PHILOSOPHICAL PROBLEMS CONCERNING
INTERNATIONAL JUSTICE.
ON JOHN RAWLS' *THE LAW OF PEOPLES*

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The present papers tries to introduce the issue of international justice through the evaluation and full analysis of John Rawls' recently published work «The Law of Peoples»[1]. I do not intend to go through all the main issues Rawls' work deals with nor shall I consider whether Rawls' theory of justice is consequently applied. I shall rather focus on some issues of international justice, which have been recently much discussed on.

Furthermore I would like to point out that the present study won't be concerned with such basic issues as war nor with such controversial and complex a problem as distributive justice. The kind of approach I will aim at is that of philosophy of international law[2].

Such an approach is based on the assumption – which won't be demonstrated here – that international relations are to be judged ethically and that they do not merely belong to sheer factuality, as political realism seems to imply[3]. Within the field of international

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[1] Cp. J. Rawls, *The Law of Peoples*, Harvard U.P. Cambridge, Mass. 1999 (all references in the text will be put into square brackets), italian translation edited by S. Maffettone, Edizioni di Comunità, Torino 2001. It is a remarkable in-depth study of a previous work (dated 1993) on the very same issue: J. Rawls, *La legge dei popoli*, in S. Shute - S. Hurley (ed.), *Diritti umani (Oxford Amnesty Lectures)*, translated into Italian by S. Lauzi, Garzanti, Milano 1994, pp 54-97.

[2] A useful introduction can be found in C.R. Beitz' *Philosophy of International Relations*, in *Routledge Encyclopaedia of Philosophy*, London and New York 1998.

[3] For the full understanding of such turning point in the history of international relations please refer to C.R. Beitz' *Political Theory and International Relations*, Princeton U.P., Princeton 1979.

relations two possible approaches can be given: the realistic and the idealistic approach.

We could either try to figure out what the ideal relation among states, peoples and individuals should be or we could just describe the actual state of things and try to give as objective an evaluation as possible[4]. The realistic approach may be subdivided further into two different attitudes: the tendency to fully accept and justify the status quo while aiming at its improvement[5] and the tendency to try to alter it in order to achieve the ideal status quo.

As for the latter attitude, both ideal and real level are necessary and focused on, since only if we strive after an ideal state can we figure out what the present situation should develop into.

The latter attitude resembles Rawls' critical approach, the originality of which is but very comparative since it quite resembles Kant's in point of international law[6]. Yet the peculiarity of Rawls' approach, which is based on the dialectic relation between a feasible political establishment and ideal politics, lies in his increasing attention to the realistic element[7].

Rawl describes his Society of Peoples as a realistic utopia [4] while pointing out that it can be achieved only if political philosophy succeeds in exceeding limits which have so far been regarded as insurmountable [6][8]. Although human nature is fully accepted as it is (Rousseau) within the realistic utopia, still law and civil institutions are

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[4] Frost takes up an ambiguous position between the aforesaid approaches, since he, just like Dworkin, intends to work out a theory of international relations by moving from this question: How can the justification of the preservation of the society of States be best formulated? Yet such theory does not stand as a justification of the actual state of things (*social normativity*) but rather for a moral or critical justification (*moral normativity*), required by an ideal theory. Cp. M. Frost, *Ethics in International Relations. A Constitutive Theory*, Cambridge U.P., Cambridge 1996.

[5] Among the supporters of this approach the most extreme positions are held just by disillusioned idealists.

[6] Cp., for instance, G. Cavallari, *Kant and the Theory and Practise of International Right*, University of Wales Press, Cardiff 1999. Rawls refers as well to Kant's *Zum Ewigen Frieden* (1795) and, as far as cosmopolitanism is concerned, to *Über dem Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis* (1793) and to *Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht* (1784).

[7] B. Kukathas - Ph. Pettit, Rawls. *A Theory of Justice and Its Critics*, Polity Press, Cambridge 1990.

[8] «Political philosophy is realistically utopian when it extendes what are ordinarily thought of as the limits of practical political possibility».

believed to have the power to subdue all evils of human history, i.e. war, tyranny, persecution on religious grounds, non-acknowledgement of freedom of thought, starvation and poverty, genocide and slaughter [7].

1. *Paradigms of International Law*

The main models of international justice, which are now at discussion, are the following: (1) the Westphalia paradigm; (2) moral cosmopolitanism; (3) institutional cosmopolitanism; (4)World State.

The *Westphalia paradigm[9]* is the state-centred model of international law. The subjects of international law are states. They are sovereign within their territory and the aim of their foreign politics is to secure national interest and safety[10]. States are regarded as independent units as for economics and distributive justice, and are considered politically homogeneous, i.e. without any relevant differentiations in domestic politics[11]. The realistic approach of international relations is based on the above described paradigm.

Moral cosmopolitanism is neither a legal nor a political concept, yet it can promote specific actions (such as, for example, the creation of an international criminal jurisdiction for particular situations and for crimes against mankind, or else the support of legitimate interventions for humanitarian aims). According to moral cosmopolitanism borders between different states are not relevant, ethically speaking.

Moral privileges cannot be derived from the mere belonging to a given political community. Any single person is equally subject to moral consideration. Under this light citizenship seems to imply partiality, whereas the impartiality of law demands any discriminations to be avoided, which are caused by proximity or by any other particular binding force. The origin of moral cosmopolitanism is to be

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[9] The Treaty of Westfalia (1648) put an end to the Wars of Religion of the 17th Century and ratified the independence of the United Provinces, of the Swiss Confederation and of the German States from the Holy Roman Empire.

[10] On the importance of the Treaty of Westfalia for the development of international law cp. L. Gross, *The Peace of Westfalia, 1648-1948*, in «American Journal of International Law», 42 (1948), pp. 20-41.

[11] Cp. A. Buchanan, *Rawls's* Law of Peoples*: Rules for a Vanished Westfalian World*, in «Ethics», 110, July 2000, p. 701 ff., showing to what extent Rawls' theory is still tightly connected to that model.

traced back to stoicism, though it originally had no consequences on a legal level[12]. According to Plutarch we must regard all men as our fellow-citizens, neighbours and companions. Yet cosmopolitanism does not wish to dismiss the division of the world into different political communities. Stoics did not aim at abolishing any particular community but rather at fixing the moral code the whole mankind should stick to, thus anticipating Kant's concept of the kingdom of ends.

In his *De Otio* Seneca points out that we all live and act within two different contexts at the same time, i.e. the domestic and the world community.

According to cosmopolitanism there is no discontinuity whatsoever between the domestic and the international society. Anyway, it goes without saying that cosmopolitan morality is not compatible with the Westphalia paradigm which regards state as the subject of international morality. Between these extremes, though, many other approaches are possible, which try to combine general criteria of ethics with the acceptance of different political societies.

We owe the distinction between moral and institutional (or legal) cosmopolitanism to Beitz. *Institutional cosmopolitanism* is mainly concerned with the organisation of international society. There isn't any necessary connection between both concepts. Yet it is very clear that institutions must be amended in order to achieve moral cosmopolitanism even though the latter is not always needed to justify the creation of cosmpolite institutions.

According to Pogge institutional cosmopolitanism is characterised by the following features: individualism (i.e. the refusal to turn social groups into bodies), universalism (i.e. the acknowledgement of the equal dignity of all human beings), generality (everybody must have the very same rights and duties, whichever country they belong to)[13]. Yet institutional cosmopolitanism may be also community-oriented (Walzer): its peculiarity is to be found in the formulation of rules institutions are regulated by, depending on their acceptance of pre-established political communities, rather than in institutions as a

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[12] Cp. D. Heater, *Citizenship, Longman, London 1990 and M. Nussbaum, Patriotism and Cosmopolitanism*, in J. Cohen (ed.), *For Love of Country: Debating the Limits of Patriotism*, Beacon, Boston 1996.

[13] T.W. Pogge, *Cosmopolitanism and Sovereignty*, in «Ethics», 103, October 1992, pp. 48-49.

whole. Yet cosmopolitanism must not necessarily be centred on individualism[14]. Does the idea that individuals are the ultimate object of moral evaluation necessarily belong to individualism?

Peculiar institutions of institutional cosmopolitanism are those which aim at partly or completely depriving the sovereign authority of the power of ruling over state-specific matters.

According to institutional cosmopolitanism legal matters must be dealt with on a global (global justice) rather than local level, whereas such global approach should consider all social and economic inequalities all over the world[15]. The general aim is to achieve extremely complex international societies whose social and state institutions co-exist with cosmopolitan institutions, the latter being neither founded nor ruled by single governments[16]. Such approach challenges the traditional concept of political community, which is regarded as a circumscribed and self-sufficient unit. In institutional cosmopolitanism the political society par excellence is the world's society as a whole, other societies being but small political communities held together by sectarian interests[17].

The World State concept is based on the aspiration for a single, worldwide acknowledged legal system. Just like the Westphalia paradigm it centres on state but it eliminates the pluralism of countries since it leads to self-centred politics. This model reflects the yearning after the re-establishment of the Empire (another concept which won't be described here as it is a non-actual model), i.e. a unitarian political

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[14] Pogge's point of view is shared by B. Barry, *International Society from a Cosmopolitan Perspective*, in D. Mapel - T. Nardin (eds.), *International Society. Diverse Ethical Perspectives*, Princeton U.P., Princeton 1998, pp. 144-163.

[15] Cp. T.W. Pogge, *An Egalitarian Law of Peoples*, in «*Philosophy and Public Affairs*», 23 (1994), 3, pp 195-224. Pogge's proposal for an egalitarian exploitation of resources is to levy a tax (*Global Resources Tax*) which should be paid by those who use natural resources, even if such resources are located within their own territory. The proceeds should be then allocated to developing countries so as to make up for the original inequalities. Cp. also B. Barry*, International Society from a Cosmopolitan Perspective*, already mentioned, who is more concerned with future generations.

[16] T.W. Pogge, *Cosmopolitanism and Sovereignty*, cit.; M. Walzer (ed.), *Toward a Global Civil Society*, Berghahn Books, Providence-Rhode Island 1995; D. Held, *Democracy and the Global Order. From the Modern State to Cosmopolitan Governance*, Polity Press, Cambridge 1995, pp. 267-286; a more recent study, M. Walzer, *International Society. What is the Best we can do?*, in «Ars Interpretandi. Jahrbuch für juristische Hermeneutik», 5 (2000), pp. 223-239.

[17] As for this issue, please refer to F. Viola, *Identità e comunità. Il senso morale dela politica*, Vita e Pensiero, Milan 1999, p. 81.

organisation spread all over the world. Its philosophical basis could be traced back to Kant's ideal of the moral unity of mankind; yet Kant saw clearly the dangers the concept of World State could lead to. It goes without saying that the present study will regard the World State as a model admitting federalism and decentralisation, thus resembling institutional cosmopolitanism, though we shall also endeavour to consider its strictest formulation[18].

Hans Kelsen first outlined the general features of legal globalism: unity and objectivity of the legal system, supremacy of international law over domestic law, «partial» validity of national legal systems, the acknowledgement that the sovereignty of a state must necessarily be dismissed since this very concept jeopardises a steady and world-wide spread peace. Law should be a *lex mundialis*, which are valid *erga omnes* and which should gradually lead to the homologation of cultural and political differences. Such a concept requires therefore also a unitary jurisdiction, particularly in point of criminal law. « Just as the ethical concept of man corresponds to mankind according to an objectivistic view of life, according to the objectivistic theory of law the concept of law overlaps with international law, thus necessarily becoming an ethical concept»[19]. Such ethics are connected with pacifism and anti-imperialism whose roots can be traced back to the ideals of *imperium romanum*, *civitas maxima*, *respublica christiana*.

On an operative level UNO should be strengthened, the power of the existing international organisations should be extended and a really effective international police should be created.

Some of these steps have already been taken (The Court of Criminal Law, just to give an example). Legal globalism stands for the evolution of old domestic law into international law. Its basic assumption is that all evils in a State are caused by its being non-unitary, i.e. by plurality of States.

The most effective argumentation supporting this model is the necessity to regulate globalisation process in economics and technology. In fact such a process occur spontaneously and non-organically, thus leaving mankind at the mercy of fate and occult

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[18] D. Zolo, *I signori della pace. Critica del globalismo giuridico*, Carocci, Roma 1998.

[19] H. Kelsen, *Il problema della sovranità* (1920), ed. by A. Carrino, Giuffrè, Milan 1989, p. 468.

sciences. Our experience has demonstrated so far that capitalism and the development of informatics can co-exist with dictatorial regimes.

Only a central, worldwide-acknowledged authority could protect people's rights. Yet who could then protect us from such irresistible authority? To the latter model some oppose international anarchy, which postulates a minimum political organisation run by but a few and non-interventionist authorities, the autonomy and originality of different cultures being preserved and respected[20].

2. *The Law of Peoples and The Law of Nations*

As for Rawls' text, the first question to be raised is the difference between the Law of Peoples and the traditional *ius gentium*[21]. Just right at the beginning of his work [3] Rawls draws a clear distinction between both concepts: *ius gentium* stands for legal principles which are shared by all peoples, whereas Law of Peoples refers to political principles which may regulate the relations between peoples. Therefore, the former is the body of laws, which is made out of the intersection of national legal systems[22], whereas the latter is the

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[20] H. Bull, *The Anarchical Society*, Columbia U.P. New York 1977 and also D. Zolo, *Cosmopoli: Prospects for World Government*, Polity Press, New York 1998.

[21] In the first edition of the *Law of Peoples*, Rawls explained the difference between *ius gentium* and international law, the latter being regarded as positive law. Cp. Rawls, *The Law of Peoples*, cit., pp. 63-64.

[22] As it is well known, the statute of the International Court of Justice explicitly refers to the «general principles of right acknowledged by civilised countries» which stand for the third source of law after treaties and customs. Cp. F. Salerno, *Principi generali di diritto (diritto internazionale)*, in *Digesto (Discipline Pubblicistiche)*, Vol. XI, Utet, Torino 1996, pp. 524-558. Our concern here is not the meaning of such reference to «civiled nations», the eurocentrism of the phrase having been already extensively critised. International courts, however, have interpreted it in its broadest meaning, the plurality of different juridical cultures being thus duly respected. What is worth pointing out are the new meanings such phrase acquires after the diffusion of constitutionalism. In fact it accounts for a flexibility of meaning which the principles of international law won't allow, since they are based on the consolidation of the international *opinio juris* of States. Yet, whereas the principles of international law have an autonomous meaning, the principles of legal civilisation normally play a complementary role, in that they integrate the rules of international law and nevertheless outdo the stiff distinction between statal and interstatal law. Cp. G. Strozzi, *I «principi» dell'ordinamento internazionale*, in AA. VV., *I principi generali del diritto*, Accademia Nazionale dei Lincei, Roma 1992, pp. 199-216.

creation of reasonable political rules, which might become laws, of course, by means of an international agreement.

This distinction is but seemingly convincing, since we should verify first if it suits the history and nature of *ius gentium*. I would also wish to point out that such matter is strictly connected with the identity of the subjects of international relations, a problem, which shall be thereafter dealt with. For the moment being some reflections upon the concept of *ius gentium* are necessary. It is indeed a very complicated matter and its interpretation has often varied throughout the history of legal and political thought[23].

It has been used empirically by jurists and rationalistically by philosophers. Rawls, as we saw, refers to the meaning accepted by jurists, thus neglecting that given by philosophers, particularly Kant. As a general rule we could state that *ius gentium* derives from the rational fixing of legal laws for matters which are not regulated by shared political authorities.

Therefore *ius gentium* could be placed between natural and positive law: it is neither artificial, since it does not come out of human will nor is it natural, since it is worked out by reason in a given historical background. We may indeed observe that the concept has changed throughout the centuries along with the historical-political development of Roman law, the beginning of medieval Christianity and of Modern State, thus becoming Law of Nations according to modern jusnaturalism. Then why shouldn't we assume that pluralism must necessarily lead to a new concept of *ius gentium* meaning Law of Peoples?

The Justinian code acknowledges three different forms of law: the law of the city, i.e. of the state (*ius civile*), the law of peoples, regulating the relations between peoples and men (*ius gentium*) and the law of Nature which stands for what is universally accepted as good and right (*ius naturale*). Yet scholars of Roman Law have always discussed the meaning and the relations between these forms. The Justinian Code itself stressed that there was no univocal interpretation of natural law and of its relation to civil law and law of the peoples.

According to Gaius (D.I, 1.9) the law of peoples is the body of rules which is accepted by all peoples and which are fixed by the nature of

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[23] A. Nussbaum, *A Concise History of the Law of Nations*, MacMillan, New York, 1954.

things itself (ratio naturalis). It is therefore to be regarded as pure natural law.

According to Ulpianus, the law of peoples is essentially human, whereas natural law is shared by men and animals (*quod natura omnia animalia docuit* – D.I, 1.1). Ermogenianus (IV century AD) sees natural law as a primitive law where such problems as war and property are not considered whereas law of peoples does not ignore matters as private property, slavery, was and contracts. (D.I, 1.5). Cicero and Stoics of the imperial age, such as Seneca, Epithetus and Marcus Aurelius, maintained that all men were equal without making such an assumption effective on a legal level. The *Corpus Iuris Civilis* reflects the very same attitude. Therefore it is to be assumed – according to the Stoics' terminology which was acknowledged by the Fathers of the Church – that *ius gentium* is a *secondary ius naturale*. Roman jurists whose characteristic feature was originally pragmatism were deeply influenced by Greek philosophy, particularly by Stoicism, and by Christianity (Byzantine jurists were particularly affected by latter). Yet we must stress that natural law at the Roman age was worked out by jurists and therefore considered as a legal branch, which was particularly useful for legal interpretation. Yet, however deep the influence of Greek and Christian philosophy might have been, it never developed into a philosophical doctrine.

Cicero's concept of *ius gentium* is worth pointing out: he regarded law as a body of rational rules rather than a natural ordering of human actions from which rules have to be drawn out. This body of natural laws corresponded to the *ius gentium*, i.e. the body of positive rules, which were common to Romans and to other peoples. He saw it as natural (since it was worked out by reason) as well as positive law[24].

Cicero's undoubtedly influenced Thomas of Aquino's concept of ius gentium, since he regarded it as positive rather than natural law[25]. Yet his interpretation must not be misunderstood. We should rather say that he regarded it as human law instead of fixed law. Therefore, law is seen as the outcome of a cultural elaboration made by deductive reason which, depending on the relevant historical background, draws up

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[24] In his *De Republica* Cicero tends to consider *ius gentium* as positive law, whereas he sees it as natural law in his *Tusculanae Disputationes*.

[25] *Sum. Theol.* , II-II, q. 57, a.3.

suitable rules[26]. For instance, the principle «there must be tribunals and rules protecting people's rights» is the outcome of reasoning: it states the necessity of legal authorities protecting human rights and of tribunals preserving *ius gentium* (here meaning the law shared by civilised people)[27].

Grotius also maintained that law of nations is made up of an unchangeable part, which coincides with natural law, and of a secondary changing part which suits the actual historical circumstances[28]. Our aim is not to find out which rules are common to civilised countries but rather deduce rationally which rules should be shared as for relations among peoples depending on historical background and rational principles. Therefore our research does not differ methodologically from Rawls'.

We owe to Vitoria rather than to state-centralism supporter Grotius a new concept of international relations, which does not differ much from cosmopolitan view. The novelty of his concept can be summarized[29] in the following aspects: 1) The representation of world order as *communitas orbis*, i. e a society of respublicae or sovereign states, each one of them being free and independent, which in foreign law acknowledge the very same *ius gentium* while sticking to their own constitution in domestic law [30](mankind is here regarded as a moral subject representing all human beings); the existence of people's

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[26] It is also true that *ius gentium* «*est aliquo modo naturale homini, secundum quod est rationalis, inquantum derivatur a lege naturali per modum conclusionis quae non est multum remota a principiis. Unde de facili in huiusmodi homines consenserunt*». Ivi, I-II, q. 95, a.4, ad 1m.

[27] As for the Thomistic concept of ius gentium I here follow J. Maritain*, Nove lezioni sulla legge naturale*, edited by F. Viola, Jaca Book, Milan 1985, pp. 65-70. As it is well known, the historicity of *ius gentium* is particularly stressed by Vico, who regards the «*diritto naturale delle genti*» as the realisation of juridical conscience within the conflictual factuality/reality of history. Cp. F. Botturi, *La sapienza della storia. Giambattista Vico e la filosofia pratica*, Vita e Pensiero, Milano 1991, pp. 283-327.

[28] H. Grotius, *Mare liberum* (1605), in J.B. Scott (ed.), *Freedom of The Seas*, The Carnegie Institution, Washington D.C. 1916, p. 53; also cp. J. Thomas, *The Intertwining of Law and Theology in the Writing of Grotius*, in «Journal of the History of International Law», 1 (1999), p. 98.

[29] L. Ferrajoli, *La sovranità nel mondo moderno*, Anabasi, Milano 1995, pp. 13-18. It is very evident here to what extent modern international law failed to apply such orientation of thought by sticking to Grotius'state-centred approach.

[30] J. Brown Scott, *El origen español del derecho internacional moderno*, Cuesta, Valladolid 1928, p. 131.

natural rights (*gentes*) such as *ius communicationis*, *ius peregrinandi et degendi*, *ius commercii*, *ius occupationis*, *ius migrandi*, etc. 3) The legalisation of war (*ius ad bellum*) and the waging of war for right purposes (*ius in bello*), thus anticipating the acknowledgement of the war of defence as the only justified cause of war[31]. With the beginning of modern State, ius gentium became law of nations, the latter standing for states themselves, so that international law was originally regarded as inter-state law. The international context was seen as a wider context where states played the very same role of individuals in domestic contexts. Such domestic analogy was a leitmotiv running through 18th century internationalists' works[32] and it led to the personification of state and to their being granted equal dignity to individuals.

Kant also refers to domestic analogy[33] and regards law of peoples as that regulating relations between different states; he furthermore distinguishes it from cosmopolitan law (ius cosmopoliticum) which regulates the relations between a state and citizens of foreign states as well as foreigners as a whole. According to the second and definitive paragraph of *Zum ewigen Frieden*, law of peoples must rely upon a federation of free states[34] and it goes as far as to say that the very concept of law of peoples necessarily calls for the splitting of many neighbouring states into independent countries on mutual agreement[35].

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[31] Rawls compares his theory of right war with that of the Christian tradition [103-105]. The difference is not to be found in its basic principles but rather in its basic justification, since the Law of Peoples is based on politics, not on theology - even though it is not secular –, as well as on the guiding principles of war. Rawls, though, criticizes the principle of double effect admitting the possibility of killing, even if not intentionally, helpless civilians.

[32] For instance E. de Vattel, *The Law of Nations or the Principles of Natural Law* (1758), translated by C.G. Fenwick, *The Classics of International Law* n. 4, vol. 3, The Carnegie Institution, Washington D.C. 1916; also cp. C. Wolffs, *The Law of Nations Treated According to the Scientific Method* (1749), translated by J.H. Drake, *The Classics of International Law*, n. 13, vol. 2, The Carnegie Institution, Washington D.C. 1934, § 7 (who formulated the concept of a *civitas maxima* and drew a distinction between *ius gentium naturale* and voluntary international law, based on contracts and customs).

[33] «Taken as States, peoples can be judged as if they were single men…» (I. Kant, *Per la pace perpetua*, translation into Italian in Id., *Scritti di storia, politica e diritto*, Laterza, Roma-Bari 1999, p. 173).

[34] Here, p. 173. Also cp. L. Le Fur, *Kant et le droit des gens*, in «Annales de l'Institut superieur de Philosophie», 5 (1922), pp. 189-219.

[35] Kant, *Per la pace perpetua*, cit., p. 185.

We wonder why Rawls does not admit that his study was born out of this tendency of thought. We might venture some hypotheses as for his taking distance from the law of peoples. The most evident reason lies in the formulation of many traditional theories about law of peoples: both medieval scholars and modern jusnaturalism had law of nations founded on a universal normative authority (God, Nature or else Reason). Such an argumentation supported the idea of law of nations as being shared by all nations. To admit the existence of such an authority would be impossible for any liberal political theory à la Rawls since it would lead to a comprehensive metaphysical concept[36].

Furthermore the modern notion of law of peoples nearly coincides with natural law, at least according to Hobbes and Kant[37]. We might object that Rawls' concept of peoples differs much – as we will see – from Vattel's[38] and Kant's[39] nations; besides, Rawls makes a distinction between the latter notion and states. We might assume that Rawls' regards law of peoples as a merely legal concept and that implies a further separation from politics in an Anglo-Saxon, rather than continental, context. Yet all these reasons are not conclusive.

The reason of his attitude might lie in the constructive character of Rawls'formulation. His concept is not based on the actual situation and does not aim at finding actual rules to be improved and refurbished (as it is normally the case in *ius gentium*), but he builds up his theory in that he gradually extends international community[40].

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[36] S. Chauvier, *Liberalisme politique et universalisme juridique. Droit des gens et droits de l'homme selon John Rawls*, in «Revue de metaphysique et de morale», 101 (1996), 2, p. 177.

[37] L. Bonanate, *Etica e politica internationale*, Einaudi, Torino 1992.

[38] Vattel defined the *law of nations* as follows: «the science of rights which exist between Nations or States, and of obligations corresponding to these rights» (Vattel, *The Law of nations or the Principles of Natural Law*, cit., Introduction, § 3). That implies that States are actually moral people, thus sharing the very same rights, and that obligations are mutual. The concept of the equality of States, though, proved false from a factual point of view.

[39] On the condition of international law in Kant's time cp. Cavallar, *Kant and the Theory and Practise of International Right*, op. cit., p. 44 ff.

[40] Rawls'philosophy – just like Plato's and Kant's – belongs to the general orientation of ethical revisionism, i.e. an attitude based on the assumption that universal rules can be formulated only if specific contexts and usual practise are not taken into account. Moral criticism apparently requires free judgement which should be influenced neither by culture nor history. Cp. F. Viola, *Il diritto come pratica sociale*, Jaca Book, Milano 1990, pp. 174 and 194.

3. *Subjects of International Law*

The first question international law has to cope with is to which subjects law should be applied to. It is a very complicated matter and its solution affects the conceptual and axiological apparatus of the theory. Different concepts of international relations can be distinguished according to their notion of subjects.

There may be different kinds of subjects: 1) human beings, individually considered (present and/or future subjects, i.e. future generations) and social groups, which may be peoples, nations, ethnic groups, states[41], non-governmental organisations or other kinds of associations. Other possible subjects won't be taken into account here, such as animals (or rather any sentient individual) or even all natural beings[42]. Yet the basic subject are either individuals or groups. It is perhaps useful to distinguish between subjects whom law is applied to and agent-subjects, i.e. those who formulate and apply such rules. These categories might not coincide and do not actually coincide in many modern and contemporary theories. The problem of the consignee of law is not that easy since law can be applied to groups as well as individuals; besides, duties may be done not only to human beings but also to animals.

Yet the problem to identify the agents is even more difficult, because nowadays not only states but also other subjects strive to play an international role. Such distinction between consignee-subjects and agent-subjects, therefore, triggers off some more complications.

As a matter of fact, any concept of international law necessarily implies a specific concept of human being. Is it regarded as a single individual or as a social individual? It is important to ascertain whether sociality is considered as a peculiar feature in individuals since their preservation necessarily implies the defence of their social bonds (both voluntary and involuntary) the individual has within the group he

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[41] As for States, we would like to point out the problem of their duties and of the moral principles which should guide their domestic and international acting. Cp. L. Bonanate, *I doveri degli stati*, Laterza, Roma-Bari 1997.

[42] I dealt with this problem in F. Viola, *Dalla natura ai diritti. I luoghi dell'etica contemporanea*, Laterza, Roma-Bari 1997.

belongs to[43].Yet if we go further, political philosophy might flow into the wider context of philosophical anthropology.

Rather than enquiring the above mentioned categories and its variables, let us go back to Rawls.

According to Rawls there are five different kinds of national societies (domestic): reasonable liberal peoples, decent hierarchical peoples, outlaw states, societies burdened by unfavourable conditions and benevolent absolutisms. Only the first and the second type share a category Rawls calls «well-ordered peoples»[4][44]. It is also worth pointing out that he defines peoples only these two kinds of society.

Such distinction between democratic liberal societies and decent non-liberal societies is fundamental for his theory. It is marked by realism, i.e. the acknowledgement that the societies of the world scenery are all very different from each other. Not all non-liberal (which is different from illiberal) societies should be excluded from international society founded in law of peoples but only those the word people cannot be referred to.

Rawls' readers know the concept of «liberal people». Its institutional basic structure is that of a constitutional regime where fundamental rights are equally granted to all citizens. The preservation of such rights and freedom is given priority towards social welfare and perfectionist values and it grants primary goods to all citizens.

A decent society[45] must fulfil the following conditions: its foreign politics must not be aggressive, thus respecting other societies' independence, and it must have a common good conception of justice, so that all peoples' advantage are considered (even though such advantage is not equal for everyone) when taking public decisions and

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[43] Therefore the actual debate between liberalism and communitarism cannot be separated from the issue of international justice.

[44] In his *Political Liberalism* Rawls maintains a well-ordered society should possess the following characteristics: i) the common and voluntary sharing of the same concept of justice; ii) the existence of a basic institutional structure – publicly ackowledged – fulfilling the principles of such a concept; iii) the moral support and assent of citizens endowed with sense of justice. Cp. J. Rawls, *Political Liberalism*, Columbia U.P., New York 1996, p. 35.

[45] It is worth pointing out the parallelism which runs between «decency» and «reasonableness», both being directed towards the normative meaning of «acceptable» [67].

so as to secure the basic human rights[46] to everyone. All people are treated as subjects of law and judges (as well as other public officials) acknowledge and enforce this common conception of justice [64-67].

The basic structure of some decent peoples (though not of all decent societies) is called decent consultation hierarchy [63-64] and clearly refers to an Islamic view of politics [75 ff.][47].

What is interesting in such basic structure is its «associationist» character[48]. That means that a person is chiefly considered as part of a group, thus having rights and freedom, duties and obligations and participating of an acceptable co-operation system. [68]. We may here refer again to our distinction between consignee-subjects and agent-subjects of international justice. If we apply to it the associationist character of social structure then consignee-subjects will correspond to individuals taken as social beings and the agent-subjects will correspond to groups themselves. We may wonder whether any conception giving human beings the character of sociality should come to an associationist conclusion, thus preserving the political priority of a group towards individuals[49].

As we have seen, there are decent societies characterised by a decent consultation hierarchy [71 ff.]. That means that the structure of such a society is made of representative bodies, which participate – their influence being often not equal – of fixed decisional procedures and interpret the common idea of justice so as it affects all members of the people. Even though not all citizens are equal and not all-representative bodies are equally important, all decisions must be made for all people's benefit, rather result from a struggle between separate representative bodies. The difference between such a system and a

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[46] We shall hereafter deal with the problem of identifying such «basic human rights».

[47] Cp. C.R. Beitz, *Rawls' Law of Peoples*, in «Ethics», 110, July 2000, pp. 674-675.

[48] «All these societies, however are what I call associationist in form: that is, the members of these societies are viewed in public life as members of different groups, and each group is represented in the legal system by a body in a decent consultation hierarchy» [64].

[49] Rawls refers to Hegel and to his critcism of atomistic individualism in political delegation [cp. 73, n. 131].

paternalistic regime would lie in the fact that also dissentients should participate of political decisions[50].

Only members of acceptable liberal and non-liberal societies are considered «peoples». Therefore, according to Rawls, the agent-subject of international justice is people[51]. People are the actors in Peoples' Society just like single citizens are in domestic society. That provides a typical enforcement of domestic analogy with «people» playing the role of «state» [23].

Rawls' constructivism can be divided into three phases: first of all it is concerned with the definition of the subject of justice (what is meant by people?), then with the amendments which should be made to the original concept, and eventually with the problem to find out which principles will be chosen by peoples' representatives whose deliberations are founded on these rules of procedure[52].

In the first edition of Law of Peoples Rawls defined peoples as corporations of people organised by institutions which also fix the power of the government[53]. Yet his new definition has now become much more far-reaching (so as to include peoples of accepted non-liberal societies). People should be acknowledged according to an institutional, cultural and moral point of view. From an institutional point of view, people must be led by a reasonably right government which should protect their interests, such as the protection of national territory, preservation of its political institutions, culture and independence as organised state, public safety and welfare of its citizens [23-29; 34-35]. From a cultural point of view, people are joined together by what Mills called «common sympathies», which do

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[50] That is but a weak distinction. Paternalism apparently doe not lie in not listening to those who are governed but rather in taking decisions for them without their participation to such decisions. The interpretation of course depends on what we mean by «listen to». It is evident here that it means «to consult». As for the imaginary example of Kazanistan cp. [77], where the six main characteristics of a consultive hierarchical society are listed.

[51] For a general introduction to the notion of «people» cp. F. Viola, *Popolo*, in *Dizionario delle idee politiche*, Ave, Roma 1993, pp. 651-656.

[52] A. Kuper, *Rawlsian Global Justice. Beyond the Law of Peoples to a Cosmopolitan Law of Persons*, in «Political Theory», 28 (2000), 5, p. 642.

[53] J. Rawls, *The Law of Peoples*, cit., p. 70. In *Political Liberalism* the concepts of «people», «nation» and «state» are not relevant to Rawls' theory.

not exist towards foreigners[54]. The community of language and of shared memories of the past makes a nation out of people, though it doesn't always occur[55]. Anyhow, this concept of nation is different from that of government or state[56]. From a moral point of view, all people have a moral nature, that is to say that they share a moral conception of law and justice – which at least shouldn't be irrational – so that while rationally pursuing their aims and interests, they also respect co-operation with other people on an equal basis [25].

The general aim is to find a halfway definition between the liberal and the non-liberal concept of «people». According to the former the main feature of people is constitution, whereas the latter sees culture as its most important feature. The liberal concept stresses the voluntary and organisational character of people, whereas the non-liberal acknowledges its non-voluntary and spontaneous character. To achieve his goal Rawls sees the necessity of weakening both elements.

Rawls evidently tries not do identify necessarily people with nation and to distinguish both from state[57]. We should verify if such distinction is proper or if its outcome results in a conception of state, thin as it may be[58].

Rawls certainly keeps at distance from a realistic conception of state and international relations: external sovereignty does not include the right to make war, but only the right of self-defence, and internal sovereignty is not absolute but limited by constitutional limits as well as by matters of international relevance. [26-27]. Yet to reject a realistic conception of state does not necessarily lead to grant people international subjectivity. Rawls' rejection of the realistic concept of state, i.e. of the Westphalia paradigm, leads to the basic assumption of the paradigm, the assumption being that state sovereignty should be fixed before any rules of international justice; therefore the definition

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[54] Such bonds make a group of people co-operate among themselves better than with other people and make them long for a common governance, which is to be completely or partly democratic.

[55] As I have already stated, such characteristic is nevertheless always essential for the political concept of «people». Cp. Viola, *Identità e Comunità*, cit. pp. 59-92.

[56] Rawls here follows Y. Tamir, *Liberal Nationalism*, Princeton U.P., Princeton 1993.

[57] In the statute of United Nations the word «peoples» only identifies those peoples who have been organised into States.

[58] As it is maintained by Kuper, *Rawlsian Global Justice*, cit., p. 641 ff.

of international laws implies pre-established sovereignty. According to Rawls, instead, the concept of state sovereignty is not pre-existent and derives necessarily from the Law of Peoples[59]. This is the reason why we do not find a clear formulation of sovereignty in Rawls' previous works[60]. Only when acceptable liberal and non-liberal societies formulate the principles of international relations, can they give a definition of state sovereignty. International realism tries to suit the rules of behaviour to sovereign states as they appear onto the international scenery.

We may object that the weakening of the concept of state and the mainly cultural and co-operative character of that of people make the above mentioned theories quite meet. Such overlapping occurs at a lower level than that where state sovereignty corresponded to people's self-determination. To define Rawls' conception as state-centred is wrong since he does not carry internal sovereignty to its extremes and defends the co-operative quality of external sovereignty. If what is meant by state is the political organisation of society, then state may be defined as a complex of political institutions, without charging the author of being state-centred.

Yet, the charge of state-centrism acquires a peculiar meaning for supporters of cosmopolitanism according to which the agent-subject is the individual instead of people. They reject political organisation on a territorial basis, the political meaning of frontiers, the moral primacy of national ties in the fixing of political constraints, the cultural identifiability of peoples[61]. The tasks of a government should have a functional, instead of territorial, basis, each one of its political agencies being concerned with different spheres of human activity[62]. Since not

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[59] «It is significant that peoples' rights and duties in regard to their so-called sovereignty derive from the Law of Peoples itself, to which they would agree along with other peoples in suitable circumstances» [27].

[60] The principles of domestic justice can be concerned only with police force and with judicial power in defence of democratic institutions.

[61] Other options must be added to the present list: people often have a multiple political identity and belong to more than one «people»; people are often culturally bound to people belonging to another «people»; there is no clear distinction between peoples and other kind of groups; multiculturalism implies that a territory is inhabited by several peoples. Some of these issues are dealt with by O. O'Neill, *Justice and Boundaries*, in C. Brown (ed.), *Political Restructuring in Europe: Ethical Perspective*, Routledge, London 1994.

[62] Kuper, *Rawlsian Global Justice*, cit., p. 658.

all activities are carried out on a territorial context, then not all agencies should be territorial either. Such argumentation lead to the dissolution of the concept of state as well as that of people on a political level, thus proving that both concepts are necessarily and tightly linked together. To assert the existence of a single people on earth would be meaningless, since mankind is not a people.

Supporters of cosmopolitanism reject Rawls' following argumenta: since a world government resembling that of a state is not advisable, then there must be a decentralised government, and such decentralisation implies necessarily the government of separate territorial units, each one of them being politically independent[63].

Rawls apparently backs up the primacy of people with a pragmatic argumentation: the cosmopolitan approach would be much less tolerant towards the peculiarities of peoples, their culture and tradition, besides, only a liberal-democratic society would be regarded as acceptable [82-83]. We might object that he mingles two different problems, i.e. that of the primacy either of groups or individuals and that of the toleration of non-liberal peoples[64]. Rawls mingles both matters and believes that tolerance necessarily implies the primacy of people[65]. Yet to accept a situation de facto out of opportunity should not lead to its moral justification, otherwise changes of such situation, if any, could not be accepted and acknowledged. Should Rawls' concept of people be carried to its outmost, not even multicultural societies could be duly acknowledged[66].

We also wish to remind that the position of liberalism and democracy as for the political relevance of people strongly differ: if democracy means «government of people», then the latter must be pre-eminent towards the individual. Yet in how far?

It has by now become clear that the traditional concepts of state and people sovereignty must be carefully reviewed. Whereas the former

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[63] «In the absence of a world-state, there must be boundaries of some kind» [39]. Such necessity is justified by the analogy with the right of property implying the responsibility in the use of resources. In such right Rawls also sees the reason for the weakening demand of the principle of distributive justice on an international level.

[64] Such toleration is apparently unacceptable for comprehensive liberals and for some of them it is the proof of the weakness of «political liberalism». Cp. Kok-Chor Tan, *Liberal Toleration in Rawls' Law of Peoples*, in «Ethics», 108, January 1998, pp. 276-295.

[65] Beitz, *Rawls' Law of Peoples*, cit., p. 681.

[66] *Ibidem*, p. 683.

gave state predominance towards political community, the latter led to the denial of the inner organisation of the political community, which preserves minorities and individuals' rights. Such review of the relation running between state as independent apparatus and democracy as independent determiner of the conditions of collective association should not neglect the contents of democratic deliberations and of social co-operation. On what conditions is democratic will to be regarded as wise and right? In how far the majority's will is a sufficient ground/justification for a non-arbitrary government? A recent introduction of the «principle of autonomy» seems to take this direction[67]. The recent discussions upon deliberative democracy[68] assert the importance of finding acceptable or reasonable contents of social co-operation[69]. Therefore, the concept of people shall be concerned not only with the problem of subjects but also with objects of social co-operation, which are not to be interpreted as merely cultural. Only this way the problem of «embodiment» of social groups – which is the hardest to be solved on a philosophical level - can be avoided[70].

4. *Rules of International Justice*

I do not intend to discuss here the model of the second position of the original list, according to which the parties are people's representatives, since it is connected with Rawls' general concept of justice. I wish to point out that it applies only to people of liberal societies, since Rawls first fixes the international rules which should regulate the relations among liberal societies and then faces the problem of changing them so as to include into peoples' society also non-liberal, yet acceptable societies. Nevertheless by using once more domestic analogy Rawls equalises the position of citizens according to

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[67] Held, *Democracy and the Global Order*, cit., p. 145 ff.

[68] Cp., for instance, A. Gutmann - D. Thompson, *Democracy and Disagreement. Why Moral Conflicts Cannot Be Avoided in Politics*, and *What Should Be Done about It*, The Belknap Press of Harvard U.P., Cambridge (Mass.) 1996, and *Deliberative Democracy*, Cambridge U.P., Cambridge 1998.

[69] The essential question to be asked is: Does an international model of democracy exist? Which are the minimum parameters for a government to be acknowledged as democratic? We shall later go back to these issues.

[70] On this issue please refer to P. Jones, *International Justice – Amongst Whom?* in T. Coates, *International Justice*, Ashgate, Aldershot 2000, pp. 111-129.

the model of the original first position with that of people. Such equalising is questionable as it implies that people's representatives ignore the surface of territory, the population, the amount of resources and inhabitants' rights.

Such ignorance is even more unacceptable than that of citizens of the first original position. In fact, supposing (without granting) that a citizen's moral and cognitive powers are such as to make any pre-existing cultural condition unnecessary, the concept of people is undoubtedly cultural; indeed in the original position it was to be already interpreted as liberal, i.e. provided with right – in Rawls' accepted meaning - political institutions[71]. Yet that requires that the thick cloak of ignorance has already been removed and that justice has already been administered in particular social and economic contexts.

Besides, there are no grounds for the analogy between domestic and international society since the former aims at choosing principles of justice regulating institutions whose organisation affects every single citizen, whereas the Society of liberal Peoples are not concerned with the fixing of principles for international institutions.

The Law of Peoples is a corpus of principles for liberal peoples' foreign politics, i.e. the widening of liberal political morality to foreign politics[72].

Following the procedure he already employed for his Theory of Justice Rawls sorts out the following principles:

Peoples are free and independent and must therefore be respected by other peoples.

Pacta sunt servanda.

Peoples are equal and are parties of binding agreements.

Peoples must comply with the duty of non-interference.

Peoples have the right to self-defence; they have no right to stir up war for any other reason whatsoever (*ius ad bellum*)

Peoples must respect human rights.

Peoples must keep to restraints at war (*ius in bello*)

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[71] «Though they do know that reasonably favourable conditions obtain that make constitutional democracy possible – since they know they represent liberal societies – they do not know the extent of their natural resources, or the level of their economic development, or other such information» [32-33].

[72] Beitz, *Rawls' Law of Peoples*, cit., p. 675.

Peoples must aid other peoples whose disadvantaged domestic situation hinders the establishment of a socially and politically right or decent regime[73].

Rawls adds that such principles are so terse as to make further explanations and articulations necessary [37-38][74].

These peoples shall set up co-operative institutions for trade (such as GATT), for the banking system (such as the World Bank) and for politics (such as UNO, which Rawls chooses to call Confederation of Peoples[75], instead of states [42-43].

Throughout the history of theories about international relations there have been several examples of lists of principles, Kant's being the best known[76]. A brief comparison between the latter and Rawls' is therefore necessary.

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[73] The latter principle is not mentioned in the first edition of *The Law of Peoples*. We must also point out that only principles 6 and 8 represent a change from what already stated in *A Theory of Justice* (sec. 58). Whereas the former limits sovereignty, the latter formulates a model of international development where rich countries aid poor countries. Yet we wonder whether the context is still that of liberal societies. That doesn't seem to be the case since decent political regimes are mentioned. On the one hand the principle of reciprocity and the conventional character of the Society of liberal peoples apparently require such principles to be applied only by its parties; on the other hand the universal character of such principles calls for their being applied by all peoples. We cannot maintain, of course, the limited right of self-defence to be valid only versus other liberal peoples. Such principles are liberal peoples' guidelines in their international relations with all other peoples all over the world: yet there may be some limits under particular circumstances.

[74] For instance, the right of independence and self-determination do not automatically imply right of secession, particularly if that should lead to violate other peoples' rights.

[75] The phrase was first devised by Kant, *Per la pace perpetua*, cit., p. 173, although he didn't distinguish between People and State. What is new is the proposal of introducing another assembly into UN, i.e. the Assembly of Peoples. Cp. J. Segall, *A UN Second Assembly*, in F. Barnaby, *Building a More Democratic United Nations*, Cass., London 1991.

[76] In the 18th century many proposals for international peace have been formulated. The most famous ones are Charles Irénée Castel de Saint-Pierre's (*Projet pour rendre la paix perpetuelle en Europe*, 1713, published by S. Goyard-Fabre, Garnier, Paris, 1981) and J.-J. Rousseau's, who read Saint-Pierre's work twice (1756-1782) (cp. *Estratto del Progetto di Pace perpetua dell'Abate di Saint-Pierre* and *Giudizio sul Progetto di Pace Perpetua*, in *Scritti Politici* edited by M. Garin, vol. II, Laterza, Roma-Bari 1994, pp. 319-359). There is a remarkable difference between both positions: Saint-Pierre didn't see the necessity of carefully analysing the general structure of international relations and firmly believed that the problem could be solved by absolute rulers' good will whereas Rousseau was fully aware of the necessity of discussing and developing further the Westphalia paradigm. Kant admired

In his *Law of Peoples* Rawls' position is much nearer to Kant's than in the Theory of Justice. He acknowledges Kant's theory of the double agreement, i.e. the domestic and the international one.

Just like Kant, Rawls maintains that the principle of distributive justice is not contained in the international agreement[77].

In his «For everlasting peace» Kant hypothesises two steps: that expressed by preliminary and definitive paragraphs. He maintains that men should first come out of the state of war and then move on to make peace durable. His utopia is based on facts and does not set aside the hard laws of history, which undoubtedly had a certain fascination on him (I am here making a passing reference to his reflections upon the naturality of war, his critical approach being strongly influenced by Hobbes[78]). The facts he takes into account are on the one side the existence of states as subjects of international law and on the other side their relations marked by war. Somehow, Rawls deals as well with facts, though much more implicitly: the diffusion of human rights, that of international organisations, the liberal-democratic model of constitution. That means that Rawls' list should be compared to Kant's second list, i.e. with that of definitive paragraphs for everlasting peace[79].

Rawls moves from a principle which Kant described very clearly and which was to become essential for any new theory on international

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both authors and their proposals, yet he didn't follow them. Just like Rousseau, and in opposition to Saint-Pierre, he stressed the importance of domestic right for international relations. Unlike Rousseau he believed absolutism could be developed into republicanism. Yet, what is actually new in Kant's theory is that international relations are based on philosophy of right which is a part of metaphysics of customs. Kant wanted to work out a juridical concept of peace. Cp. A. Burgio, *Per una storia dell'idea di pace perpetua*, in I. Kant, *Per la pace perpetua*, translated into Italian by R. Bordiga, Feltrinelli, Milano 1991, pp. 87-131, and for an updated study, J. Habermas, *Die Einbeziehung des Anderen. Studien zur politischen Theorie*, Suhrkamp, Frankfurt/M. 1996.

[77] C. Brown, *Contractarian Thought and the Constitution of International Society*, in D. Mapel - T. Nardin (ed.), *International Society. Diverse Ethical Perspectives*, Princeton U.P., Princeton 1998, p. 137.

[78] Kant, *Per la pace perpetua*, in Id., *Sritti di storia, politica e diritto*, edited by L. Ceppa, laterza, Roma-Bari 1999, p. 137.

[79] Such definitive paragraphs have been formulated as follows: 1) the civil constitution of each state should be republican; 2) the law of peoples should be based on a federalism of free states; 3) cosmopolitan law should be limited to the conditions of universal hospitality. As we may easily observe, every paragraph applies to each branch of law (domestic, international and cosmopolian one).

relations: the principle of the indissoluble connection between «civil constitution» and «external relations between states»[80]. Yet his liberal-democratic constitution takes the place of Kant's republican constitution[81]. Rawls' federation of people resembles Kant's federation of state. To Kant's *hospitality* Rawls opposes the respect of human rights (see paragraph no. 6 of his list). Rawls list does not exclude war (even though he only admits war of self-defence), whereas Kant accepts war only in the preliminary, not definitive, paragraphs. Rawls' concept peace is not as evelasting as Kant's.

Kant wishes to go beyond the concept of right war, since it may be easily exploited for wrong purposes. He regards his predecessors in point of international relations as *leidige Tröster j*ust like Jobbes' friends (16, 2).

On the one hand he disagrees with their optimistic view of international relations (Pufendorf, for instance, regarded peace as a natural state); on the other hand he also disagrees with Vattel's theory of the impossibility of eliminating war. Vattel supported right war without demonstrating the reasons of its being right, thus legitimizing military aggression. Kant attempts to formulate an international legal system which completely rejects war. The new and revolutionary paradigm should be: *si vis pacem, para iustitiam et pacem[82]*. Yet we won't deal with the problem of war any further, since it is not the subject of our study.

Many of Kant's scholars stress the cosmopolitic character of his work[83]. Oddly enough it is justified by pointing out that Kant's thought develops from state-centrism

Oddly enough, the reasons of such character are traced back to the development of Kant's state-centrism into people-centrism, the latter – as we have seen – being one of Rawls'argumentation to reject the cosmopolitan doctrine. In the preliminary articles all states, whatever

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[80] I. Kant, *Idea per una storia universale dal punto di vista cosmopolitico*, in Id., *Scritti di storia, politica e diritt*o, cit., pp. 36-39.

[81] According to Rawls liberal-democratic regimes do not have any espansionistic aims and nor do they wage war upon each other [51-55]. Such was also Kant's view of the republican constitution.

[82] J. Galtung, *Peace by Peaceful Means: Peace and Conflicts. Development and Civilization*, Sage, London 1996.

[83] Cp., for instance, F.R. Tesòn, *The Kantian Theory of International Law*, in «Columbia Law Review», 92 (1992), pp. 53-102.

they might be (monarchies, aristocracies, democracies, despotic governments) are regarded as sovereign states. In the definitive articles only those states ruled by republican constitution (i.e. which are based on division of powers and on sovereignty of people) apparently result from the idea of an original agreement[84]. What is now important is the form of government, which can be republican or despotical. This theory has been interpreted as «normative individualism», as if Kant had asserted the primary normative unit to be the individual instead of state[85], since people consist of individual wills. Yet this interpretation is quite puzzling to me. Kant derived his concept of people from Rousseau, people therefore not being regarded as merely a sum of individual wills but as «the collective unity of unified will»[86]. It follows that sovereignty of people should be seen as a means of translating the sovereignty of state and state itself (such a formulation resembles Rawls'). The ideology of cosmopolitanism can go so far as to force the meaning of Kant's works to make them fit such phenomena as globalisation, global civil society, and erosion of sovereignty[87]. The third definite article of Kant's sylloge is seen as provisional or else as the first step towards the stoical ideal of *civitas maxima*, which Vitoria described as follows: *totus orbis habet potestatem legis ferendi*[88]. On the other hand, Kant's master, Christian

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[84] In republicanism the greatest threat to freedom is domination, i.e. being ruled by other peoples'arbitrary will. That can be regarded as the synthesis of the Greek's concept of freedom (from external domination) and the Romans' (from internal power). Cp. Ph. Petitt, *Il repubblicanesimo. Una teoria della libertà e del governo* (1997), translated into Italian by P. Costa, Feltrinelli, Milano 2000, and, as a more general study, M. Viroli, *Repubblicanesimo*, Laterza, Roma-Bari 1999.

[85] Tesòn, *The Kantian Theory of International Law*, cit., 1992, p. 54. For a complete study of all interpretations of Kant's theory on cosmopolitanism, cp. F.H. Hinsley, *Power and the Pursuit of Peace*, Cambride U.P., Cambridge 1963; M.W. Doyle, *Kant, Liberal Legacies and Foreign Affairs* (parts I and II), in «Philosophy and Public Affairs», 12 (1983), 3-4; M. Wight, *An Anatomy of International Thought*, in «Review of International Studies», 13 (1987).

[86] Kant, *Per la pace perpetua*, cit., p. 189.

[87] D. Archibugi - D. Held, *Cosmopolitan Democracy: An Agenda for a New World Order*, Polity Press, Cambridge 1995. See also P. Laberge, *Kant on Justice and the Law of Nations*, in Mapel - Nardin (eds.), *International Society. Diverse Ethical Perspectives*, cit., pp. 82-102.

[88] Cp. M. Wight, *International Theory: The Three Traditions*, edited by G. Wight and B. Porter, Holmes and Meier Publications, New York 1994. The author analyses three traditions of thought on international politics: the realistic one, strongly influenced by Hobbes, the universalistic one, formulated by Kant who regarded

Wolff, put forward the idea of *civitas maxima* to be based on all people's tacit agreement. Yet the interpretation of the third article is very hard, due to Kant's terseness. Kant deals with *ius peregrinandi* and its limits, a subject would clash with his (presumed) ideal of unity of mankind. We can only affirm that individuals, not only states, are here given more importance as they have rights as well as international duties. Kant's formulation resembles that of the ius gentium of the present days[89].

To justify cosmopolitan law, Kant also refers to Copernicus: as the earth is round and limited in space, all nations share the very same goods and need therefore a common legal regulation. And he therefore closes his argumentation as follows: since such community is now widespread among all peoples on earth as since it has gone so far as to make a single violation of law suffered by an individual be felt by everyone on earth, the idea of cosmopolitan law is no longer seen as an extravagant vision of law, but as the necessary completion of the unwritten code as regards the law of state, the law of people, the public law of mankind, all tending to everlasting peace which can be approached and achieved only on the aforesaid condition[90]. We do not know whether Kant's cosmopolitan law should include also state and international law. Everlasting peace was what he longed for and what he was mainly concerned with. He was neither a cosmopolitan universalist nor a state-centred realist. He required from all states a republican constitution, which should grant individuals their rights and freedom. Cosmopolitan right is for Kant compatible with a right international society, since individuals have the right to make private transactions across the frontiers[91].

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international politics as a potential community of mankind, and Grotius'concept of international society.

[89] P. Benvenuti, *Diritto delle genti in divenire: fonti e soggetti*, typescript, 2000.

[90] Kant, *Per la pace perpetua*, cit., p. 179

[91] Tesòn, *Kantian International Liberalism*, cit., p. 105

5. *The Society of Well-Ordered People and Human Rights*

Once the principles and conditions regulating the relations between states and liberal peoples have been fixed, Rawls tries to extend them also to other states and peoples to widen international Society. We should go through Rawls constructive method once again.

The difference between his theory and Kant's should be first made clear. According to Kant it is first necessary to create the conditions for temporary peace. Such conditions will then allow states to develop into republics and will eventually lead to everlasting peace. Rawls' theory is different, it is quite the opposite: only after the principles regulating the relations between liberal societies have been fixed, can we move on to extend them to non-liberal, yet acceptable and decent societies. As a final result, absolutist, poor and outlaw societies will be left outside the above-mentioned system. Rawls'Society of People does not therefore include all states (does it include all peoples, though?), his ideal goal, his ideal utopia, being a world where all peoples are liberal.

The problem of the development of Society of liberal peoples into Society of Well-Ordered Peoples is a delicate matter. We should first point out that domestic analogy doesn't apply to it. A liberal society can host plenty of reasonable comprehensive conceptions, even though there might be disagreement as to which is the most reasonable [60]. Yet all agree to define acceptable non-liberal societies as societies which do not fully respect the equality and freedom of their citizens. Therefore they are believed to deserve some kind of sanctions and are helped develop into liberal people. According to Rawls we must not identify a reasonable comprehensive doctrine with an acceptable liberal society, since we do not require from the former to give up its very self, whereas the latter is accepted only provisionally. Yet such an attitude might be dangerous. How can we respect non-liberal cultural and political traditions of a people if we believe that they deserve sanctions and that they should change radically their political institutions?

The new fundative agreement requires all the above mentioned conditions: the non-aggressive character of a society and its strong and widespread trust in the advantages brought about by the co-operation with other peoples [64], the respect of basic human rights, the acceptance of the principle of legality when fixing duties and rights, a

legal and administrative organisation which is based on a shared ideal of justice [65-67].

Rawls' thesis is that under these conditions representatives of acceptable (or decent) peoples will undersign the very same eight principles regulating the Society of liberal people [69]. We may legitimately think that decent non-liberal peoples could accept such principles only because their power has been weakened to the outmost. Why should peoples whose existence is founded in political liberalism avoid undersigning a stronger international agreement if not in order to extend it to acceptable non-liberal people? If this should be the case, then both steps of development of the society of peoples are a useless pretence and Kant's theory sounds much more convincing, since in the preliminary articles he defines the conditions of development into the pacifist liberalism of the definitive articles.

Rawls' liberal critics, instead, strongly criticised his liberal concept of tolerance and stressed the weakness of the eight principles. According to his theory, non-liberal politics, which are regarded as unreasonable within their domestic context, become reasonable within an international context[92]. Only within its domestic context should a liberal state critique a comprehensive vision, which prevents its members from exercising their political rights, whereas it should tolerate within a wider context well-ordered hierarchic states, which do not even grant their citizens such rights. Such a theory is unacceptable since it tends to slacken the limits of tolerance on an international context, thus driving the project of an international community to a mere *modus vivendi*[93]. Rawls' attitude is certainly realistic since international community is actually helpless to fight most of violations of rights occurring within domestic borders. Yet we must distinguish between the evaluation of a situation and the actual reaction or attitude towards it. If on the one hand we may evaluate a given political regime as non-acceptable, on the other hand we may not try to change it due to

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[92] It is worth pointing out that to such objection Rawls replies that reasonableness is no unitary unchangeable criterion and that as such it depends on the context in which it is applied. If criteria are too stiff in international society, international relations become impossible.

[93] Kok-Chor Tan, *Liberal Toleration in Rawls' Law of Peoples*, cit. pp. 283-285

opportunistic reasons[94]. Rawls'view is to be criticised since he confuses evaluation of and reaction to a situation, his internationalising theory having no pragmatic basis. Critics maintain therefore that Law of Peoples clearly brings out the weakness of «political liberalism».

They also focus their attention on the way Law of Peoples deals with such basic issues as human rights and the acknowledgement of the basic principles of democracy.

The Society of Well-Ordered Peoples does not provide its members with all rights citizens have in liberaldemocratic regimes but only with a subclass of them (urgent rights): freedom from slavery and servitude, freedom of conscience (even though it is not equally granted to everyone), the protection of ethnic groups from genocide and mass-slaughter [79][95]. These rights are therefore distinguished from fundamental or constitutional rights, and therefore make up the restricted group of actual «human rights»[96].

It is worth pointing out that this essential core of rights is enough as to make sanctions towards decent societies illegitimate and as to legitimise military intervention versus out-law societies [80-81]. The normative character of the essential core of rights seems to outdo even «political liberalism» and apparently stand for mankind's natural law. Then why shouldn't it provide the basis for a progressive building of Law of Peoples rather than being born out of the necessity to admit decent societies into the Society of Peoples? If Rawls' view had been such, it would have resembled the traditional view of natural right and of *ius gentium*.

The identification of human rights with an essential core of rights is stated in the interpretation Rawls of the Universal Declaration of 1948. [80, no. 23]. Human rights are divided into two groups. The first group is ruled by paragraph 3 («Everyone has the right of life, freedom and of

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[94] Cp. W. Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Oxford U.P., Oxford 1995, pp. 164-166 and J. Raz, *Ethics in the Public Domain*, Oxford U.P., Oxford 1994, p. 170.

[95] Rawls carefully listed such rights: the right of life, of freedom (from slavery, from servitude, from hard labour, and a sufficient freedom of conscience so as to secure freedom of religion and of thought), the right of property and of formal equality (equal cases to be treated equally) [65]

[96] «Human rights are distinct from constitutional rights, or from the right of liberal democratic citizenship» [79]. Cp., for instance, as for Rawls'concept of rights R. Martin, *Rawls on Rights,* University of Kansas Press, Lawrence (Kansas) 1985.

safety»[97]) and by paragraph 5 («None can be tortured or undergo any cruel, humiliating and inhuman punishment»), from which all other 18 paragraphs are logically drawn. The second group is concerned with such extreme crimes as genocide and apartheid for which particular agreements have been made. Par. 1 (All human beings are born free and equal as for dignity and rights. They are endowed with reason and conscience and must behave towards each other in a spirit of brotherhood») is already considered as a liberal right and does not therefore belong to urgent rights. Accordingly social rights[98] have also been excluded from the core of human rights.

This interpretation of the Declaration is questionable for several reasons: Rawls evidently aims at releasing single human rights from a general concept of human being (such as that of par. 1) which might not be shared by non-liberal societies. Yet if on the one hand he accepts the possibility of logical deduction from the essential core, on the other hand he does not see that such deduction can only derive from such general premise. A further problem is the following: if we accept the derivability of a right from another, then why should we stop at par. 18, neglecting for example the freedom of association (art. 20), which has been considered undoubtedly one of most essential rights since Toqueville's works? Besides, there are also human rights, which are included by Rawls into the original core, such as freedom of religion, which can hardly be accepted by well-ordered hierarchic societies[99].

Rawls moves on as to progressively weaken the problematic of rights. The development of a comprehensive (or else metaphysical) concept of law into a «political» one represents the first step towards such weakening within domestic society. International society must weaken further the concept of rights and even give up the concept provided by political liberalism,

If it wishes to include decent non-liberal societies. The actual concept of human right would be then reduced to the minimum of

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[97] Par. 4 on the prohibition of slavery is implicitly contained in Par. 3.

[98] Just like, for example, Par. 22 on social safety and Par. 23 on right of work.

[99] It must be stressed, though, that Rawls does not trace human rights back to each different culture so as not to be accused of the parish universalism characterizing the liberal justification of rights of the western world, as it is maintained by E. Charney, *Cultural Interpretation and Universal Human Rights*, in «Political Theory», Thousand Oaks, 27, Dec. 1999, 6, pp. 840 ff.

respect which must be granted to every human being: that implies a considerable restriction of universal human rights[100]. Oddly enough pluralism apparently forces us to give up doctrines to save universality. Yet this strategy implies on the one hand the restriction of meaning of shared values and on the other hand the impossibility of articulating and applying such values without going back to doctrines.

If we consider the development of human rights in recent political culture, we will realise that it was different from that represented by Rawls' constructive theory. We do not want to critize his thought since our concern is whether to accept the status quo in order to improve it or to build up straightaway an ideal model. Yet the latter must not ignore the real situation tout court if it wishes to be a «realistic utopia». All ideologies and spiritual tendencies made the original agreement over the Universal Declaration, however much they differed from each other on a theoretical level). Such agreement, at least theoretically, was not concerned with a minimum core of rights but it extended (or at least wanted to extend) to all fundamental rights of human beings; furthermore it was based upon the general assumption of human dignity as being superior to all ideologies and comprehensive doctrines. It was subscribed not only by liberal societies and by well-ordered hierarchic societies but also by states which we might consider, as Rawls, «out-law states». When it came to the actual application of the rights, there arose clash of interpretations, reasons of states and reservations. Yet the argumentation of coherence was put forward which has a strong influence and performative effectiveness in international relations. If I claim a human right for my good self (or for my people, my social class, my breed), I cannot deny it to you (or to your people, your social class, your breed). American settlers claimed their rights towards the English and could not eventually deny the very same rights to their black slaves. Such logical consequence has marked the evolution of human rights and leads to an astoundingly progressive and unrestrainable widening of their formulation. This is what Habermas defined as the «oriented course» of rights. If Society of Peoples had stuck only to the restricted group of urgent rights, what above stated wouldn't have been possible.

Rawls'critics charged him of deliberately overlooking the liberal concept of values even though in his first work he affirmed to give as

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[100] Chauvier, *Libéralisme politique et universalisme juridique*, cit.

neutral and universal concept of the principles of law as possible. He rejected their charge by claiming that his concept applied only to certain societies in a given historical period, i.e. to societies with a democratic and constitutional tradition. If that is the case, then it cannot convert societies with different traditions, since it does not provide any explanation of the reason why liberal institutions should be established in societies without liberal traditions. Liberal traditions must precede political liberalism[101]. Rawls doesn't succeed in giving a non-liberal society a reason to become liberal.

What above stated shows that Rawls' attitude does not coincide with that of well-ordered non-liberal societies and does not explain how they can become liberal or open up to political liberalism; it rather resembles that of liberal societies when fixing their attitude towards non-liberal societies [121].

6. *Democracy and International Justice*

We shall now deal briefly (due to Rawls' terseness) with the acknowledgement of democratic principles by the Society of Well-Ordered Peoples[102]. Since well-ordered hierarchic societies must respect some fundamental rights, they should also have democratic institution and shouldn't be despotic at all.

As regards this problem, Rawls' attitude is hard to understand. It is not clear whether he requires from them some positive conditions of democracy or if the only (negative) requirement he asks of them is that they are not despotic. My interpretation is the following: Rawls doesn't ask of well-ordered non-liberal societies to be democratic, but he requires it from the Society of Well-Ordered Peoples. I shall now put forward some observations supporting my interpretation.

First of all we may notice that, whereas human rights are explicitly referred to, none of the eight principles of the Law of Peoples openly

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[101] S. Sheffler, *The Appeal of Political Liberalism*, in «Ethics», 105, October 1994, pp. 18-20.

[102] The subject of democracy is actually connected with that of «public reason»: that is the reason why Rawls' work dated 1997 was inserted into the appendix and – as it is stated by Rawls himself – is an essential part of the Law of Peoples. Yet the aim of the work of 1997 is to react against those, who – like Waldron – strongly criticized Political Liberalism due to its underrating of the role all religions could play in public debates.

refers to democracy. As for that Rawls' positions differs from Kant's who explicitly mentioned the condition of a republican constitution in the definitive paragraphs.

Even though democracy may have different meanings, Rawls' accepted meaning is clearly «deliberative democracy». Rawls supports deliberative democracy where citizens discuss over essential constitutional matters. Their opinions must comply with requirements of reasonability and are ruled by public reason. Deliberative democracy has therefore three fundamental features: the idea of public reason, a group of constitutional democratic institutions regulating the deliberative and legislative bodies and the citizens'general tendency to follow public reason and to suit their behaviour to it[103]. The feature Rawls lingers over most is undoubtedly «public reason»[104].

The point is that public reason is not linked to any comprehensive doctrine and requires pluralism. It acknowledges only argumentation, which is considered valid also by those who have a different opinion according to the principle of reciprocity. Public reason implies a political concept of law and is detached from any specific concept of common good, which may be connected with a comprehensive doctrine[105].

Now, decent non-liberal societies are based upon a concept of common good, which is often religious, and provide therefore no ground for pluralism. Therefore, public reason (as well as Rawls' concept of deliberative democracy) cannot be applied to them. Yet Rawls regards the subjects of such societies as an actual «people», as we saw, even though it consists of associations rather than individuals and democratic representativeness belongs to groups rather than individuals. Such view is possible because the general notion of people does not include public reason among its essential features, because it only characterises «liberal peoples». If people are subjects of political decisions in these societies, we must admit that they have some democratic features, even if they do not comply with the requirements

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[103] J. Rawls, *The Idea of Public Reason Revisited*, in «The University of Chicago Law Review», 64 (1997), 3, p. 772 ff.

[104] On the relation between public reason and rights cp. F. Viola, *Etica e metaetica dei diritti umani*, Giappichelli, Torino 2000, pp. 159-174.

[105] Rawls, *Political Liberalism*, cit., pp. 35-40.

of Rawls' deliberative democracy[106]. Yet there's no such conclusion in Rawls'work, nor does he attempt at putting forward a minimum notion of democracy as he did for basic human rights. Actually by resting his concept of deliberative democracy on public reason, he cannot possibly acknowledge other degrees of democracy: either there is a prevailing comprehensive concept of common good or there is a pluralism which can be reasonably regulated only by a «political « concept of law. Furthermore Rawls is not so much interested in the institutional character of democracy but rather in its liberal character (i.e. its contents)[107].

Public reason normally fits the context it works in. The very Law of Peoples (liberal and decent ones) can be regarded as international public reason [121-123]. It is not reasonable to demand that all peoples should be liberal. The mutual respect among peoples, which is the essential condition for peace, requires that liberal people acknowledge non-liberal decent peoples as members of the very same international community. That echoes once again domestic analogy, since the Law of People extends public reason (which characterises liberal domestic societies) to the international community. The bodies of the international community or, in Rawls' words, of the Confederation of Peoples will be ruled by institutions and principles, which all peoples (liberal as well as decent ones) cannot reject due to the principle of reciprocity. The model of deliberative democracy is thus applied to international community, even if it is not applied by some of its members within their domestic context.

From the point of view of international justice the democratic character of a political society may become a problem, when, for instance, aid is to be given to underdeveloped countries: it must be avoided that such aid is plundered by those who are responsible for underdevelopment, their despotic, non-democratic power being thus increased and strengthened. People, not the state must benefit from aid. A commonly used device consist in the insertion of the so-called

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[106] Rawls' concept of people is undoubtedly imbued with elements borrowed by the democratic tradition, such as the free acceptance of law, the principle of social co-operation and of reciprocity.

[107] Liberalism is a doctrine on what law should be, whereas democracy is a doctrine on the way laws should be brought forth. Such distinction was first mentioned by F.A. Hayek, *The Constitution of Liberty*, Routledge & Kegan Paul, London 1960, pp. 103-104.

«principle of conditionality» in treaties of foreign aid, where co-operation programmes can be carried out and fulfilled only under the condition of democratic principles or particular rights (such as women's rights) being respected[108]. This way the right of development (which originally implied the protection of the countries of the Third World) has become a means (Though it is not always legitimate) of controlling and influencing their political structure and their peculiar political culture[109]. Rawls explicitly deals with this problem [105-113]. It refers to the third kind of societies, those burdened by unfavourable conditions, and it belongs to the general issue of international distributive justice which, as we already said, is not the object of this study since its complexity requires an in-depth discussion[110].

We would like to remind the reader that Rawls divided his work into two parts: in the first part he exposes the ideal theory we have examined, whereas in the second part he lingers over non-ideal theory, i.e. over particular situations which are to be approached with a realistic attitude and with provisional measures in order to achieve the ideal model.

Rawls concludes by re-asserting the big difference between his Law of Peoples and a cosmopolitan view. The latter aims at each individual's welfare, whereas the former aims at justice in the societies. The latter aims also at a global redistribution of wealth even after societies have established a sufficient amount of right institutions. Law of Peoples does not consider such issue since its goals are only justice and stability of the Confederation of Well-Ordered Peoples as a whole.

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[108] The «principle of conditionality» is explicitly mentioned in several bilateral agreements of the EEC.

[109] On the history of the right of development cp. U. Villani, *L'evoluzione del diritto allo sviluppo*, in «Volontari e terzo mondo», 1997, 4, pp. 47-55. On the relation between development and democracy cp., for instance, AA.VV., *Cooperazione allo sviluppo, diritti umani e democratizzazione (Atti del Convegno nazionale per la celebrazione del 50° Anniversario della Dichiarazione universale dei Diritti Umani – Palermo, 11/12 Maggio 1999)*, SIOI, Roma 1999.

[110] Please refer to § 16 of the *Law of Peoples*, which is entitled *On Distributive Justice among Peoples* [113-120].

7. *Conclusion*

As a conclusion I would like to go back to cosmopolitanism which is connected with the general philosophic issue of international justice. The dispute between cosmopolitanism and nationalism is an aspect of the general controversy as for the primacy of individuals towards groups or viceversa.

As we have seen, though the approach of institutional cosmopolitanism can be acceptable in some situations, we should not necessarily stick to moral cosmopolitanism, according to which all problems of international justice can be dealt with by impartially evaluating the pretences of each single person who is affected by international politics.

The core of moral cosmopolitanism is the fundamental principle of the equality of all human beings. All inequalities of rights, opportunities and resources must be justified so as not to be possibly rejected by those who gain less[111].

This approach is considered by many utopian, unreal and unfeasible. Besides impartiality itself calls for a different treatment of different categories of people. Therefore we must distinguish between a strong and a weak cosmopolitanism[112].

According to strong cosmopolitanism, all principles must be universal; according to weak cosmopolitanism there are independent principle the application of which can occur within a narrower context. It cannot be reasonably affirmed that our obligations of humanity are always the same towards people as a whole, without considering the peculiar relationships we may have towards some of them. Even universalists should admit that we have particular duties and obligations. The argumentation and the justifications for such a difference can be the following: 1) we might be able to help some people rather than others 2) we may know the needs of some people in particular; 3) some people may be particularly affected by our actions; 4) we may have particular obligations towards those we freely

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[111] Barry, *International Society from a Cosmopolitan Perspective*, cit.

[112] D. Miller, *The Limits of Cosmopolitan Justice*, in Mapel - Nardin (eds.), *International Society. Diverse Ethical Perspectives*, cit., pp. 164-181.

associate with; 5.) the existence of special obligations leads to a more efficient ethic division of work[113].

Principles of justice may have either a comparative or an absolute (or non-comparative)[114] character. In the former case they are valid only within the very same category of subjects. The application of the principle of equality implies a comparative use of principles of justice, i.e. it implies an equal treatment for those who belong to the very same category or to the same community context. That is the reason why legal issues over human rights should not be dealt with comparatively. We do not grant a man freedom of conscience so as to treat him equally to other human beings, but rather because it is his absolute right. Then we must necessarily ask ourselves whether the principles of international justice have a comparative (as those of domestic justice) or absolute character.

To regard the principles of international justice as comparative implies the existence of a world community within which all subjects must be treated equally. We should then consider mankind or humanity as a whole as a universal legal community, which exists by nature. Such was indeed the stoics' as well as Vitoria's and Suarez' assumption.

Two forms of cosmopolitanism have emerged: that which can be defined «cosmopolitanism of rights» and which is individualistic and non comparative, and that which can called «communitarian cosmopolitanism» which regards mankind as a natural original community, which is comparative. The former wishes to dismiss frontiers, whereas the second widens them to their outmost (universal citizenship).

Some maintain that the application of comparative rights to an international dimension is wrong because it would consider the deprivation of poor countries as relative, whereas it is absolute

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[113] D. Miller, *On Nationality*, Clarendon Press, Oxford 1995. Miller maintains that particularism is necessary for the motivation in ethics just like the right of property is a necessary condition for the efficient exploitment of resources. Also cp. M. Freeman's criticism, *Particularism and Cosmopolitan Justice*, in Coates (ed.), *International Justice*, cit., pp. 65-88.

[114] Following the traditional nomenclature, we shall distinguish between justice *secundum quid* and justice *simpliciter*. Cp. J. Finnis, *Natural Law and Natural Rights* (1992), translated into Italian by. F. Di Biasi, Giappichelli, Torino 1996, pp. 11 and 368.

injustice[115]. We must ask ourselves what exactly the right of a minimum standard of life is rather than decide if countries whose standard of life is over the minimum should be made responsible.

Just like Miller, Rawls can be regarded as a supporter of weak cosmopolitanism according to which comparative principles of justice work within national communities, since they do not admit the existence of a world community, while non-comparative principles affect the international context. We have obligations towards mankind only when a violation of fundamental rights, reduced to a minimum, has occurred.

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[115] Miller, *The Limits of Cosmopolitan Justice*, cit. p. 172.