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Preventing Rwanda in a Rawlsian World

Gerbrand Hoogvliet

An intuitive and commonly held view of human rights is that they are good and worth upholding because they are good for persons. A violation of human rights causes suffering to persons and since suffering is intrinsically bad we should take a stand against such violations. By making explicit the assumption that all persons are equal we get what is usually referred to as a Cosmopolitan View of human rights. This view suggests that we are required to intervene in violations of human rights on the basis of the two assumptions stated above. The degree of intervention and the severity of the violation necessary to warrant such an action are up for debate but all arguments of this sort ultimately rely on a view that takes persons as primary. Other reasons for intervention are often of a more ad hoc variety, such as Nagel's humanitarian duties¹, and will not be discussed in this paper.

In light of the strong appeal of the Cosmopolitan View and the fact that it seems to be widely held (although admittedly in a large variety of forms) it is striking that Rawls chooses a radically different approach to the role of human rights in international relations and rejects Cosmopolitanism. In his *Law of Peoples* (LOP) he takes Peoples rather than persons as primary and therefore ends up with an interpretation of human rights that is no longer grounded in persons. This version of human rights is more

¹ see Thomas Nagel, 'The Problem of Global Justice', *Philosophy and Public Affairs* 33(2005): 113-47

instrumental in nature and serves as a guideline for the conduct of international relations among Peoples in the Society of Peoples.

Following Rawls's lead in LOP, this paper shall start by considering Rawls's notion of human rights as part of an ideal theory. I shall show that in order for it to be 'political in the right way' it cannot be grounded in persons. I will then go on to consider whether in the context of a non-ideal theory Rawlsian human rights are a sufficient motivation for intervention. I shall take the Rwandan genocide in 1994 as the paradigm case of a preventable violation of human rights² and test whether the Law of Peoples could persuade decent and liberal societies to act in such cases. I shall then go on to argue that the primacy of Peoples in Rawls fails to lend sufficient weight to human rights and furthermore does not respond adequately to the nature of human rights violations in a globalized world.

Rawls's ideal theory starts from the perspective of Peoples, which are different from nation states in that they have a moral character and have by definition reasonably just or at least decent regimes (p. 27)³. Not all states and societies are Peoples and in fact only liberal democracies and decent societies count as such. The word decent is used here, as in Rawls, to indicate a society that accepts the Law of Peoples. A detailed analysis of the concept of People lies beyond the scope of this paper but it is important to note that

² For an account of the Rwandan genocide and its preventability by the international community, see Lt. General Romeo Dallaire, *Shake Hands with the Devil* (New York: Carol&Graff Publishers, 2004)

³ Unless otherwise indicated, all page numbers refer to John Rawls, *The Law of Peoples*, (Cambridge: Harvard University Press, 1999).

these are the primary agents in the Law of Peoples. He arrives at this primacy by following Kant's reasoning in *Perpetual Peace* that a world government is both undesirable and unfeasible (p. 36). Instead of an oppressive or ineffective world government, Rawls suggests a decentralization of power by relying on the cooperation of Peoples. Thus Peoples - and societies in general - become the primary agents in the Law of Peoples.

However, Rawls's choice for the primacy of Peoples over persons as agents with regard to human rights is also a necessary one. In order for both liberal and non-liberal decent Peoples to affirm human rights they must be "political in the right way," that is, independent of any comprehensive doctrine (p. 81). For liberal Peoples this is important since they respect the fact of reasonable pluralism - the fact that different people in society hold different sets of beliefs - and they do therefore not endorse politically any comprehensive doctrine. Decent, non-liberal Peoples do often have a comprehensive doctrine and it is hence important for them that human rights do not run counter to their comprehensive doctrine. Thus human rights must be political in the right way so that decent Peoples can reasonably affirm them.

For Rawls, the Cosmopolitan View, which takes persons as primary, fails this criterion of being political in the right way. As stated in the introduction to this paper, the Cosmopolitan View takes persons as primary and would thus ground human rights in their effects on persons. For example, freedom from torture is a human right because torture is bad for a person. However, as stated above, this requires that one buys into the utilitarian notion that suffering is bad and pleasure, defined as the opposite of suffering, is good. The same view can also be supported on

the basis of the Kant's second categorical imperative, which requires the treatment of humans not merely as means, a condition clearly violated in the practice of torture. The problem is that in both cases we would have to hold (part of) a certain comprehensive doctrine in order to be able to affirm human rights. This is objectionable to Rawls since it would exclude a decent Peoples who hold a comprehensive doctrine that is opposed to utilitarianism or Kantianism. Human rights cannot be grounded in persons since this requires acceptance of a part of a comprehensive doctrine and would make them political in the wrong way.

Unable then to ground human rights in persons, Rawls chooses to include them in the Law of Peoples which is a set of principles agreed upon by Peoples in the second Original Position (OP). The second OP resembles the well known first OP that takes place between persons of the same society behind the veil of ignorance. The second OP situates Peoples symmetrically and fairly, as rational actors behind a veil of ignorance which prevents them from knowing specifics about their own situation (eg. population, land size, natural resources etc.) (p.30). In this position the Peoples then choose the Law of Peoples from among a list of different formulations of the same principles. In the Law of Peoples, human rights are based upon the Peoples' consideration of their political conception of justice (p. 40) rather than a conception of the good which is what motivates choices in the first original position. To make sure that both liberal and decent Peoples can agree to the same set of human rights this set is rather limited compared to, for example, the Universal Declaration of Human Rights. In turn these human rights so determined are also used as a necessary condition for decency. More importantly for our present purposes, however, human rights are formulated so

that a violation of them could justify political, economic and ultimately military intervention in a society by liberal and decent Peoples (p. 80).

The main importance of human rights for Rawls then does not lie in their value for persons but in their instrumental value for determining when intervention in an outlaw state is justified. Their sole motivation comes from the agreement of Peoples in the second Original Position. To be more precise, human rights arise from the agreement of *liberal* Peoples in that second OP, with the decent Peoples later affirming the same beliefs. It is in fact the affirming of these beliefs that makes makes them part of the Society of Peoples, which is the community of liberal and decent Peoples. However, the question remains as to why Peoples in the second OP care at all about violations of human rights in outlaw states? Since outlaw states do not accept the Law of Peoples they are not Peoples. Considering that we take Peoples as primary, concern about what goes on in outlaw states can only be secondary. Furthermore, the Law of Peoples states as its fourth principle that “Peoples are to observe a duty of non-intervention”(p. 37). The reasons for intervention of any kind and especially the military variety are thus slim in Rawls’s ideal theory.

We can however construct an ideal theory view on military intervention from the other Laws. The Law of Peoples states that Peoples have the right to self-defense and a duty to help burdened societies. Presumably, outlaw states are burdened societies, but it is doubtful whether political or economic assistance will alleviate human rights violations within an acceptable time frame.

Within ideal theory we are then left with only one legitimate ground for the type of military intervention that can prevent severe human rights violations, namely the right

to self-defense. Countries then have a right under ideal theory to intervene in human rights violations if their own security is at stake. This can plausibly be extended to the stability of the Society of Peoples as well. The mandate that ideal theory provides for intervention then is that countries are allowed to intervene militarily if their own security or the stability of the Society of Peoples is at stake. Put differently: human rights violations that have international spill-overs allow for military intervention, but atrocities neatly and purposefully contained within the borders of an outlaw state do not. If this is indeed the conclusion from ideal theory I hold it to be both undesirable and morally deplorable. It would furthermore fail to prevent the paradigm case of genocide, Rwanda, which was almost entirely contained within the country.

Rawls's non-ideal theory however, provides a somewhat more satisfactory view on nationally contained violations of human rights. For the most part it is a reformulation and concretization of the ideal theory from Part II of LOP.

In the section on Just War Doctrine Rawls reasserts that well-ordered societies can only wage war against "non-well-ordered states whose expansionist aims threaten the security and free institutions of well-ordered regimes and bring about war"(p. 94). Wars are thus to be fought only on the basis of self-defense and are never to be started. This clearly fails to prevent any form of genocide occurring within the borders of a state and thus fails the paradigm case of Rwanda.

As stated before, human rights provide a criterion by which intervention can be justified. Rawls elaborates most on this idea in a footnote to the section on Just War Doctrine. Because this passage is essential in constructing

Rawls's position vis-a-vis human rights I will quote it at length:

“Earlier I said that we must at some point ask the question whether it is ever legitimate to interfere with outlaw states simply because they violate human rights, even though they are not dangerous and aggressive towards other states[...] Certainly there is a prima facie case for intervention of some kind in such cases, yet one must proceed differently with advanced civilizations than with primitive societies. Primitive, isolated societies [...] we really have no way to influence. [Advanced societies] must be made to realize that without human rights, their participation in a system of social cooperation is simply impossible.[...] Is there ever a time when forceful intervention might be called for? If the offenses are egregious and the society does not respond to sanctions, such intervention in the defense of human rights would be acceptable and would be called for”
(p. 93-94)

Rawls thus does, although hesitantly, endorse military intervention. The idea is that Peoples will first exert diplomatic, political and economic pressure on an outlaw state to get them to bring these violations to an end. Only if all of these methods fail is a military intervention called for.

Although many theories of international relations call for intervention in defense of human rights, only very few have been able to motivate nations to actually do so. I will thus turn my focus to the implications of Rawl's non-ideal

theory and its ability to motivate Peoples to intervene militarily in outlaw states.

As stated before, Rawls's notion of human rights in the context of international relations is limited. One of the reasons for this is that human rights play an instrumental role in LOP. They define a necessary condition for decency and a criterion, as mentioned above, for intervention. It can thus be argued that they are fundamentally instrumental and their importance is almost entirely contingent on the role they play within the theory. In fact if it were otherwise they would be political in the wrong way.

If this criticism stands it has serious implications for LOP. It is important to emphasize the degree of motivation and determination it takes for a People to put its soldiers in harm's way for the benefit of persons with whom they have no particular relationship. After all, they are coming to the aid of citizens of an outlaw state, and since outlaw states aren't Peoples it is unclear to what extent their citizens would affirm the Law of Peoples. There is thus no promise of reciprocity which in Rawls's *A Theory of Justice* serves as one of the key motivating factors in helping others.

Considering the high degree of required motivation it is doubtful whether a merely instrumental version of human rights will be capable of persuading Peoples to intervene when these rights are being violated.

This criticism of Rawls, however, does not accurately reflect the nature of human rights in LOP. Although it is true that the role of human rights is almost entirely an instrumental one, its origins are normative. This can be seen in the section on human rights where Rawls claims that "the violation of this class of rights is equally condemned by both reasonable liberal peoples and decent hierarchical peoples"(p. 79). This suggests that the concept

of human rights does have moral content and thus carries more motivational weight.

However, if we analyze further the origins of this importance of human rights we encounter a problem. The most logical way of thinking about the way in which human rights originate from the moral ideas of liberal and decent Peoples, is that they are based on a wide-spread sentiment within society that the violation of human rights is bad for persons. As I have shown above, however, this requires the acceptance of part of a comprehensive doctrine, which is fine for individual persons but prevents it from becoming part of the outcome of an original position. Unable then still, to ground the importance of human rights in their effect on persons, we are forced to conclude that human rights are important in and of themselves. Indeed, this is what Rawls seems to suggest as well in the quote above when he states that “intervention *in the defense of human rights* would be acceptable and would be called for (emphasis mine)” (p. 94). We intervene in defense of human rights, not in defense of the persons suffering their violations.

Contrasting this view of the importance of human rights with the importance of persons as expressed by the Cosmopolitan View I think the latter has a stronger appeal and ability to motivate. In fact I strongly doubt whether the Rawlsian view can provide sufficient motivation for intervention at all. In light of this I think one ought to prefer the Cosmopolitan View which, though certainly not shared by everyone, provides sufficient motivation to a sufficient number of nations to intervene and bring an end to atrocities in outlaw states. A theory of international relations that seems unable to prevent genocides such as the one in Rwanda can hardly be an improvement of the current situation.

A possible response for Rawls to this critique is that like the basic structure in *A Theory of Justice*, people, or in this case Peoples, will over time grow affectionate towards the global basic structure and its rules and will come to see them as valuable. Hence they would over time be willing to put the lives of their citizens at risk in military operations aimed at defending human rights. The effectiveness of this response is dubitable since it remains unclear to what extent Rawls really establishes a basic structure for global interaction. In fact, the views expressed in LOP are largely based on the non-existence of such a basic structure on the international level. It is thus unclear if there is a sufficient basic structure in the Society of Peoples towards which persons could feel affection. It is consequently doubtful that such an affection can arise at all, leaving us again with a theory that lacks motivational weight.

I think there is nevertheless a broader problem with the ability of the Law of Peoples to effectively regulate international politics in order to bring about a better world. This problem is expressed by Allen Buchanan in his paper *Rawls's Law of Peoples: Rules for a Vanished Westphalian World*⁴ in which he argues that LOP fails to take into account the complexities and intricacies of the modern world. Although Buchanan's criticism applies to the whole of LOP, I shall here focus on its implications for Rawls's view of human rights and humanitarian intervention. I shall argue that Buchanan's criticism points in the same direction as the objections raised earlier in this paper, namely that the weakness of Law of Peoples lies in the fact it that takes nations or Peoples as primary.

⁴ Allen Buchanan, 'Rawls's Law of Peoples: Rules for a Vanished Westphalian World', *Ethics* 110(July 2000): 697–721

As Buchanan points out, dividing up the world in Peoples and defining all international interaction in terms of Peoples fails to capture the reality of the modern globalized world. In the world we live in today, cross-border interactions on a non-governmental level are pervasive and no ideal theory can legitimately choose to ignore this. The importance of non-governmental actors in global politics poses challenges to governments to which any theory of international relations should strive to formulate answers. Specifically, the governments of outlaw states - or governments of any state for that matter - no longer have a monopoly on the violation of human rights. In fact, the responsibility lies increasingly with militia groups that operate within countries or across borders. To be sure, Rawls is correct in choosing governments as those who should follow the Law of Peoples in acting on the global stage, but he is wrong in identifying other governments as the only parties affected by such actions. The field of international relations deals with what governments ought to do, but should not limit itself to interactions between governments as this would exclude many dimensions of modern politics. However, the theory expressed in LOP is even harder to apply when we take into account all these intricacies. For example, a militia perpetrating crimes against humanity within the border of a single country would not be a proper target for applying political and diplomatic pressure since these militias do not operate on the government level. It is difficult to determine if Rawls thinks we could intervene at all in such a situation where violations are not sanctioned by the government. But if we are capable of responding, then within the framework of the Law of Peoples we are left with only two options: to do nothing or to intervene militarily. Any of the other measures suggested

by Rawls requires a government with which to interact. This seems problematic to me and although many of these objections can be probably be answered through ad hoc extrapolations of the Law of Peoples, the problem remains that taking Peoples as primary does not correspond to reality and as a consequence fails to accurately address many of the current political issues such as human rights violations.

A Cosmopolitan View on the other hand that takes persons as primary, also recognizes any form of organization between these persons, not just the nation state. It thus provides a blueprint for international relations which responds to the dynamic nature of associations among persons and does not run into the problem of defining the proper agents to whom actions should be directed. Furthermore, since it takes persons as primary, human rights get a more solid grounding in their value as being beneficial to persons. The Cosmopolitan View thus yields a theory in which governments can address their actions to any organization of persons, both nationally and across borders, and intervene in violations of human rights on the basis of alleviating the suffering of persons. Certainly, this view needs to be elaborated further to determine its ultimate viability as a rule for conducting international politics. However taking persons as the starting point of a theory allows us to respond better to the problems of a globalized world and gives us a more satisfactory and intuitive understanding of the nature of human rights. I think Rawls's concern for the neutrality of any principles of international politics is an important one and the necessity of accepting part of a comprehensive doctrine in order to be able to endorse the Cosmopolitan View is a troubling notion. In fact it may prove to be the case that the group of nations willing to support the Cosmopolitan View is much smaller than the

Society of Peoples envisioned by Rawls. However, given the choice between a theory of foreign relations that is acceptable to all Peoples but fails to make a strong stand against human rights violations and furthermore does not resemble today's political reality, or a more normative view that does provide the necessary motivation to intervene on behalf of the victims of slavery, torture and genocide, I choose the latter. This may leave us with a view acceptable to fewer nations, but a more meaningful guideline for those who do accept it.

Rawls's Law of Peoples does call on liberal and decent Peoples to intervene in human rights violations such as the Rwandan genocide. However, since its notion of human rights is not grounded in persons it fails to supply the necessary persuasive strength to motivate Peoples to bring about such an intervention. Furthermore, the fact that Law of Peoples takes persons as primary means it cannot respond adequately to the intricacies and challenges of a globalized world. Because both these problems originate from a focus on Peoples rather than persons I argue that today's governments are better served with a political theory that takes persons as primary. The Cosmopolitan View currently seems to be the best candidate for such a theory but in pursuit of a person-affecting theory of international politics better candidates may yet be revealed.