

The aim of a global theory of justice is not to eliminate differences but rather to counter those inequalities that are a product of the way our global institutions are organized. I am referring here to inequalities between nations. Internal inequalities need to be addressed domestically but we need to bear in mind that in elevating international inequality to a major political concern we are also changing the political culture both globally and nationally. If there is a global political culture that challenges inequality, then domestic inequalities will become harder to sustain. If our existing global institutions are designed so that some nations are unable to achieve their realistic plans then quite clearly those institutions need to be reformed. This is the case that Stiglitz (2002) makes about the way institutions like the IMF, World Bank and WTO currently operate.

Given the unique character of each people, it makes eminent sense to ensure that they have the right to enter into agreements for mutual benefit with other similarly positioned peoples. Such relationships will be developed organically. For example, societies with a harsh climate that makes the growing of food difficult may combine forces with societies that are similarly placed, and by working together they can come up with mutually advantageous strategies.¹⁰⁸

Powers and Prerogatives of Office

The management of the global institutions should be open to citizens of all nations under conditions of equal opportunity and fair competition. There is a risk that a class of people will emerge who manage the global institutions. Whilst they may be drawn from all manner of peoples, there is ample precedent for the actual incumbents of offices that are notionally open

¹⁰⁷ Of course, in the non-ideal world this is far from being the case. It serves to underscore the idea that the motivation to migrate may be attributed to the way we manage our global institutions – whether people are refugees from war zones, or as may well become more common, climate refugees – we can argue that they are a product of shortcomings in the global basic structure.

¹⁰⁸ For our present purposes I am glossing over a number of practical problems associated with forming alliances; the reality is that multilateral relations are rarely a coming together of equals and hence there is always the risk that such relations become exploitative or coercive.

to all to be drawn from a small elite. So whilst we may not have a *de jure* global government, if the managers are drawn from a comparatively small pool of individuals we can no longer talk meaningfully about global governance. We are in fact confronted with a *de facto* world government.¹⁰⁹ Consequently, to protect the integrity of global justice there is a need to ensure that the individuals who accede to positions of power within global institutions do not become an identified class of their own.

The reason to draw the people who have a management role from a range of peoples is also to avoid getting trapped in what may be referred to as incestuous amplification. This is defined by *Jane's Defence Weekly* as a 'condition in warfare where one only listens to those who are already in lockstep agreement, reinforcing set beliefs and creating a situation ripe for miscalculation' (Krugman 2003 p524)¹¹⁰. At the global level, given that we will not be dealing with an elected government, it becomes critically important that the decision makers are not drawn from the one class.

It is here that we need to draw on the idea of overlapping consensus. In the domestic setting citizens understand the political conception of justice in the light of their own comprehensive doctrines. At the global level this does not change. Citizens will support and accept global governance on the basis that the decisions can be justified in terms of meeting the interests of their society. This in turn implies that, if the decision makers become isolated from the people on whose behalf they are making decisions, the critical link between the interests of the citizen, the interests of the state and the demands of global governance may be broken with the result that decisions will not be supported.¹¹¹

Income and Wealth

In the domestic theory income and wealth are treated as a primary good (1971 p54). These are the goods that we suppose that everyone wants more of. At the domestic level we are concerned with distributive fairness. Hence to avoid any bias the parties in the original

¹⁰⁹ This is arguably one of the problems with the WTO, IMF and World Bank all seem draw their managers from a small pool of powerful nations.

¹¹⁰ It may be argued that this will happen regardless – institutions have a way of initiating and socializing newcomers into the norms of the institution. However, if the culture of an organization is one of welcoming and encouraging different perspectives this threat is minimized.

¹¹¹ There is a great deal of work being done in the area of democratic decision making. For example, Habermas (see Hedrick, T. (2010). Rawls and Habermas. Stanford, Stanford University Press.

has a well-developed theory of law and democracy. His ideas, although different, are not incompatible with those of Rawls.

position do not know any facts about themselves that may distort their judgement; hence they have no knowledge of their social and economic status. When it comes to global justice much the same criteria should apply. The parties do not know anything about the natural wealth of the polities they represent – they know nothing about their size, population or income potential.

In discussing the original position for the domestic situation, Rawls argues that the parties would be extremely risk averse; they would not want to commit to an arrangement where they may be disadvantaged. If the parties in the domestic situation would be risk averse would they not also be risk averse in a situation when they are establishing distributive justice at the global level?

At the domestic level the reason for entering into a social contract is the question of moderate scarcity. Moderate scarcity does not disappear at the global level. Each polity would be seeking a fair share of the global resources on which their wealth and income may be based. Behind a veil of ignorance, the representatives would not know if they come from a territory that is rich in natural resources or not, but they would know that they would like to maximize their access to such global resources as may be available. Equally they would be concerned to ensure that the use of natural resources is sustainable. Rawls's argument for the use of the maximin principle applies with equal force at the global level. In the original position the parties are to favour those principles that should prove more tolerable, whatever their situation in society turns out to be. Equally at the global level the idea is to favour principles which we can happily accept whatever society we are allocated to. This is similar, but not identical, to a global difference principle. In the absence of this fourth primary good there is the real danger that some nations will seek to structure global institutions so as to entrench scarcity and thus deny distributive justice as was highlighted with the way the TRIPS was managed in Indonesia. The notion of a contract implies that one cannot enter into an agreement that one will be unable to keep. At the global level the principles chosen would regulate social and economic inequalities in the basic structure of society that affect the prospects of states meeting the needs of their citizens. In principle citizens will have no objection to global arrangements; they will not be looking for a world in which everyone enjoys the same lifestyle. In general people's life plans are framed in the context of where they live. However, where global arrangements result in deep and pervasive inequalities they will be resisted; we saw that with the example of Indonesia and its attempts to comply with

TRIPS. Deep and pervasive inequalities will lead to global instability. At the global level the difference principle will be more nuanced – a state will need to be fully compensated for whatever benefits it surrenders in the interests of the global good. Arguably the idea of carbon credits shows that the world is already moving towards such a concept. The slow acceptance of carbon credits or a carbon market shows two things firstly that despite considerable resistance governments are accepting that CO2 emissions represent an existential threat and secondly that to address this threat they need to find ways of working together that are recognized as fair by all parties.

Self-Respect/Sovereignty

There is one other aspect of resource use and global primary goods that needs to be discussed. Self-respect is a critical feature of Rawls's theory. Citizens are treated as equals, and they participate on an equal footing in political discussions. This is even more important at the global level. Each polity has an identical status; it is responsible for its internal affairs and participates on an equal footing in discussions concerning global co-operation. Global governance, to be effective, needs to be the product of a discourse among equals. This is not without its problems, which will be addressed in the next chapter.

The first four primary goods are a critical foundation to create that self respect. If the first four are recognized and accepted as part of a just global order then the self respect will flow quite naturally.

A Global Difference Principle

This set of five primary goods also enables us to identify a global difference principle. As is the case with the domestic difference principle its function is to enable us to identify social inequalities (Rawls 1999p 65) Whereas at the domestic level we are concerned with social inequalities as they apply to individuals, the global difference principle enables us to identify those inequalities that are a function of the global basic structure.

In so doing I draw upon the duty of assistance as described by Rawls in §15 of the Law of Peoples. It is very different to the difference principle as it applies in the domestic setting. Rawls argues that we have a duty of assistance that is restricted to ensuring that societies have the means to be well ordered. It does not call for a transfer of wealth but rather that we need to be proactive in ensuring that societies are able to become well-ordered and that we

neither by commission or omission do not frustrate that objective.

The way Rawls describes the duty of assistance is not without its critics. As Armstrong notes Rawls's position is that we owe this duty irrespective of the reasons why a society is unable to become well-ordered. Thus a society that is marked by internal corruption or is, in effect a kleptocracy is owed assistance just as much as a society that has been prudent. As Armstrong notes this is a controversial position to take. (Armstrong 2009) But it is consistent with the central argument in this thesis that the challenges humanity faces are such that we require a global social contract to which all peoples can sign up to.

The Principles of Global Justice

Our point of reference is the two principles of domestic justice:

Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.

Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society. (1993 pp5–6)

The question now becomes what relevance, if any, do these principles have when we are considering global justice?

The First Principle

We have already indicated that the primary good of self-respect is critical to a stable world order – self-respect means that all peoples are regarded as having equal significance as part of the human community. The principle of self-respect acknowledges that circumstances may create differences but these differences are not relevant when considering the entitlements or claims of a particular people. A stone-age tribe plucked out of the obscurity of the Amazonian rainforest is entitled to the same consideration as a twenty-first-century people cocooned in the comforts of the digital age. The fact that there is an experiential gulf between the two peoples makes it all the more important that both operate on the world stage not as if they are the same but with equal consideration. The distinction is important. Equal consideration implies that we recognize that peoples may need to be treated differently in order to ensure equal outcomes.

Rousseau constructed his social contract in terms of ‘taking men as they are and laws as they might be’ (Rousseau 1968 p49). Rawls does not depart from this idea; it is central to understanding the way his conception of political justice has been constructed. When we compare a stone-age people to a twenty-first-century people it is tempting to see one people as primitive and the other as advanced. I would suggest that this is more a reflection of the inadequacy of our language than of reality. If we consider the objective circumstances in which people live we can talk quite sensibly about human progress but if we talk about human nature itself that progress is largely illusory. Can we really claim to have made any progress in settling our differences? In what way is President Trump’s blustering on the global stage any different to the way the Athenians approached the people of Melos during the Peloponnesian war? As [Thucydides](#) tells it in his history Athens as the stronger nation was entitled to impose its will. (Thauer and Wendt 2016)

The role of the laws and social institutions that we devise is essentially to protect us from ourselves. Thus when we consider questions of fairness we are better placed to take an objective view if we create an original position and place ourselves behind a veil of ignorance. We can then design the principles that will guide those laws and social and political institutions so that we are protected from our weaknesses and able to take full advantage of our strengths.

Thus the parties in the original position, having disposed of the problem of developing a domestic theory of justice, turn their attention to developing a complementary global theory of justice. They would be acutely aware of the risk that extending the just savings principle to the global stage allows those peoples who enjoy a natural advantage to use that advantage to get extra leverage over other peoples. So here too the veil of ignorance is critical – the representatives would not know how their peoples are situated vis-a-vis other peoples, what resources they would have at their disposal, how well developed their technologies are. All that they would know is that they have sufficient resources to enable them to implement a domestic theory of justice if and only if the activities of other peoples do not undermine their capacity to utilize those resources.

Although they have that very limited knowledge about how a particular people will be situated, they will also have some broader general knowledge/understanding of the way in which resource exploitation can adversely affect people. We know that the rainforests, particularly those of the Amazon basin, are the lungs of the Earth – we need to protect those

rainforests not just for the people who live there but for all peoples on the Earth.¹¹² The people who live among these rainforests do not therefore have the absolute liberty to destroy them for in so doing they infringe on the capacity of other peoples to survive.

Now consider three peoples who live along a river – the activities of the upstream people can impact on the capacity of the people living downstream to maintain sufficient resources to implement the principles of justice. Finally consider a people that decide to use nuclear energy. We know there are risks associated with nuclear plants – if there is a major nuclear accident then the people who are exposed to the consequences of that accident are not limited to the people who made the decision to use nuclear power. Consequently building a nuclear power plant is something in which all peoples have a legitimate interest.

So we can rephrase the first principle of global justice as follows:

Each people has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.

Although that principle is effectively identical to the first principle of domestic justice, we can see why it is important that it is phrased in this manner. There are in fact very few actions that a people take that do not impact on the ability of other peoples to manage their domestic institutions (Goldin and Mariathasan 2014). The challenge will be to overcome the problems that we currently see manifest with the immigration/refugee crisis. In 2016 it was estimated that there were 65 million refugees and or asylum seekers globally.¹¹³ Whereas after World War II nations generally accepted their responsibility to resettle refugees, this is no longer the case. A casual glance at the newspapers shows a trend towards xenophobia, protectionism and nationalism. The more global events threaten, the greater the danger that peoples will endeavour to retreat into their own closed-off environments. The problem is that there is no escape – we either work together and survive, or civilizations will unravel around us. Some nations may hold out longer, but eventually failure to co-operate will impact on us all.

¹¹² There has been a great deal of work done on the impact of deforestation in the Amazon basin on climate change. A useful overview of that impact is provided in a letter to *Nature* by J. Lean and D. A. Warrilow (1989).

¹¹³ Global totals have been sourced from the UNHCR: <http://www.unhcr.org/en-au/figures-at-a-glance.html>

Yet we also know that few peoples would be prepared to sacrifice domestic prosperity if there is no adequate compensation. The idea of reciprocity is even more important at the global level. Thus, if peoples feel that rainforests should not be felled then there is a reciprocal obligation to ensure that the peoples who live among these rainforests are properly compensated. The argument for compensation would be developed along the following lines. Maintenance of rainforests may be regarded as a global public good. Maintaining rainforests has an opportunity cost for the indigenous inhabitants. Therefore, if rainforests are to be maintained the owners need to be compensated to cover the loss of revenue.

Yet it is important that decisions that are made are transparent. The difficulty that we face is ‘out of sight out of mind’ – for the average urbanite the impact that she has on the environment is invisible. All our wastes are exported and disposed out of sight – we do not see the impact that we are having on the environment and so are less motivated to act. We can be concerned that the reality of globalization is encouraging people to look inward:

Citizens feel that they are no longer in control of their destinies ... the sense of diminished control leads people to bring responsibility home and to be more local ... overwhelmed by global complexities citizens and politicians resort to local thinking and short-termism. This not only impairs local and global economic progress and innovation; it also opens the doors to nationalist ideologies and threatens the peace and relative global political stability that have been painfully achieved in recent decades. (Goldin and Mariathan 2014 p200)

But that would be a mistake. The more we encourage local decision making the more aware people will be that the flapping butterfly is not just a conceit but a reality. They will become aware that they need to work with other communities to meet the challenge of living in an interconnected world. I do, however, come to the same conclusion as Goldin and Mariathan, for I agree that we have a common responsibility for the world and that we need to learn to co-ordinate and to co-operate globally. The global institutions that we create to enable us to achieve this need to start with the principle that equity is indivisible. A global basic structure needs to be designed so that, irrespective of where you live on the globe, your nation will not be disadvantaged by adhering to the principles of global co-operation.

In Chapter 5 when discussing the basic structure, I argued that, with regard to ideal theory, the basic structure is developed *after* the principles of justice have been established. Goldin and Mariathan have alerted us to the fact that globalization has served to alienate people – they feel (and I believe quite rightly) that globalization has disenfranchised them, that they do

not have any control over the system that appears to have been built up around them. They have lost the means of addressing injustices.

The Second Principle

This brings us to the second principle. The global difference principle should reflect the domestic principle. In particular it should take on board Rawls's discussion:

No one deserves his greater natural capacity nor merits a more favourable starting place in society. But of course, this is no reason to ignore, much less to eliminate these distinctions. Instead the basic structures can be arranged so that these contingencies work for the good of the least fortunate. (1999 p87)

When translated to the global stage we find that the first part of the proposition is relatively easy to deal with – a people blessed to live under particularly favourable environmental circumstances does not deserve a more favourable starting place than other peoples within the global community. Such a people does not have a natural entitlement to use its favourable starting place as a means of consolidating that advantage at the expense of other peoples. The global basic structure should be arranged so that the contingencies work for the benefit of the worst off.

There may be those who would seek to challenge this. They may feel that if a people have such natural advantages they should be entitled to use them as they wish and, if they choose, to exclude other people from having access to those advantages or to use them to subjugate and oppress people less fortunate. As the people behind the veil of ignorance will make their decision based on mutual disinterest, given that they would not know if they were among the 'winners' or not, they would think it was in their self-interest to maximize the position of the worst off, since they might end up being the worst off.

Furthermore, we have established that in order to ensure that circumstances of justice are maintained over time it is essential that we manage the way we use the global resources at our disposal. Historically, we have seen the rise and fall of great empires. What most of these empires had in common was that a people used their favoured natural situation as a means to subjugate and oppress surrounding peoples. Whilst the lifespan of these empires may have extended over several generations, the long-term outcome has been the same – eventually the barbarians were at the gate and the empires were sacked and pillaged. Given that in the original position the parties do not know which society they belong to, it follows that they will not wish to enter into a contract that results in a global order that is inherently unstable.

Concluding Remarks

Throughout I have argued that the challenges that we are facing demand global co-operation. The Anthropocene means that, to give effect to the just savings principle and to ensure the ongoing capacity of a polity to remain well-ordered over time, we need global co-operation. There is a mutual advantage associated with addressing these challenges and therefore there exists the basis for a global social contract.

To do that we do need to create a set of institutions that will form the backbone of that global co-operation. Those institutions are to be based on the two principles of global justice. The first principle gives all nations the right of redress to the International Court of Justice. The second ensures that no global actor can use its wealth to impose its will on another nation.

In positing a Rawlsian conception of an ideal theory of global justice I was motivated by two related concerns. The first is that the fact of global interdependence means that a theory of justice for a closed society is incomplete without a complementary ideal theory of global justice. In advancing such a theory I have demonstrated that Rawls's theory of justice is a useful tool for understanding how we may go about tackling the problem of global justice. However, I need to take this one step further. I need to be able to demonstrate that it is possible to make the transition from this ideal theory of global justice to the reality of the non-ideal world. As Rawls puts it: 'A purely procedural theory that contains no structural principles for a just social order would be of no use in our world, where the political goal is to eliminate injustice and to guide change to a fair basic structure' (1993 p285).

By way of conclusion I will propose some tentative directions to make the transition from our present reality to an ideal theory of both global and domestic justice.

8. CONCLUSION

The prologue with which this thesis started was not a whimsical indulgence. Just as Rawls's account of the original position was used as a heuristic device to uncover the fundamental questions about justice within a polity, likewise our interstellar boat people provide us with a perspective on global justice that all too often can get lost. Looked at from their perspective then, whilst there is a small chance that they will find themselves in a situation of either extreme wealth or extreme poverty, it is far more likely that irrespective of where they are located they will have their basic needs met. Yet they identified the threat of the Anthropocene and concurred with the claim that

if our species does not survive the ecological crisis, it will probably be due to our failure ... to work out new ways to live with the earth, to rework ourselves ... We will go onwards in a different mode of humanity, or not at all. (Gibson-Graham and Roelvink 2009 p322)

Paradoxically the narrator decided that Rawls's theory of justice may be the way the challenge of the Anthropocene can be addressed. I say paradoxically because Rawls's theory was developed for a closed society. But it is his just savings principle which holds the key. For the principle of just savings means that every polity has a vested interest in co-operating with other polities to deflect this ecological crisis.

We can therefore summarise the argument in terms of the following syllogism:

1. All polities both Rawlsian and non-Rawlsian are designed to function from one generation to the next.
2. The Anthropocene means that the capacity of any society to survive in the long term depends in part on co-operating with other polities to avert the ecological crisis.
3. Rawls's theory of justice provides us with a framework for constructing the principles on which a global theory of justice may be based.

The original contribution this thesis makes is to reconcile the demands for a theory of global justice with the concept of national sovereignty. It arises from a neglected aspect of Rawls's work: the just savings principle. Although the just savings principle is framed in terms of the ongoing maintenance of a well-ordered Rawlsian society, I have argued that it is a mistake to regard the idea of savings as applying exclusively to Rawls's theory of justice. A fundamental component of good governance is to maintain society from one generation to the

next. If we can agree that the need to maintain society is a common feature of all governments then it follows that, if all governments face a common threat to their long-term viability, then they face a common challenge.

The parties in the original position are faced with the challenge of determining fair terms of co-operation so that they may be able to achieve their individual objectives, that is, to execute their rational plans of life. In determining the basis of their co-operation, it is assumed that the parties are rational and disinterested (1971 p12). To assume that the parties are rational and disinterested is an idealization but to construct an ideal theory of justice it is an idealization that needs to be made. The same applies to nations; here too we need to frame the discussion as representatives of nations being rational and disinterested. Furthermore just as with domestic justice we will find that when we divorce questions of justice from preconceived normative positions we arrive at an account of justice which describes that 'set of common understandings that allow citizens of a society to co-ordinate their efforts' (Binmore 2005 p3). Similarly the aim of a Rawlsian theory of global justice is to describe that set of common understandings that allows nations to co-ordinate their efforts.

This is a significant departure from standard accounts of global justice. Typically, they tend to start with a taxonomy of injustices and then proceed to offer solutions. This account on the other hand establishes that there is a problem that all nations face. It then goes on to argue that to address that problem there is a need for international co-operation. It then describes the set of common understandings that will allow nations to co-ordinate their efforts. In so doing it overcomes the concern that some philosophers have that global justice requires world government (Nagel 2005, Kukathas 2006, Miller 2008). But at the same time it provides the means to reconcile the arguments that cosmopolitans advance in favour of global justice (Pogge 1989, Nussbaum 2006, Brock 2009). It does this by describing those features of Rawls's constructivist theory that can be adapted to apply to the question of global justice.

I remain silent on one important and significant issue. This concerns the fact that the personal wealth of an individual is, in the vast majority of cases, a product of where one is born. Whilst some of the poorer nations are catching up with the richer nations for the majority the wealth differential is growing wider. I agree with Satz that this is an important moral issue. (Satz 2010). The argument presented here, however, concerns the notion of being realistically utopian – as Rawls would have it pushing the boundaries of what is practically possible. This

in turn means that any successful theory of global justice needs to be framed in terms of mutual advantage. Satz's arguments do not do that, hence they are unlikely to succeed.

I argued that in an ideal theory of justice the basic structure is developed *after* the parties move from behind their veil of ignorance. Further the instrumental role of the basic structure means that the global institutions will be designed to ensure that the principles of global justice are implemented. The global basic structure settles questions such as: What is the nature of a legitimate political regime? What are the grounds of political obligation? What is the basis of rights?

Furthermore, the global basic structure, like the domestic structure, will be pervasive. There is no reason to suppose that, if 'the basic structure shapes the way the social system produces and reproduces a certain form of culture shared by persons with certain conceptions of their good' (Rawls 1993 p269), the same will not hold at the global level. In the long term the global basic structure will reshape the way we think both about our global and domestic responsibilities.

The third aspect of the basic structure is coercion. Given that there is no world government it follows that there will be no independent world power to enforce the principles of justice. But as argued above that may not be necessary. I was persuaded by Sands' argument that the one class of individuals with the expertise to assess evidence in an impartial and rational way are jurists. So although the questions that relate to the impact of the Anthropocene are complex, it should be possible for an international panel of jurists to adjudicate on questions which may be regarded as the 'burdens of judgement'. If such an international panel of jurists is structured so that no nation can be regarded as having undue influence over its deliberations then its decisions, when publicly announced, will work as a form of coercion in their own right.

Rawls's conception of justice is a political conception of justice. The idea of public reason is a critical aspect of the domestic theory; it enables disputes to be settled without the need to resort to coercion:

in a democratic society public reason is the reason of citizens who, as a collective body, exercise final political and coercive power over one another in enacting laws and amending the constitution ... political power, which is always coercive power, is the power of the public. (Rawls 1993 pp214–215)

At the global level the power of the public is exercised by sovereign states acting as a body. This is not altogether different from the way the General Assembly of the United Nations works. Given that all states, irrespective of size or economic power, have an equal voice, it follows that the role of public reason will be to provide a framework within which that power is exercised. In the global sphere public reason will be based on a common understanding that it is in our collective interests to address the challenges of the Anthropocene. This does not mean that the best decisions will be implemented – the cut and thrust of politics in practice means that that compromises will be made.

It may seem that Rawlsian global justice is very light when it comes to questions of justice. It almost seems mandatory that any account of global justice starts with a lengthy shopping list of injustice on a global scale. Nussbaum described ‘issues of justice raised by inequalities between rich and poor nations that affect the life chances of their citizens’ (Nussbaum 2006 p18) as one of the unresolved problems of justice. On the face of it this strategy does little to resolve that problem. I make no apology for that. Imposing solutions rarely works; what has a better chance of success is to implement a change process. In this case I have suggested a change process that demands we acknowledge that, like it or not, we are in a reciprocal relationship with other polities, with other peoples. Once we acknowledge that relationship we will recognize that for peoples to commit to co-operative ventures they will need to be convinced that those ventures are in our mutual interest.

During the course of the discussion I referred to O’Neill’s comment that Rawls’s theory asserts that ‘normative claims are merely political, and which purports not to draw on comprehensive moral doctrines, or on unsustainable metaphysical claims’ (O’Neill 1997 p411). An inherent weakness in many theories of global justice is that, either explicitly or implicitly, they appear to draw upon comprehensive moral doctrines. Hence we find that some nations see human rights as yet another instance of the West imposing a western normative perspective on the way they conduct their affairs. Using the reality of the need to address the problems posed by the Anthropocene as the basis for a global theory of justice would seem to fall well short of addressing the major injustices that are a reality for many of the world’s population.

Addressing the challenges posed by the Anthropocene demands global co-operation. If the basis of that global co-operation is defined in Rawlsian terms, then it describes a reciprocal relationship. We have already seen what happens when that reciprocity is absent – the co-

operation stops. Field workers in Indonesia refused to co-operate with a system where, as a result of their efforts, a vaccine was created which would be beyond the reach of their fellow citizens.

Implementing Rawlsian global justice does not require that all states or indeed any states adopt Rawls's domestic theory of justice. Binmore (2005 93) argues that the way Rawls's theory is constructed ensures that the game of life that we play together is in equilibrium. There may well be other iterations of the game of life that also lead to an equilibrium. I have chosen to demonstrate that applying Rawls's reasoning to the problem of global justice yields a model of global justice that respects the importance of states maintaining their sovereignty whilst at the same time giving us the means to address problems which impact on us all. But this is only the start. The real work will be to design public policy that can address both the local and global challenges of the Anthropocene.

This thesis is but a first tentative step. It needs to be followed by a multidisciplinary account of public policy in the Anthropocene. One of the features of the Rawlsian perspective is that for policies to be fully implemented the costs and benefits need to be fairly distributed. The TRIPS example highlighted that, even if national governments are willing to abide by agreements, it does not mean that field workers will be prepared to accept agreements that are perceived to be unfair.

There is no shortage of people around the world who acknowledge that 'another world is possible' (Stiglitz 2006 p3). Applying a Rawlsian perspective provides a coherent and unifying framework whereby global co-operation is possible

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