Historic Injustice and *The Law of Peoples*

Why background conditions matter

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In broad strokes the history of the last 500 years, since colonialism first took off in the late 15th century, has been one of grave injustice. This requires some form of compensation. My goal in this chapter is not, however, to discuss a duty of rectification as such. Instead, I want to ask what this history of harm means for the duty of development. My conclusion will be that the duty of development, a permanent feature of the law of peoples, must be supplemented with a temporary duty to bring about the necessary background conditions for the law of peoples to take effect, through redistribution beyond what duties to burdened societies would require. This is a one-time only obligation, and one we are satisfied that the background conditions have been met, events may run their course in accordance with the principles governing the Society of Peoples from then on.

I must make clear, however, that I do not claim that this duty exists. Rather, I argue that, (a) there is a contradiction in the law of peoples that must necessarily be resolved, and (b) a temporary duty of redistribution is one way of doing that.

Another way could be to introduce a redistributive principle directly into the law of peoples instead, which cosmopolitans would no doubt find
more appealing. But the advantage of my proposal is that it resolves the contradiction without fundamentally altering the nature of the law of peoples, making it more palatable to those who find Rawls’s international theory convincing on the whole.

My argument proceeds in the following way. I will first establish and discuss Rawls’s law of peoples. I outline the contradiction in his argument, namely that his theory is simultaneously supposed to represent an ideal of peoples as they might be, and be applicable to the world as it currently is. With the global order shaped by historical injustice, applying non-distributive principles to it would simply entrench that injustice, undermining its claim to fairness. At this point I introduce the temporary redistributive principle, designed to bring the global state of affairs up to the point where the principles of the law of peoples can be relied upon to produce fair outcomes.

The paper then justifies this duty from two different angles. The first is the fairness-based approach, based on a liberal understanding of the international sphere. It argues that the duty must be fulfilled in order for the resulting transactions between parties in the Society of Peoples to be fair. The second is the justice-based approach, which argues that the global sphere is best characterised by libertarian principles. The duty is therefore owed as a matter of justice, due to the past having been characterised by large-scale theft of resources.
The contradiction in the law of peoples

Rawls conceives of the Original Position for the international sphere as analogous to, and an extension of, the domestic Original Position in *A Theory of Justice*. In that book he briefly\(^1\) sketches the next step, namely that the societies who have just agreed to their domestic principles must now meet to agree the principles for handling conflicts between them. The ones he discusses bear a close resemblance to what would later form the Law of Peoples.\(^2\) In this sketch, “Independent peoples organized as states have certain fundamental equal rights. The principle is analogous to the equal rights of citizens in a constitutional regime.”\(^3\)

To recap, the eight principles that Rawls contends will be chosen are:

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. People are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe a duty of non-intervention.

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\(^1\) In fact, the section (John Rawls, *A Theory of Justice*, revised edition (Oxford: Oxford University Press, 1999), 331–335.) is mainly about the right to conscientiously object to military service.


\(^3\) Rawls, *TJ*, 332.
5. Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense.

6. Peoples are to honor human rights.

7. Peoples are to observe certain specified restrictions in the conduct of war.

8. Peoples have a duty to assist other peoples living under unfavourable conditions that prevent their having a just or decent political and social regime.

In the domestic sphere, ensuring that outcomes are just makes it “necessary to set the social and economic process within the surroundings of suitable political and legal institutions. Without an appropriate scheme of these background institutions the outcome of the distributive process will not be just.”⁴ This means fair equality of opportunity, equality of education and access to markets, and a guaranteed social minimum through a redistributive scheme.⁵ Yet there is no analogous case for most of these provisions in the international sphere. How can that be?

In the global Original Position, the peoples do not know their relative size, strength and wealth, but in addition to knowing that they have some sort of comprehensive doctrine, they know the necessary facts about the world in which they operate. Presumably, then, they know that there will be countries whose wealth exceeds that of any other society in human history, and conversely that there will be countries so poor that

⁴ Ibid., 243.
⁵ Ibid.
their citizens suffer from chronic malnutrition in large numbers. They will further know that this poverty comes on the back of centuries of systematic exploitation by the world’s richest. Would they still affirm a set of non-distributive principles? I think not. Either they would affirm distributive principles right off the bat, even if they were less extensive than in the domestic case, or they would agree on a temporary principle to bring the starting conditions for the law of peoples up to scratch.

So how does Rawls end up endorsing non-distributive principles? My guess is that he overlooks an apparent contradictions in how the realism (in the sense of practical applicability) of his project is laid out. At one point he says, “we view people as they are [...] and the Law of Peoples as it might be, that is, how it would be in a reasonably just Society of just and decent Peoples.” Yet almost immediately after he says it “may be applied to ongoing cooperative political arrangements and relations between people.” The second statement in particular is telling, as a lot of defences of Rawls rely on ignoring or downplaying this statement. For instance, Reidy says that “Rawls has always insisted on approaching fundamental issues in normative political philosophy from a point of view

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6 The law of peoples is designed to apply between decent liberal or hierarchical regimes. Outlaw states, benevolent absolutists and burdened societies are therefore not parties to this agreement. Pogge, however, points out that the criterion chosen must nonetheless apply to everyone. Even if authoritarian regimes do not sign up to it, it still remains the criterion by which we would judge their actions. For instance, he suggests, when Chile descended into totalitarianism in the 1970s the international community did not suddenly evaluate their actions by different standards, given that they were no longer a decent liberal people (Pogge, Realizing Rawls, 266–267. The same must be true for burdened societies. They are not currently parties to the Original Position. However, given that they desire, with the help of decent peoples, to be included in the law of peoples, it follows that the terms must be acceptable to them as burdened societies, not merely that they will be acceptable to them when they become decent peoples. The relationship between decent peoples and burdened societies must be characterized by justice. So the second Original Position should be imagined to contain burdened societies as well, in order to ensure that their compliance can be reasonably expected.


8 Ibid.
that takes persons not as they are under existing conditions, but as they might be, given the empirical limits of human psychology, biology, and the like, under conditions that might reasonably be hoped for.”

And Freeman claims that the “problem with Pogge’s contention that the Law of Peoples does nothing to alleviate current global injustice is that, like so many criticisms of Rawls, it ignores the fact that the Law of Peoples is drawn up for the ideal case of well-ordered societies and peoples.” But, presumably, an ideal case that is applicable to the current political reality? I do not want to cast a vote on what Rawls’s intentions were, but purely on the basis of what he wrote it would seem the nays have it.

In the first step, then, the law of peoples articulate the law as it might be, given some irrefutable facts about peoples. This is something he carries over from the first Original Position. But this conception is in itself problematic, as it takes certain facts about states as a given and treats them as immutable, similar to some basic facts about human nature.

In the second step, however, Rawls suggests that the law of peoples is immediately applicable to the world as it is, to the on-going co-operative political arrangements that currently exist. In doing so, he skirts over the question of whether the background conditions in place are sufficiently just for the outcomes that result from the principles to, ipso facto, be just.

This is not a problem in the domestic sphere, where the question of inherited conditions never really pops up. Here the Original Position is

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11 “The reasonably just Society of well-ordered Peoples is realistic in the same ways as a liberal or decent domestic society.” Ibid.
imagined as a purely hypothetical scenario rather than, as in the tradition of Locke and Hobbes, one set in an imagined past. Representatives stand behind the veil of ignorance, and therefore know nothing about their own unique positions in society, coming together to establish first principles for the founding of society.\textsuperscript{12} Moreover, it is a discussion that can be entered into at any point, to evaluate the present state of society and ask to what extent this is what would have been decided behind the veil of ignorance. The background conditions in domestic society are therefore guaranteed to be just because they are determined by the Original Position.

But while \textit{The Law of Peoples} is not historical, it is not a-historical either. The second Original Position does not take place in an imagined past, but nor is it purely hypothetical; it takes place here and now. The background conditions are therefore already given. This is in part due to the fact that domestic societies have already been formed in the first Original Position, their principles having been decided on without reference to their effects on other societies and their citizens. But it is also because they are applied not at the founding moment for international politics, but at a time when human civilization is already some 10,000 years old, and the contours of international trade and politics as we known them today have already been in place for at least 500 years, arguably longer.

Yet throughout, Rawls treats peoples as fiercely individualistic, never pausing to consider the role that interactions between them could have not just in terms of the traditional domains of international relations

\textsuperscript{12} Rawls, \textit{LP}, 10–15.
– trade, diplomacy, conflicts between parties pursuing their own rational interests – but also as constitutive of these societies, shaping their internal make-up as democratic or authoritarian regimes, or determining their place in the pecking order of global power structures.

So while the law of peoples marks a welcome break with traditional international relations in characterising states as reasonable rather than rational, the relationship between states is shaped by an out-dated logic.

For this Rawls, has received widespread criticism. Buchanan is particularly scathing in his critique, chastising Rawls for offering “no support for his sweeping generalisation that good government ensures that a society can provide ‘a decent and worthwhile life’ for all its citizens,” given that he gives no thought to the way negotiations take place within the parameters of the global basic structure and the unequal power relations that characterise it. Beitz, too, is unconvinced that actors with wildly unequal resource shares can be expected to share equally in the benefits of a global political structure that “offers them no more than the formal equality of symmetrical voting rules.” In Pogge’s summation, the “current law of nations is a complete failure in this regard [securing fair background conditions] because it is entirely insensitive to such differentials in bargaining power.”

Rawls’s defenders will argue that his critics demand too much of him. The principles of justice express the limits of moral permissibility,

\[\text{\textsuperscript{13}Ibid., 28.}\]
\[\text{\textsuperscript{15}Ibid., 706–707.}\]
\[\text{\textsuperscript{17}Pogge, }\textit{Realizing Rawls}, 249.\]
not a complete blueprint for global politics. Rawls makes no mistake that his principles require peoples to be fair-minded.18

So while the fact that the wealthiest countries in the world are able to impose unfavourable terms on the poorest is without a doubt as regrettable as it is obvious, there is no reason to expect the same kind of wholesale corruption to rule the roost in the Society of Peoples. According to Freeman, this is simply an unwarranted assumption given Rawls’s ideal theory framework. Far from using the law of peoples’ lack of distributive principles as a pretext for exploiting the poor, well-ordered peoples would respect each other and interact in accordance with principles of fairness.19

Moreover, Rawls would in fact have been sensitive to the historical baggage that nations bring with them into the Society of Peoples:

As Rawls maintains in the case of social justice, the transition principles that apply to the non-ideal case to bring about a well-ordered society often must go beyond the principles of justice, and by implication beyond the Law of Peoples, to establish remedial conditions that would not be appropriate in a well-ordered society. So just as Rawls might have supposed as a provisional measure preferential treatment of minorities, though it infringes fair equality of opportunity, in order to remedy generations of pernicious discrimination, so too he could have supported as a temporary measure a global distribution principle, to rectify the history of exploitation,

expropriation, and gross violation of human rights endured by burdened peoples around the world.\textsuperscript{20}

The problem, of course, is not just that Rawls’s ideal theory is too removed from reality, as his critics point out. It also seems too far a stretch to reconcile it with his own conception of realistic utopia which, as I said earlier, can be applied to the world as it is. Rawls therefore seems to fail in applying the basic maxim of taking “people[s] as they are, and laws as they can be.”\textsuperscript{21} In focusing so narrowly on whether states or societies are desirable in their ideal form instead of asking whether such entities do or even can exist, Ypi suggests, they lack any solid normative grounds for dealing with circumstances where justice is so far from being realised, as with global poverty.\textsuperscript{22}

It is therefore regrettable that Freeman only devotes a small section of a chapter to addressing this crucial question, because it is a very important idea that deserves more attention. In giving it more serious thought, I am not suggesting that there is a duty to implement a temporary global distributive principle. But I will argue that in order to defend the basic premise of the law of peoples, such a duty must be part of the package of principles guiding it. I will show that this temporary duty can be defended on two accounts, the first of which I will call the \textit{fairness-based account}, and the second being the \textit{justice-based account}. Each will

\textsuperscript{20} Ibid., 251. Freeman says the same, almost verbatim, in Samuel Freeman, \textit{Rawls} (New York, NY: Routledge, 2007), 452. There is no more detail on the proposal to be found there, however.


\textsuperscript{22} Ibid., 540, 543.
be persuasive depending on whether you understand the internationalist view of the global system as being fundamentally characterised by a liberal conception of justice, as in the former account, or a libertarian conception of justice, as in the latter. In the liberal conception the duty is owed because it is a necessary precondition for the fair and equal treatment of peoples. In the libertarian conception it is owed as a matter of justice, because societies are properly understood as self-owning peoples, and consequently the historical process by which the present global order came about constitutes theft of resources for which compensation must be paid.

A fairness-based reason

*The Law of Peoples*’ proponents more often than not see the law of peoples through the same liberal prism as they do the domestic sphere, even if the conclusions they draw are rather different. Even the inclusion of decent peoples who do not subscribe to the full list of liberal principles domestically, in particular democracy, are included in the Society of Peoples on liberal grounds: refusing to tolerate decent peoples for failing to meet a set of principles that includes diversity of comprehensive values would be “nothing short of manifest hypocrisy.”

One area where Rawlsians and their critics tend to disagree is what kinds of examples are most valuable in illustrating the liberal principles at work. Where critics have used the fact of global poverty to elucidate their

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23 “Properly” here should be understood as the standard libertarian cop-out, as in “you only disagree with me because you fail to properly understand what liberty/coercion/property/etc. really means.” For examples, see every libertarian blog in the history of the Internet.

points, Rawls himself relies on two examples of interactions between two decent, and probably liberal, well-ordered societies. In the first case, one decides to industrialise while the other decides not to. In the second case, one implements equal justice and opportunities for women, resulting in the population growth rate slowly grinding to zero. The other society freely chooses (with the full consent of its female population) to retain traditional gender patterns, leaving population growth rates high. After several years, in both cases the former society is now twice as wealthy as the second. Yet we would clearly reject any claims for redistribution from one to the other as being unfair on the wealthier people, whose wealth is a result of their choices, and did nothing to prevent to other society from developing.25 Whilst sympathetic to Rawls’s overall argument, Martin nonetheless concedes that this is a weak point in The Law of Peoples. Instead of focusing on the philosophically easy case of two decent peoples, Rawls should have been asking what was significant about societies that had only just been lifted out of burdenedness, or about relations between states where one is still burdened and the other is trying to lift it up into well-orderedness.26 This choice is especially odd since the section in which Rawls discusses these cases is about relations between well-ordered societies and the other kinds.27

So how do we incorporate that question into Rawls’s framework, and what are the consequences of doing so? I think the basic argument can be summed up into five key stages.

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27 Martin makes a similar point. Ibid.
First, in the law of peoples, societies do not need to cooperate. This, Reidy points out, is not to say that not doing so will be cheap, but simply that unlike for individuals in the domestic sphere, it is a viable option.\textsuperscript{28} Societies are not dependent on each other the way human beings are, and as self-contained units do not strictly speaking need to interact with each other for their own survival’s sake. But where cooperation does take place it should nonetheless be guided by fair principles.

Second, the eight principles that make up the law of peoples guarantee those fair terms of conditions.

Third, while the law of peoples does not concern itself with differences in bargaining power, they are nonetheless assumed to be fair so long as they have come about under fair terms of cooperation.

Here a small clarification might be in order. The third step might look a tad too libertarian for comfort, but that need not be the case. After all, the libertarian principle of justice in acquisition (of which more later) is a pre-societal, natural right that government(s) cannot override. In liberalism, but contrast, the principles that govern acquisitions are decided by the people(s) collectively. The peoples behind the veil of ignorance could have agreed on redistributive principles, but agreed instead that fair terms of cooperation were sufficient. But although the outcome may be similar, the process matters greatly in itself. It is through this agreement, rather than natural rights, that the principle draws its force.

\textsuperscript{28} Reidy, “Rawls on International Justice,” 303.
Fourth, historically the power differentials between societies have not come about by fair means.\textsuperscript{29} The effects of that power distribution are therefore unjust. (It does not, however, automatically follow that the power distribution itself is unjust. That has implications for what can be demanded in compensation.)

Fifth, where some are disadvantaged by differences in bargaining power that have come about by unjust means, and where others have improved their bargaining power by unjust means, those differences would result in unfair terms of cooperation, even if that would not have been the case if the differences had come about through repeated iterations of fair principles.

Fairness therefore requires that advantages gained by injustices in the past must be eliminated. This, however, is a separate issue from whether these injustices thereby require direct compensation. There will generally be strong reasons to think that they will, but it does not follow automatically. I have discussed that question elsewhere.\textsuperscript{30}

Of course, once and if the differences become vast enough that one of the parties' status as well-ordered becomes threatened, the question of how the differences came about becomes much less important. Assuming that this would be impossible given the constraints imposed by the law of peoples, or assuming that the threshold for well-orderedness is set low enough, this might never become an issue. Still, Pogge argues that it almost certainly will, outlining extensive reasons why the conditions

\textsuperscript{29} Risse, of course, disagrees with this. Against his objection, which is empirical in nature, the narrative power of the fairness-based account seems limited, as you would instead have to object to his empirical claim directly. But that is not the case with the justice-based account, as I will get to shortly.

\textsuperscript{30} Assuming the article is out somewhere by then.
secured by the law of peoples can never prevent the hoarding of resources by the richest against the poorest. While the duty of development might seem to be a stop against this kind of exploitation, it is not a duty to correct the system, but rather to compensate for its effects. The system itself remains in place throughout.

I will not comment directly on this claim, but in this paper I will assume that the basic idea of the second Original Position is at least capable of delivering a just international sphere. But that clearly does not mean that it currently does so.

**Historical injustice in acquisition**

A second reason for concluding that there must be a duty to sort out the initial distributive imbalance in the international system comes from what would at first appear to be an unlikely source. The libertarian framework that Nozick advocates is typically seen as the counter to Rawls’s liberalism, nonetheless its treatment of justice in acquisition helps us shed light on the question, for two important reasons.

First, here at least there is a surprising degree of overlap between Rawls and Nozick’s conceptions of justice in the transfer of property, especially with regards to the methodological assumptions underpinning them both.

And second, Nili suggests that as far as the international is concerned, Rawls and Nozick are not only closer than you would assume, they are fundamentally and necessarily entwined. Internationalists

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including Michael Blake, Leif Wenar and Rawls himself, he says, are actually Rawlzickian - that is, while they reject libertarianism in the domestic sphere, they endorse libertarian tenets in the international sphere. Moreover, he says, this is not simply an accident but rather an essential feature of the theory.\textsuperscript{32} Nili argues that the societies that have constituted themselves in the domestic Original Position must necessarily see themselves as self-owning peoples, which has profound implications for what kind of distributive ethics hold. Domestically the libertarian interpretation of ownership and consequent dismissal of egalitarian policies must be rejected because society does not, as they claim, regulate the transfer of property held prior to redistribution. That is, when the government taxes your income it does not take a proportion of what originally belonged to you. Rather, the principles that govern society determine how much income you should be able to enjoy, relative to the state, and only once that has been decided can the resulting post-tax income be said to truly be your property. But this can only be the case if society as a whole is able to claim original ownership of the full value of goods to be distributed. Otherwise how can it claim the authority to do so?\textsuperscript{33} Societies must therefore be original, first owners of their own property.\textsuperscript{34}

The implications for the international sphere are quite significant: “There is no overall state of affairs to be brought about, no right end-state

\textsuperscript{33} Ibid., 486.
\textsuperscript{34} Of course if there were a global state then \textit{it} would be the original owner of all resources, and it would be impossible to consider each state’s share of resources independently.
that is distinct from the simple aggregation of specific agents who each avoid actions that are morally wrong. The duties of self-owners, then, are agent-oriented rather than outcome-oriented.”  

In other words, only the process matters from the point of view of justice.

In highlighting Nili’s interpretation I make no claim about its validity. Nor do I offer any external endorsement or rejection of the Rawlzickian argument. My use of it is strictly limited to the specific point I am making here, and I do not rely on a libertarian interpretation for any other part of my argument. It is, moreover, worth also pointing out that the Rawlzickian thesis does not offer an explanation for duties towards developing countries. Just as Nozick considers “moral horrors” grounds for suspending libertarian principles, at least temporarily, so the moral horror of extreme global poverty may justify some deviation from strict libertarian principles.  

But given, as I have argued elsewhere, that the duties towards burdened societies is greater than most assume – and even given internationalism’s focus on the orderliness of political institutions rather than weighing and contrasting the various forms of human misery – it is not clear that all cases of burdenedness, especially at the cusp of well-orderedness, constitute a moral horror.

Still, by relying on a theory that falls so far from the framework of the rest of the thesis it serves to triangulate the argument: if you accept a libertarian account of responsibilities in general, here is a powerful reason to still believe the international system requires redistributing.

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36 Ibid., 493–494.
Moreover, the justice-based account has the further advantage of being able to overcome an important objection to the fairness-based account: namely that the current world is not unfair. Mathias Risse is a prominent proponent of this idea, arguing that while there is no doubt that much about the past was deeply unjust, that is not in itself enough to show that the world order we currently live in is unjust also.38 This contention hinges on what Risse calls the Feasible Alternatives Thesis: that there is an alternative global order which, as the name implies, would have been feasible to implement, and which would have left the global poor better off today. He takes umbrage with proponents’ (mainly Pogge’s39) claim that an alternate order is feasible; this objection is mainly ground in Institutional Thesis, that the primary source of development is sound institutions. Given that Pogge’s alternative world order primarily differs from the current one in its more demanding redistributive aims it follows that, if the Institutional Thesis is right, this would not be an effective way of improving the global order.40

Risse’s contention that the lack of feasible alternatives justifies the world order fares particularly badly against the Rawlzickian objection. While for instance, on a cosmopolitan account the correctness of Risse’s claim hinges on larger empirical and epistemological objections – that the global poor are in fact worse off, that he measures the current state of affairs against the wrong set of counterfactual assumptions, or that his concept of harm is wrong – on the Rawlzickian account the global order is

40 Risse, “How Does the Global Order Harm the Poor?,” 371–373.
unjust not because people today suffer harm as a result of it, but because the historical trajectory that led to where we are includes injustices on a grand scale.

Rawls’s treatment of international distributive justice seems to share some features of Nozick’s principle of justice in acquisition. At least, it articulates some ideas largely consistent with it. The principle of justice in acquisition is:

1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
2. A person who acquires a holding in accordance with the principle of justice in transfers, from someone else entitled to that holding, is entitled to the holding.
3. No one is entitled to a holding except by (repeated) applications of 1 and 2.41

The same logic animates the relationship between peoples in the law of peoples, at least so far as ideal theory is concerned. Obviously there are some glaring differences. For a start, decent peoples are motivated to act in certain ways, which puts limits on the forms that “just acquisitions” can take. Another obvious difference is that there are some, limited, distributive principles in play when it comes to fulfilling duties to burdened societies. But that should not concern us too much at this point: Nozick, too, admits that the state may claim the contributions from its

citizens that are necessary to uphold the “night-watchman state”,\textsuperscript{42} which is not directly justified by the principle of justice in acquisition.

Rawls’s version of international justice is, in effect, agent-oriented as well. It best resembles a case of pure procedural justice, like Nozick outlines. It is the procedure rather than the outcome that determines whether a distribution is just, and as such, what matters is not who got what but how they got it. But the catch, of course, is that it becomes impossible to determine the justice of a situation from its distributive outcomes. “The just result must actually be carried out; for in these cases there is no independent criterion by reference to which a definite outcome can be known to be just.”\textsuperscript{43}

The implications for the claim that the global order does not harm the poor are clear. Recall that Risse’s main claim is not that the history of globalisation is not riddled with injustices, but rather that on the whole the world is a much better place to live than it was 200 years ago. It is the distribution that matters, then. And the current one is not unjust compared with an alternative, counterfactual scenario in which the events that led to injustices in the real world had not existed.

If the end distribution matters to your conception of justice, Risse is probably right to say that Pogge has failed to prove that the global order is unjust simply by virtue of the fact that 20% of the world’s population is poor, when that represents a quarter the proportion that lived in poverty at the onset of the industrial revolution.

\textsuperscript{42} Ibid., 26–27.
\textsuperscript{43} Rawls, TJ, 75.
But on Rawls’s terms it is not the distribution that is unjust, but the procedure. In our history of colonial and Cold War violence and subjugation, the procedure did undoubtedly include violations of even the basest of conceptions of moral decency. We are therefore forced to conclude that the current distribution of resources is unjust, even if a just procedure could have led us to the exact same result.

Bringing this logic to bear on some thought experiments and alternative historical scenarios, we could end up with some intuitively uncomfortable conclusions, at least from a more liberal point of view.

On the one hand you could imagine a scenario in which globalisation never took off, or European explorers treated the inhabitants of the New World with the same respect for their property and personhood as they would their own. But for whatever reason, perhaps due to much slower technological advances, the vast majority of the world remained abjectly poor. This would be a completely just world nonetheless.

But on the other, you could also imagine a world with much lower levels of inequality than in the real world, and zero extreme poverty to boot, perhaps due to remarkable advances in technology that had been brought about independently of any effort to reduce poverty and inequality. This scenario is perfectly compatible with grave injustices committed in the past. And redressing them could require vast transfers, perhaps even from the poorest to the richest, depending on subsequent developments, making the world more unjust from an outcome-oriented standpoint.

But of course, there is only one world, and only one global order. Philosophical investigations of this kind should ideally be conducted
within the limits of realistic possibilities. When it comes to the kinds of historical global orders we have to evaluate, that list is very limited indeed.

If justice requires returning what was taken, how do you go about determining who owes what to whom? We are talking centuries of exploitation, and even if we set a cut-off of, say, injustices committed only within the last 100 years, there is no clear way to determine what consequences the harms have subsequently had through the generations. Nor is there any mechanism for saying that the injustices have been superseded by future events.

Nozick himself has few answers to this problem, preferring instead to mostly just acknowledge the dilemma via a list of casuistic questions involving duties to descendants and counterfactuals, concluding that “I do not know of a thorough or theoretically sophisticated treatment of such issues.” One possible solution he does suggest is that some estimate of what would have happened, or at least what could plausibly have occurred, in place of the injustice. Here Nozick could arguably be interpreted to imply broadly what I am arguing in the case of the background conditions to the law of peoples. If it is possible to draw up more than one description of a fair distribution (which seems almost guaranteed to be true), it may be possible in this situation that some sort of egalitarian principle could be applied here. This is a one-time measure only. A line must be drawn, in order to arrive at an initially just distribution of holdings. Once we are satisfied that this has been done as well as it can be given the

45 Nozick, Anarchy, State, and Utopia, 152.
46 Ibid., 153.
circumstances (some injustices may be impossible to ever fully compensate for), we can then begin meticulously applying the principle of justice in acquisition, and everything that follows from it will be just.

There, in effect, we see the problem with the second Original Position. Just possession requires two things: first, the rules that govern the acquisition must be fair. On the Rawlsian internationalist account, the second law of peoples takes care of that. But second, in Nozickean terms the original owner must have a valid title to the goods in order for both the holding and the transfer to be just.

The law of peoples effectively imposes its rules on the current world order, refusing any redistributive efforts and thus in effect drawing a line under anything that happened prior to its adoption. In failing to ensure that the background conditions are fair, the second part of justice in acquisition is not fulfilled.

**Conclusion**

There is a contradiction in the law of peoples when Rawls simultaneously suggests that his theory represents an ideal scenario of well-ordered peoples in a just society of peoples, yet at the same time also suggests that it can be applied to the world as it is. But both of those claims cannot be true at the same time, considering the history of injustice that has led us to where we are now.

A plausible way of overcoming that problem would be to allow the peoples in the international Original Position to choose a temporary extended duty of development, greater than the duty Rawls suggests, to
bring all societies up to a level playing field. This duty, moreover, can be
defended against two separate conceptions of the global system. Whether
you believe that the world is characterised by a liberal world order
concerned with fairness, or a libertarian one concerned with formal
justice, I believe my conclusions hold up against either one.

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