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Citation: 23 Can. J. L. & Jurisprudence 163 2010

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Tue Mar 22 14:44:34 2011

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A Rawlsian Dual Duty of Assistance

Hugo Omar Seleme

I. Introduction

The publication of John Rawls' *The Law of Peoples* (henceforth *LP*) has produced adverse reactions, even among his philosophical advocates and heirs. Two types of objections have been frequently made since then. Some have found Rawls' last book to be incoherent with his former works, while others have simply found it to be objectionably conservative and insufficiently critical of the injustices in our real world. They contend that while *A Theory of Justice* (henceforth *TJ*) demanded profound changes in the design of our basic structure, especially to satisfy the Difference Principle, *LP* required only minor modifications.¹

I think that these criticisms are both related and unfair. A better understanding of the connection between the domestic and global versions of the theory, leads to a much more demanding view of the requirements of Rawls' theory of international justice. I shall try to show this by focusing on the duty of assistance. Once this duty is articulated with earlier elements of the conception present in *TJ*, new requirements come to light which increase the critical potential of Rawls' theory of global justice.

I owe special thanks to Alyssa Bernstein and Paula Casal for their critical reading of this text and their important suggestions. I thank the participants of the Pompeu Fabra University political philosophy seminar for their helpful questions and remarks concerning my argument.

1. Cosmopolitans have developed objections of the two types. In the first group of objections we find, for example, those indicating that in the international domain, Rawls maintains that the morally relevant subject is a collective entity—the people—while in previous works, he stated that the morally relevant subject is the individual. Also included in this group are the critics who allege that the same arguments that led Rawls to maintain the unjustified nature of the difference of resources founded on morally irrelevant factors such as race and social class should have led him to maintain the unjustified nature of the difference of resources between individuals on the basis of their different political memberships. Pogge points out: “In opposition to cosmopolitan views, which are based on the interests of all individual human beings worldwide, Rawls claims that economic inequality in his society of peoples is morally indifferent (p. 120), suggesting that our concern for the justice of societies fully exhausts our concern for the freedom and well-being of persons...” (Thomas W. Pogge, “Rawls on International Justice” (2001) 51 *Phil. Quarterly* 246 at 252).

In the second group of objections we find those who maintain that the Rawlsian conception does not allow criticism of certain morally incorrect scenarios at an international level. For example, Pogge maintains: “Securing merely a fixed minimum, Rawls' Duty of Assistance does not protect poor societies against skewed (and deteriorating) international terms of co-operation exacted from them through the greater (and increasing) bargaining power of the affluent...” *Ibid.* at 251.

Both types of objection are also found in Charles Beitz, “Rawls's Law of Peoples” (2000) 110 *Ethics* 669; Allen Buchanan, “Rawls's Law of Peoples: Rules for a Vanished Westphalian World” (2000) 110 *Ethics* 697; Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press, 2002); Fernando R. Tesón, *A Philosophy of International Law* (Boulder, CO: Westview Press, 1998); Kok-Chor Tan, “Liberal Toleration in Rawls's Law of Peoples” (1998) 108 *Ethics* 276; and Kok-Chor Tan, *Toleration, Diversity and Global Justice* (University Park, PA: Pennsylvania State University Press, 2000).

The paper proceeds as follows. Section II argues that the duty of assistance, like the duty of just savings, is best seen as a specification of the natural duty of justice.² Thus understood, the duty of assistance (belatedly added to the Rawlsian conception of justice) fits much better with its earlier parts. Section III addresses three possible objections to this interpretation of the duty of assistance. Section IV maintains that interpreting the duty of assistance in this way enables us to appreciate that this duty involves a demand overlooked by Rawls, viz., the requirement to contribute to the maintenance of well-ordered institutions abroad. Finally, Section V shows the critical potential of the duty of assistance once it is interpreted as I propose. To appreciate this potential I will discuss the guides that the duty of assistance prescribes for dealing with one of the most pressing problems in the international domain: the foreign debt of developing countries. I maintain that, in fact, Rawls' theory justifies measures which are as or more progressive than those proposed by his cosmopolitan critics. I believe this is important because it shows not only that the same policies can be derived from very different theories, but that progressive policies can be derived from very modest and uncontroversial premises.³

II. The Duty of Assistance as a Specification of the Natural Duty of Justice

Before presenting my case in favour of understanding the duty of assistance as a specification of the natural duty of justice, I should explain the sense in which I will be using the notion of "specification". It is well-known that one of Rawls' basic ideas is that the principles used to evaluate basic institutions (both domestic and international) are not the same as those used to evaluate individual behaviour. Nevertheless, all the principles, whether they regulate institutions or individual behaviours, should maintain a coherent relationship. Thus, as Rawls points out, it would make little sense to adopt the principles of justice as fairness for institutions and the utilitarian principle for individual behaviour; doing so would imply there is no correspondence between the demands imposed on individuals by an institutional design and those imposed by moral principles; such an incongruence threatens the stability of a conception of justice.

Congruence can be restored by adopting the natural duty of justice as the principle guiding individual behaviour in societies regulated by the two domestic principles of justice. Organizing basic institutions in accordance with these principles, helping to uphold them, and fulfilling their demands are ways of satisfying the individual duty of justice. Institutional principles point to the way in which the institutions should be configured so that the natural duty of justice is satisfied.

2. The first to maintain this interpretation, based on different arguments and extracting different consequences, was Alyssa Bernstein in her doctoral dissertation. Alyssa Bernstein. *Human Rights Reconceived: A Defense of Rawls' Law of Peoples* (Ph.D. Thesis, Harvard University, 2000) [unpublished].

3. As Beitz notes: "... Rawls's strategy is to press social liberalism toward its most progressive expression and then to ask what more could reasonably be required. If successful, this approach would disarm cosmopolitan liberalism of its critical thrust by showing that a view with more conservative premises converges with it at the level of policy" (Beitz, *supra* note 1 at 678).

It is in this sense that I claim that institutional principles are a “specification” of this natural duty.⁴

I shall now try to show that this relationship of “specification” also exists between the natural duty of justice and the principles that serve to evaluate the foreign policy of a liberal people. In particular, I shall argue in favour of considering the duty of assistance to peoples living under unfavourable conditions to be a “specification” of the natural duty of justice. In a way, I intend to follow the same path Rawls follows in *TJ* with regard to the institutional principle of just savings. There, Rawls establishes which institutional design would enable us to satisfy our natural duty of justice in connection with other generations. Rawls moves from the natural duty of justice toward the institutional principle of just savings. Here, I show that configuring our foreign policy in accordance with the duty of assistance, among other demands, should be regarded as a way of satisfying our natural duty of justice in connection with individuals belonging to other peoples.

The argument founding my assertion that Rawls understands the duty of assistance as a specification of the natural duty of justice rests on the following two premises:

(a) Rawls presents the duty of assistance as analogous to the duty of just savings. The most important likeness between them is their aim: creating and preserving just or decent institutions.

Having reminded us that (i) the aim of the principle of just savings is to establish and preserve just or decent basic institutions, (ii) upon reaching this goal, the savings rate can drop to zero, and (iii) no great wealth is necessary to establish just or decent institutions, Rawls explains the analogy between the principle of just savings and the duty of assistance. He writes:

These three features of the savings process discussed in *A Theory of Justice* bring out the similarity between the duty of assistance in the Law of Peoples and the duty of just savings in the domestic case. In each instance, the aim is to realize and preserve just (or decent) institutions, and not simply to increase, much less to maximize indefinitely, the average level of wealth, or the wealth of any society or any particular class in society. In these respects the duty of assistance and the duty of just savings express *the same underlying idea*.⁵

Thus, both duties are specifications of an underlying idea.

(b) In *TJ*, the duty of just savings is expressly presented as a specification of the natural duty of justice among individuals belonging to different generations.

4. Maintaining that institutional principles have a “specification” relationship with the natural duty of justice has no implications for the sequence in which institutional principles and principles for individuals must be obtained. Thus, by means of the resource of the original position, Rawls obtains some institutional principles before obtaining principles for individuals, and some after. Specifically, two institutional principles—the basic equal liberty principle and the difference principle—are obtained before the natural duty of justice, while the institutional principle of just savings is obtained later. Nevertheless, both the former and the later of these institutional principles satisfy the “specification” relationship with the natural duty of justice, insofar as organizing institutions according to these principles, contributing to maintaining these institutions so organized, and complying with institutional requirements are ways of satisfying the natural duty.

5. John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999) at 107 [emphasis added].

This duty, as with all natural duty, is characterized as being owed to all individuals, regardless of whether they have carried out some act or whether they share any particular institutional organization. Pointing out the idea underlying the just savings principle, Rawls writes:

The savings principle represents an interpretation, arrived at in the original position, of the previously accepted natural duty to uphold and to further just institutions...⁶

Premises (a) and (b) suggest a relationship between the duty of assistance and the duty of just savings as well as a relationship between the latter duty and the natural duty of justice. These relationships justify my understanding of the duty of assistance as a specification of the natural duty of justice. If, in Rawls' opinion, the duties of assistance and just savings express the same underlying idea, and if the idea underlying the duty of just savings is the natural duty of justice, then the same should be true for the duty of assistance; its underlying idea must also be the natural duty of justice, of which the duty of assistance is a specification. The duty of assisting other peoples so that they may establish just or decent political institutions can be considered a specification of the natural duty of promoting the emergence and contributing to the maintenance of just institutions. The duty of assistance, as it is presented in *LP*, can be regarded as a specification of the natural duty of justice, as it is presented in *TJ*.

This relationship explains the similarity between the duties of assistance and just savings. Both aim to create and preserve just or decent institutions because both are specifications of the natural duty of justice. This interpretation of the duty of assistance suggests that just as the natural duty of justice among individuals belonging to the same people but to different generations is satisfied where the basic institutions are organized along the lines of the principle of just savings, so the natural duty of justice among individuals belonging to different peoples is partially satisfied by a foreign policy that honors the duty of assistance.

III. Three Possible Objections

The initial attractiveness of the interpretation presented above is that it allows us to articulate harmonically the duty of assistance within the larger framework of justice as fairness. The duty of just savings in the domestic case and the duty of assistance in the international case are thus manifestations of one and the same natural duty of justice. This also explains the analogies Rawls points out between the duties. In particular, as I have indicated, it allows us to account for one of Rawls' fundamental conclusions: that the requirements of international distributive justice are sufficientarian rather than prioritarian requirements.⁷

However, the proposed interpretation faces three important difficulties. While the first two problems challenge the consistency of my interpretation of the duty

6. John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Harvard University Press, 1999 (orig. 1971)) at 257.

7. Paula Casal coined the term "sufficientarian."

of assistance with some Rawlsian positions, the last one jeopardizes one of the premises of my argument, viz., the analogy between the natural duty of justice and the duty of just savings.⁸

(i) Natural duties are individual duties

Wilfried Hinsch notes that the duty of assistance cannot be a natural duty—as Rawls understands this notion—because natural duties are applied directly to human beings, insofar as they have some natural property in common, whereas the duty of assistance is applied to collective agents—peoples—which are not classes of entities sharing natural properties with human beings.⁹

On my interpretation, the duty of assistance—like the principle of just savings—is a specification of the natural duty of justice; it is not, however, in itself a natural duty. The duty of assistance is an institutional principle used for evaluating the foreign policy of a liberal state. Similarly, the principle of just savings is a specification of the natural duty of justice, but is in itself an institutional principle. Basic institutions should satisfy the principle of just savings in the same way that the foreign policy of a liberal people should satisfy the duty of assistance.¹⁰

Liberal peoples are bound to organize their foreign policy so that it assists burdened peoples. The subjects of this duty are liberal peoples understood as groups of politically organized individuals who are united by common bonds of sympathy and endowed with a certain moral character.¹¹ The duty requires eminently collective actions and can only be carried out by peoples as politically organized collective entities;¹² it requires certain state policies aimed at assisting burdened peoples. While

8. One might also object that since all institutional principles, including the difference principle, are specifications of the natural duty of justice, stating that the duty of assistance is a specification of the natural duty of justice is rather uninteresting. The content of the duties of assistance or just savings, however, can be determined only on the basis of the natural duty of justice. Thus, the specification relationship is always present, but in a different role.

The way in which Rawls obtains the two domestic institutional principles and the duty of just savings can illustrate the difference. First, institutional principles (the liberty and difference principles) are obtained for a society self-contained in space and time. Then, employing these principles the content of the natural duty of justice is specified with its two requirements. The following step (yielding the just savings principle) is to determine which institutional principles should regulate the basic structure so that citizens are able to satisfy the natural duty of justice in connection with future generations.

The same happens with the duty of assistance. First, we establish the principles of decency or justice that a self-contained society should satisfy. Then, the content of the natural duty of justice is specified (in its general version). The following step (yielding the duty of assistance) is to determine how to interpret the institutional principle of foreign policy that requires assistance to other peoples so that the individuals within the institutional framework satisfy the natural duty of justice to other peoples. I thank an anonymous referee for a question that prompted this note.

9. Wilfried Hinsch, “Global Distributive Justice” in Thomas Pogge, ed., *Global Justice* (Oxford: Blackwell, 2001) at 63.

10. My interpretation departs from Hinsch’s suggestion (*ibid.*) of understanding the duty of assistance as a natural duty whose subjects are peoples, understood as individual agents.

11. Rawls, *supra* note 5 at 24-25.

12. Rawls writes: “[I]n developing the Law of Peoples within a liberal conception of justice, we work out the ideals and principles of the *foreign policy* of a reasonably just *liberal* people ...” (*ibid.* at 10).

this duty cannot be satisfied by the individual actions of any one person, it requires certain individual behaviors.

The explanation I offer appears to jeopardize the whole undertaking of viewing the duty of assistance as a specification of the natural duty of justice in that the former duty refers to peoples and the latter to individuals. If the duties have different subjects, how can one be the specification of the other? The reason is that in both cases, the duty demands behaviors on behalf of the individuals; the only difference is that a people's duty involves actions carried out collectively by politically organized individuals. Thus, to state that peoples have a duty of assistance does not commit Rawls to the existence of supra-individual entities. It simply indicates that collectively organized individuals can carry out actions that are impossible for each individual to carry out alone. A collective organization broadens the kinds of actions that individuals can carry out. As long as these actions are not morally neutral, the duties the individuals are bound to will also impinge upon them.

For illustration, imagine that each of Richard Wagner's disciples secretly promised him at his deathbed that they will only play his music henceforth. After ten years as soloists, the disciples form an orchestra. This allows them now to carry out collective actions, such as interpreting operas. Suppose the director proposes that the musicians choose the work they will perform from among Tannhäuser, Boris Godunov, and Falstaff. Are they obligated to play Tannhäuser? I believe they are because the orchestra is not a supra-individual entity, but simply a group of collectively organized individuals. As members of the orchestra, the musicians can now fulfill their individual promises to Wagner by voting in favor of playing Tannhäuser and by correctly executing their part of the score. The fact that the musicians have been collectively organized has opened a new possibility to fulfill their previous moral obligation.

Similarly, individuals are bound by the natural duty of justice *irrespective of their institutional relationships*¹³, and therefore regardless of whether they have been politically organized. However, once they form a society, a new possibility of fulfilling their natural duty opens up: collective political action. If citizens promote the adoption of state policies that satisfy the duty of assistance and accept the individual costs incurred by their adoption, they will have fulfilled their natural duty of justice.¹⁴ Even though the citizens are subject to the natural duty of justice *irrespective of their institutional relationships*, once they are politically organized, the content of the natural duty becomes what the principle of assistance requires of

13. Rawls attributes this characteristic to all natural duties, including the natural duty of justice. He writes: "... A further feature of natural duties is that they hold between persons irrespective of their institutional relationships; they obtain between all as equal moral persons ..." (*supra* note 6 at 98-99).

14. One might surmise that a natural duty of justice requires not only policies, but individual actions as well. For example, if I promote a foreign aid plan that my co-citizens reject, I have a secondary duty to aid. However, insofar as for Rawls the primary aim of political justice revolves around the basic institutional structure, the requirements of justice are mediated by the existence of a certain institutional organization (*ibid.* at 6-10). Political justice is therefore a virtue of institutions. In my view, this is partly why Rawls maintains that *peoples* are the privileged subjects of the *law of peoples*. Individual behaviors that are unmediated by these basic institutions may be demanded by morality but not by justice.

them. Only then does the duty of assistance specify the content of the natural duty of justice.¹⁵

*(ii) International dualism and the social nature of justice*¹⁶

Some objectors might allege that my interpretation appears to contradict either "... the social nature of the virtue of justice..."¹⁷ or Rawls' dualism regarding domestic and international justice. Interpreting the duty of assistance as a specification of the natural duty of justice denies the social nature of justice by implying that it applies independently of the existence of a basic structure or denies dualism, by suggesting that there is a global basic structure. If the natural duty of justice applies wherever there is a basic structure and there is a global basic structure, then why should the institutional principles that are specifications of that natural duty be different in the domestic case and in the international case?

Though initially plausible, this objection fails. First, asserting that the natural duty of justice exists independently of a basic structure is required by the Rawlsian thesis that it is a natural duty. Such an assertion, however, does not deny the social nature of justice. Justice is social because wherever there is a basic structure, natural duties are discharged by reforming that structure according to institutional principles of justice—if the structure is not just—or obeying it and supporting it if it is just. Lastly, asserting that the natural duty of justice is specified in the institutional principles wherever there is a basic structure is compatible with maintaining that these principles change according to the specific characteristics of this structure in different contexts.

With the previous specifications in mind, it is now possible to see why my interpretation of the duty of assistance denies neither the social nature of justice nor dualism. First, Rawls maintains that there is a global basic structure;¹⁸ therefore, the specification of the natural duty of justice for this context should be institutional principles like the duty of assistance. Secondly, Rawls maintains that the international and the domestic basic structures have different characteristics and that consequently, the institutional principles specifying the natural duty of justice are not identical. The main difference relates to the morally relevant agents in the two cases. While at the domestic level, the relevant agents are isolated individuals insofar as

15. The analogy with just savings is useful here. Individuals belonging to different generations satisfy their natural duty of justice by organizing their political institutions according to the just savings principle. The subjects of the natural duty of justice are individuals. The same is true internationally: individuals belonging to different peoples satisfy their natural duty of justice by organizing their foreign policy according to, *inter alia*, the duty of assistance. The just savings principle can be seen as "... an understanding *between generations* to carry their fair share of the burden of realizing and preserving a just society ..." (*supra* note 6 at 257 [emphasis added]) while the duty of assistance can be seen as an understanding *between peoples* to determine the equal share of effort each should exert to create and maintain other peoples' well-ordered institutions. Rawls notes that "... persons in different generations have duties and obligations to one another just as contemporaries do ..." (*ibid.* at 258). So do individuals belonging to different peoples.

16. I thank an anonymous referee for a question that prompted this section.

17. Rawls, *supra* note 6 at 110.

18. Rawls, *supra* note 5 at 61.

they are interested in promoting their own life plans, at the international level, the relevant agents are the peoples—i.e., politically organized individuals—whose interests are determined by a conception of justice.^{19 20}

(iii) Disanalogy between the duty of just savings and the duty of assistance

Finally, one may also object on the grounds that the duty of assistance has no objective concomitant with *TJ*'s natural duty of justice, and thus cannot be its specification. Some Rawlsian remarks appear to support this objection. Rawls writes: "From the standpoint of the theory of justice, the most important natural duty is that to support and to further *just* institutions. . . ."²¹ When formulating the duty of assistance in *LP*, in turn, he maintains: "Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a *just or decent* political and social regime."²²

The aim of the natural duty of justice is to promote the emergence and maintenance of *just* institutions, whereas the aim of the duty of assistance refers to *just or decent* institutions. A just institutional framework is not equivalent to a decent institutional framework for Rawls.²³ While a *just* society must be organized as a constitutional democracy, a *decent* society need not be organized as such. Stressing this difference, Rawls points out: "I am not saying that a decent hierarchical society is as reasonable and just as a liberal society. For judged by the principles of a liberal democratic society, a decent hierarchical society clearly does not treat its members equally. . . ."²⁴ The objector reasons that if *decency* falls short of *justice*, and the natural duty of justice refers to justice while the duty of assistance refers to justice *and decency*, the duty of assistance cannot be specification of the natural duty of justice.

My reply is that the difference between the aims of the two duties does not indicate that the duty of assistance is not a specification of the natural duty of justice. On the contrary, the difference can be explained by the fact that *TJ* seeks appropriate principles for a democratic, liberal, domestic society. The original position was configured from the liberal conception of persons as free and equal, and the natural duty to which the parties would agree is one suited to individuals conceived in this

19. *Ibid.* at 30-35.

20. Here, I am defending my interpretation from the accusation of inconsistency with either Rawls' belief in dualism or the social nature of justice. I would need another paper to defend those Rawlsian beliefs.

21. Rawls, *supra* note 6 at 293 [emphasis added].

22. Rawls, *supra* note 5 at 37 [emphasis added].

23. A decent society satisfies the following requirements: (i) it lacks aggressive aims toward other peoples, and works through peaceful means such as diplomacy and trade; (ii) it orders its legal system according to a common good idea of justice which respects human rights; (iii) its legal system imposes duties and obligations on individuals within its territory, which it regards as decent, rational, and responsible; it need not consider its citizens as equal, but as responsible and cooperative; (iv) officials must sincerely and reasonably believe that the law is guided by a common good idea of justice (Rawls, *supra* note 5 at 65-67). By contrast, a liberal society is a constitutional democracy, with a *political* (rather than common good) conception of justice (Rawls, *ibid.* at 12, 34, 40).

24. Rawls, *supra* note 5 at 83.

way. In other words, the natural duty of justice presented in *TJ* is the natural duty of those who are part of a liberal society with regard to the manner in which their domestic institutions should be organized. Hence, it is not surprising that the term should refer only to *justice*.

My conjecture is that there is a general natural duty of justice whose mandate is to promote the emergence and contribute to the maintenance of well-ordered institutions. This formulation is not coextensive with that which is contained in *TJ*. If an individual belongs to a liberal people—as *TJ* assumes—the way to fulfill this natural duty with regard to domestic institutions is by promoting and sustaining *just*—i.e., liberal and democratic—institutions. If, on the other hand, an individual belongs to a non-liberal people, the way to satisfy this natural duty with regard to domestic institutions is to promote and to sustain *decent* institutions.

It is worth noting that this is compatible with sustaining the natural character of the duty of justice. All human beings have the natural duty of realizing well-ordered institutions. Belonging to a liberal people does not determine the emergence of this duty; rather, it determines the particular manner in which it should be fulfilled. Evidence that Rawls has a wider understanding of the natural duty of justice can be obtained from his comments regarding the duty of just savings. The objective of *TJ*'s duty of just savings is to promote a just institutional framework for the benefit of future generations. The coincidence of objectives between this duty and the duty of assistance, therefore, should only be partial. However, in *LP*, Rawls states that the coincidence of objectives is complete. This can only be so because he has varied the objective of the just savings duty. The new objective applies to just or decent institutions. Rawls claims that “savings may stop once just (or decent) basic institutions have been established.”²⁵ This means that if the just savings duty is a specification of the natural duty of justice, and if the former duty's aim is now to promote the emergence and maintenance of just or decent institutions, the same should hold for the latter duty.²⁶ The duties of assistance and just savings can thus be considered specifications of the natural duty of justice in his general presentation.

IV. Supporting Well-Orderedness Abroad: A New Requirement Based on the Duty of Assistance

Having dealt with the above problems, we may now return to my interpretation of the duty of assistance. This duty is a specification of the general natural duty of justice, which dictates the manner in which a liberal people's foreign policy should be organized. If this is so, Rawls' presentation of the requirements contained in the duty of assistance is incomplete. The duty of assistance, as Rawls presents it, is not the complete specification of the natural duty of justice with regard to individuals belonging to other peoples. This is because the natural duty of justice—in its general presentation—contains the following two requirements:

25. *Ibid.* at 107.

26. The difference lies in the fact that *TJ*'s aim is to build appropriate *liberal*, domestic principles, and the savings principle aims at liberal justice, rather than mere decency. *LP*, by contrast, presents a saving principle for *any* well-ordered society.

- a) To comply with and to contribute to just or decent institutions where they exist.
- b) To promote the establishment of just or decent institutions where they do not yet exist.²⁷

If we disregard the requirement to obey just or decent institutions where they exist, referring only to the domestic institutions whose exigencies we are subject to, two requirements should remain in relation to foreign just or decent institutions:

- a) To contribute to the maintenance of existing just or decent institutions.
- b) To assist in the establishment of just or decent institutions where they do not yet exist.

If the duty of assistance is a specification of the natural duty of justice, it should contain both requirements. Rawls' presentation, however, only contains the latter requirement. He maintains that this duty only obligates us to assist those peoples who do not have a just or decent social regime due to unfavorable conditions. What then is our duty to peoples who have a fairly just or decent regimes? In such cases, our duty is one of non-intervention.²⁸

On my interpretation of the duty of assistance—unlike other interpretations attributable to Rawls—the duty applies to both the ideal and the non-ideal theory. While the duty to assist other peoples to maintain well-ordered institutions belongs to the ideal theory, the duty to assist societies in unfavorable conditions to achieve well-orderedness belongs to the non-ideal theory.

Why did Rawls not include the duty of assistance in the ideal theory? The omission could be due to the following difficulty: any intervention to satisfy the duty of assistance that belongs to the ideal theory appears to violate self-determination, which is a key value in the Rawlsian conception of global justice. Maintaining a foreign policy aimed at preventing a well-ordered, self-governing society from giving up these attributes would be disrespectful toward its decisions. In other words, the duty of assisting well-ordered peoples to maintain their institutions would be contrary to the principle of non-intervention, which is central to the ideal theory.

This objection dissolves, however, when we notice that the same justification for the principle of non-intervention—valuing self-government—also favors intervention where a people's self-government is at risk. In such a case, not only does intervention not violate the value of self-government, it is required by it. It would be inconsistent to defend the principle of non-intervention based on the value of self-government and then to use this principle to condemn an intervention whose aim it is to preserve the very value it is grounded on.

Each people has the duty to assist other peoples so that they do not fall below the critical threshold of self-government necessary "to determine the path of their own future for themselves." Although each people has the right to make its own decisions without outside interferences and is held responsible for the results of its decisions, the right to self-government and the concomitant responsibility is ultimately constrained by sufficiency. Peoples whose policies are going to lead them

27. Both requirements of the natural duty of justice in its general version are obtained by extending *TJ's* statement of this duty.

28. Rawls, *supra* note 5 at 37.

to fall below the critical threshold of self-government should never be abandoned on the grounds that it is for them to decide their own policies without outside interferences. Peoples that have fallen below that threshold of self-government or decency are incapable of functioning as full members of a well-ordered Society of Peoples, which is the foundation of the duty of assistance that belongs to the ideal theory. As a full member of a well-ordered Society of Peoples, each people is required to maintain itself above the critical threshold of self-government and other peoples have the duty to assist them in doing so.²⁹

I therefore believe that Rawls has unduly restricted the duty of assistance. This duty—as with the natural duty of justice of which it is a specification—contains the requirement to assist peoples in creating just or decent institutions where they do not yet exist, and to assist peoples in maintaining those institutions where they do already exist. If Rawls does not contemplate the latter requirement, his proposal becomes less coherent.

Finally, as with the just savings duty in the domestic context, the way to satisfy the duty of assistance—as a specification of the natural duty of justice—varies according to the type of society that the foreign policy of a liberal people is addressing. If it is a non-liberal society, foreign policy must aim at developing or maintaining decent institutions. If, on the other hand, it is a liberal society, the purpose of the foreign policy must be justice rather than decency.

V. A Fresh View at Developing Countries' Foreign Debt

My understanding of the duty of assistance has some relevant practical consequences. For illustration, suppose a just or decent people, a full member of the Society of Peoples, which is able “to determine the path of [its] own future for [itself],”³⁰ is going to make a political decision that will cause the end of its well-orderedness. Is a liberal people under a duty to prevent that people from taking such a measure? According to my dual duty of assistance, the answer is yes. Rawls, however, seems to reject this option because the subjects of this duty are peoples “... living under unfavorable conditions that *prevent* their having a just or decent political and social regime,”³¹ whereas the people in my example currently has a just or decent political regime. Rawls thinks that our duty toward this people, which is about to “commit institutional suicide,” is non-intervention.

Suppose now that a well-ordered people is selfishly considering reducing the savings rate, thereby depriving future generations of a just or decent institutional framework. How should liberal peoples respond? I believe, *pace* Rawls, that the duty of assistance, as a specification of the natural duty of justice, obliges us to

29. See Elizabeth Anderson, “What Is the Point of Equality?” (1999) 109 *Ethics* 287, for a similar argument focused on individuals. See Paula Casal, “Why Sufficiency Is Not Enough” (2007) 217 *Ethics* 296 at 318-323, for a discussion of how the requirement to remain above sufficiency may provide a way of balancing our respect for the freedom or autonomy of individuals (and perhaps peoples) and our expression of equal respect and concern for them.

30. Rawls, *supra* note 5 at 118.

31. *Ibid.* at 37.

respond in ways that may vary depending on the case. While sometimes it may suffice to threaten to interrupt diplomatic relations, other times it may be necessary to offer financial aid to political parties which are struggling to maintain the required savings rate. A more restricted duty of assistance seems paradoxical: it provides that we should allow a people to sacrifice their just or decent institutions, but then requires us to help them regain them. A dual duty of assistance involving *both* the *creation* and the *maintenance* of well-orderedness seems more feasible and morally attractive.

Now suppose that the society that is about to sacrifice well-orderedness cannot do so without the participation of a liberal people. For example, it might want to borrow such a large sum of capital that future generations, burdened by the repayment of debts and interests, would be incapable of maintaining well-orderedness.³² Is it plausible to claim that the duty of assistance has no implications in such a case? That would be the consequence if the duty only required us to help burdened societies *achieve* well-orderedness. I believe, on the contrary, that the duty of assistance should discourage engaging in borrowing practices which, though profitable for developed countries, may result in the end of their debtors' well-orderedness. The people from whom the loan is requested must judge what the consequences of its action will be for the foreign institutions and act accordingly.³³

An extension of this example can illustrate not just the costs of rejecting the dual duty to the overall plausibility of a Rawlsian conception of global justice; it can also show how endorsing the dual duty is not necessarily more onerous than focusing on the single duty alone. Suppose that, affirming the single duty, each liberal society imprudently lends large sums of capital to decent societies, which are in the process of becoming just. Now, those decent societies have become burdened and not only have they lost all hope of becoming just—their well-orderedness has crumbled with serious spill-over effects on neighboring societies. Eventually, entire areas of the globe, which could have progressed to justice, will find themselves struggling with financial chaos, corruption, and instability. Having created a rod for their own backs, liberal societies now have a very onerous single duty of assistance not only to those societies to which they offered the initial loan, but also to those which have become burdened by the spill-over effects of the end of well-orderedness in the area. Given the importance that Rawls awards to domestic justice,

32. Rawls disregards the possibility of current generations not merely failing to save, but appropriating the savings of future generations. Since the just savings principle ensures that each generation receives the economic benefits it deserves from its predecessor and does its part in benefiting its successors, Rawls wrongly assumes “[i]t is a natural fact that generations are spread out in time and actual economic benefits flow only in one direction . . .” (Rawls, *supra* note 6 at 254). When a generation takes out a loan which will burden future generations, it has not only failed to fulfill its obligation of benefiting them, but has actually profited at their expense. Economic benefits can flow in either direction and the principle of just savings should contemplate this possibility.

33. The fact that on certain occasions such judgments should be made in conditions of extreme uncertainty does not dismiss the obligation of formulating them. The error caused by uncertainty may be an excuse to avoid moral reproach for the duty neglected, but it does not eliminate the transgression. I do not think that this excuse is available to the creditor countries of the Latin American public debt. As evidenced by the data referring to the Argentine case, the loans were granted with total disregard for the effects they would produce on the domestic institutions.

stability, and well-ordered national and international cooperation, it seems odd to insist on an interpretation of the duty of assistance that permits international practices which may lead to the destruction of all these values on a massive scale.³⁴

This single duty of assistance also has problematic consequences when assessing the duties of a liberal people toward a well-ordered people to whom it has already granted a loan. If the people requesting the loan is well-ordered, the only duty applied to the situation is "... to observe treaties and undertakings."³⁵ The debtor has the duty to repay and the creditor has the right to collect, regardless of whether this jeopardizes the debtor society's well-orderedness. Under the dual duty of assistance, by contrast, liberal creditors must contribute to the maintenance of well-orderedness abroad. Thus, they may collect the stipulated interests unless doing so will predictably result in the spillage of the end of well-orderedness, instability, and death abroad.

The dual duty also has consequences for societies burdened by debts incurred by outlaw regimes to prolong the duration of illegitimate governments which condition the policies of subsequent democratic regimes. For example, the peoples that gave financial assistance to the dictatorial regimes that devastated Latin America during the seventies doubly violated the dual duty of assistance. First, they failed to assist in the emergence of just or decent institutions, which could have been accomplished by financially isolating these regimes. Secondly, when despite the financial assistance given to their illegitimate rules, these countries managed to set up working democracies, their task was hindered by the lenders' insistence on interests on debts incurred by the illegitimate rulers. Such insistence restricted their possibilities for action and jeopardized their very continuity.

My native Argentina is a paradigmatic example of this double violation. During the last military dictatorship—from 1976 to 1983—Argentina's foreign debt grew by more than 300%.³⁶ Those who granted loans violated the duty of assisting the

34. I owe this paragraph to Paula Casal.

35. Rawls, *supra* note 5 at 37.

36. In 1975, the private sector's debt was \$4.941 million while the public sector's debt was approximately \$9.144 million. By the end of the military dictatorship in 1983, private debt had reached \$13.526 million and public debt had reached \$31.561 million (Alfredo Calagno & Eric Calagno, *La Deuda Externa Explicada a Todos (los que deben pagarla)* (Buenos Aires: Catálogos, 1999)). This capital largely surfaced in personal accounts abroad (Mario Rapoport, *Historia Económica, Política y Social de la Argentina (1880-2000)* 2nd ed. (Buenos Aires: Macchi, 2003) at 825). The fund's other destination involved paying the profits of the financial speculation which took advantage of the differential between domestic and foreign interest rates. Lastly, part of the debt was used to buy arms. The main arms exporter was the Federal Republic of Germany (Rapoport, this note at 808). Virtually all Latin American countries have been affected by massive foreign debts. Between 1970 and 1980 the region's global debt rose from \$20.9 million to \$243 million, an increase of 1.162%. What makes the Argentinean case paradigmatic, however, is the destination of the funds. Debt was contracted by an illegitimate government to finance an economic plan that destroyed its productive apparatus. The policies financed with foreign debt had a deep impact on the population. During 1976 alone—the year of the coup—real wages dropped by 37%, to the 1945 level. The participation of wages in the national income dropped from 45% in 1974 to 27% in 1983 (Alfredo Lattes, "Auge y Declinación de las Migraciones en Buenos Aires" in Jorge Raul Jorrot & Ruth Suti, comp., *Después de Germani. Exploraciones sobre la Estructura Social de la Argentina* (Buenos Aires: Paidós, 1992) at 186-96). Another pernicious effect was the income concentration. Urban Gini coefficients increased from 0.366 in 1975 to 0.410 in 1980 (Rapoport, this note at 834). The magnitude of the change in the Argentinean

birth of Argentinean well-orderedness. Additionally, after the assumption of a democratic government in 1983, they violated the duty of contributing to the maintenance of Argentinean well-orderedness. Collecting the initial capital and the interests was one of the main factors that conditioned the legitimate government's field of action, and ultimately contributed to its premature demise.³⁷

I hope this reflection has shown the convergence between Rawls' advocates and his critics at the level of policy—particularly with respect to policies guaranteeing the *preservation* rather than the *creation* of well-orderedness abroad—such as those proposed by Thomas Pogge. I think, like Pogge, that it is important (i) to deter illegitimate regimes from taking out loans in the name of the people on whom they have imposed their government, (ii) to disincentivise coups in this and other manners and (iii) to make it more difficult for democratic, liberal governments to justify granting financial aid to illegitimate regimes before their own people. Pogge proposes a constitutional amendment which states “that debts incurred by future unconstitutional governments—by rulers who acquire or exercise power in violation of our democratic constitution—must not be serviced at public expense... ”³⁸ Such preventive measures find full justification in the dual duty. The single duty, by contrast, cannot justify policies like those proposed by Pogge because its aim is only to create well-ordered institutions where they do not exist—not to help maintain them, for example, by preventing coup d'états—where they do exist.

basic structure can be appreciated by considering that in 1950, the participation of wages in the national income was 60.9%, while only five years earlier, in 1945, it was 46.7%. (SAE, Secretaría de Asuntos Económicos, *Producto e Ingreso de la República Argentina en el Período 1935-1954* (Buenos Aires: SAE, 1955)).

37. In 1983, the recently elected democratic government faced a foreign debt of 70% of the GDP, with no international reserves. Although the reserves available had amounted to \$1.5 million, a few days before handing over power, the military government drained the reserves by paying weapons that had been used in the Malvinas conflict (Salvador Treber, Salvador, *La economía argentina actual: 1970-1987*. (Buenos Aires: Macchi, 1987)). When democracy returned, the country owed \$20 million and had to postpone payments. It tried to re-negotiate so that payments would not exceed 15% of exports, thus avoiding the need to accept the depressive requirements of an IMF Stand-by loan. At a London G7 meeting, Argentina, Brazil, Mexico, and Colombia expressed the need to revise the debt, given its illegitimate origins. The response was devastating: a bilateral “solution” included severe austerity measures for the indebted. Argentina promoted the “Cartagena’s Consensus” by bringing together eleven nations representing 93% of the Latin debt and establishing the principle of co-responsibility of the creditor countries in debt accrual, which Western pressure rendered wet paper (Roberto Russell, “Democracia y Política Exterior” in Rubín M. Perina, Roberto Russell, eds, *Argentina en el Mundo. 1973-1987*. Colección de Estudios Internacionales (Buenos Aires: Grupo Editor Latinoamericano, 1988)).

So the Argentinean government ultimately signed an IMF stand-by loan to pay back its foreign debt. Consequently, the country faced the following difficulties: i) worse terms of exchange reduced the income of foreign currency, mainly due to subsidies for agricultural products and closing markets in central countries; ii) state accounts were hard to balance because of the debt's high interests; iii) public spending and salaries were drastically cut, which generated a recession; iv) the need to purchase foreign currency to pay interest on the debt generated inflation; and v) the foreign currency generated by the trade surplus was insufficient; therefore, it was necessary to increase the debt to make good on interest payments. The debt burden chiefly contributed to hyperinflation, causing the fall Alfonsín's government in 1989. Again, the impact on the basic structure was devastating. In 1989—after the debt generated austerity, recession, and hyperinflation—the participation of wage earners in the national income was barely 20% (Rapoport, *supra* note 36 at 926).

38. Pogge, *supra* note 1 at 153-54.

The dual duty, moreover, forbids lending not only to illegitimate governments, as Pogge recommends, but also to legitimate governments when doing so will end well-orderedness because of its effects on just savings. My interpretation of the duty of assistance both supports and extends beyond the policies proposed by Rawls' cosmopolitan critics. While Pogge only condemns loans to illegitimate governments³⁹, the dual duty of assistance also forbids lending to legitimate governments where the burden that external debt imposes on the savings rate threatens well-orderedness abroad. Those who jeopardize well-orderedness abroad are co-responsible for the end of well-orderedness and must therefore contribute financially to its restoration.

Based on this evidence, some might conclude that the dual duty of assistance cannot be Rawls' idea, and will find conflict in extending the Rawlsian conception of international justice in morally attractive directions—unexplored by Rawls himself—and reconstructing the Rawlsian conception of justice as a coherent whole. I disagree. Rawls himself failed to realize the potential of his own conception of international justice, which is why *LP* subscribes to presumptions whose consequences should have led him to the interpretation defended here. Thus, when referring to the likeness between the just savings duty and the duty of assistance, he says, “in each instance, the aim is to *realize and preserve* just (or decent) institutions... ”⁴⁰ Given such an aim, the duty of assistance should be relevant not only to the creation but to the maintenance of well-orderedness abroad. The dual duty of assistance is thus more consistent with Rawlsian presumptions than the single duty presented by Rawls himself.

VI. Conclusion

My interpretation of the duty of assistance as a specification of the natural duty of justice has several virtues:

- a) It enables us to appreciate how this duty fits into the complex structure of justice as fairness. Specifically, it shows that one of the most important principles of the conception of international justice presented in *LP* coheres with a principle that was already present in *TJ*, and undermines the criticism that Rawls' domestic and international conceptions are at odd with each other.
- b) It extends the requirements of the duty of assistance in directions unexplored by Rawls himself. Specifically, it enables us to appreciate that the duty of assistance contains two requirements: helping peoples to create well-ordered institutions where such institutions do not yet exist and helping peoples to maintain them where they do already exist.
- c) The farsighted dual duty of assistance is a useful guide with which to broach the current problem of developing countries' foreign debt; it introduces objective, non-arbitrary criteria for determining the legitimacy of collecting debts that are

39. Given the effects of such a loan's impact on future generations, I believe Pogge would agree with the implications of the dual duty of assistance.

40. Rawls, *supra* note 5 at 107 [emphasis added].

owed by decent, even democratic and liberal peoples. The duty focuses on the savings rate that the debt imposes on future generations—an objective criterion—rather than on the legitimacy of those who contracted it—arguably a subjective criterion.

The dual duty is thus far from conservative. It supports preventive policies such as those proposed by Pogge, condemns granting loans to illegitimate governments, and refrains from collecting loans granted to legitimate governments that will jeopardize well-orderedness abroad.