# RAWLS AND HABERMAS ON THE COSMOPOLITAN CONDITION[1]

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## INTRODUCTION

In *Political Liberalism*,[2] John Rawls proposes a thought experiment that is designed to produce principles of justice within a well-ordered state. Among other things, *Political Liberalism* is intended to clarify some problems that arose for *A Theory of Justice* in terms of the conditions of the original position, and also to address particular questions that arise regarding the possibility of reasonable pluralism within a Rawlsian society. In *Between Naturalism and Religion*,[3] Jürgen Habermas argues that the Rawlsian program does not go far enough. More is needed of a political theory in order for it to evade George W. F. Hegel's charge of Immanuel Kant's view, namely, that it express the "impotence of a mere ought." More specifically, Habermas criticizes Rawls's theory of domestic justice when it is applied to matters of global concern. However, Rawls's considered judgments on global justice are best articulated in *The Law of Peoples*,[4] not in *Political Liberalism*, even though it is possible to extract from Rawls's *A Theory of Justice*[5]

[1] We are grateful to Burleigh Wilkins and an anonymous referee for *The Philosophical Forum* for incisive comments on an earlier draft of this paper. We are also thankful to the journal's Editor, Douglas Lackey, for helpful advice.

[2] John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993). For one of Jürgen Habermas's critiques of Rawls's *Political Liberalism*, see Jürgen Habermas, "Reconciliation Through the Use of Public Reason: Remarks on John Rawls's *Political Liberalism*," *The Journal of Philosophy*, XCII (1995): 109–31. Rawls's replies are found in John Rawls, "Reply to Habermas," *The Journal of Philosophy*, XCII (1995): 132–80.

[3] Jürgen Habermas, *Between Naturalism and Religion* (London: Polity, 2008).

[4] John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1999).

[5] John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971).

principles of global justice from a charitable interpretation of that earlier work.[6]

While it is dubious whether Habermas fairly characterizes the Rawlsian original position as it might be applied to global justice, serious problems remain for Habermas's cosmopolitanism that do not arise for Rawls's theory of global justice as it is articulated in *The Law of Peoples* (or for a charitably revised version of it). We shall defend Rawls's position from Habermas's critique, and point to weaknesses in Habermas's cosmopolitanism that renders it problematic.

## RAWLS'S LAW OF PEOPLES AND COMPENSATORY JUSTICE

In *The Law of Peoples*, Rawls sets forth and defends "principles and norms of international law and practice"[7] and "hopes to say how a world Society of liberal and decent Peoples might be possible."[8] His view is of one of a realistic utopia to the extent that "it extends what are ordinarily thought of as the limits of practical political philosophy"[9] and "because it joins reasonableness and justice with conditions enabling citizens to realize their fundamental interests."[10] In working toward his realistic utopia, Rawls employs a modified version of the original position devised in his earlier works.[11] However, his conception of the veil of ignorance is "properly adjusted" for the problems of international justice: the free and equal parties in the second (globalized) original position do not know the size of the territory or population or relative strength of the people whose basic interests they represent.[12] Although such parties know that reasonably favorable conditions possibly exist for the foundation of a constitutional democracy, they do not know the extent of their natural resources, the level of their economic development, etc.[13] Moreover, Rawls states:

> Thus, the people's representatives are (1) reasonably and fairly situated as free and equal, and peoples are (2) modeled as rational. Also their representatives are (3) deliberating about the correct subject, in this case the content of the Law of Peoples. . . . Moreover, (4) their deliberations proceed in terms of the right reasons (as restricted by a veil of ignorance). Finally, the selection of principles

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[6] Bernard, R. Boxill, "Global Equality of Opportunity and National Integrity," *Social Philosophy & Policy*, 5 (1987): 143–68.

[7] Rawls, *The Law of Peoples*, 3.

[8] Rawls, *The Law of Peoples*, 6.

[9] Ibid.

[10] Rawls, *The Law of Peoples*, 7. See Rawls, *The Law of Peoples*, 11–23 for his elaboration of the nature of a realistic utopia.

[11] See for example Rawls, *A Theory of Justice*; *Political Liberalism*.

[12] Rawls, *The Law of Peoples*, 32.

[13] Rawls, *The Law of Peoples*, 33.

for the Law of Peoples is based (5) on a people's fundamental interests, given in this case by a liberal conception of justice (already selected in the first original position).[14]

From this procedure, Rawls argues, the following "principles of justice among free and democratic peoples" will be selected:

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples 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.
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 unfavorable conditions that prevent their having a just or decent political or social regime.[15]

It is interesting to note that over a decade before Rawls himself published *The Law of Peoples* and prior to cosmopolitan liberalism's attack on Rawls's Law of Peoples, Bernard Boxill had observed that the informational content of Rawls's fair equality of opportunity principle and the difference principle (as they are articulated in *A Theory of Justice*) might be extended globally.[16] However, Boxill also provided a set of criticisms of the early theory of cosmopolitan justice devised by Charles Beitz: "that a global principle of fair equality of opportunity would undermine cultural diversity, national autonomy, and individual self-respect, and create international instability; and it probably presupposes the dangerous institution of a world government."[17]

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[14] Rawls, *The Law of Peoples*, 33. One criticism of Rawls's procedure is voiced in the following terms: " . . . he says nothing to help us distinguish between a proper humility or appropriate caution in the light of the several sources of disagreement among reasonable people and a failure to exercise even rather minimal critical scrutiny regarding the quality of the reasoning we or others use to support conceptions of justice" (Allen Buchanan, *Justice, Legitimacy, and Self-Determination*, [Oxford: Oxford University Press, 2005] 166; see also 173f.). It is deemed that Rawls's theory of international justice is overly tolerant of non-liberal societies, resulting in injustice that could and should otherwise be addressed. But compare David Reidy, "A Just Global Economy: In Defense of Rawls," *The Journal of Ethics*, 11 (2007): 193–236.

[15] Rawls, *The Law of Peoples*, 37.

[16] Boxill, "Global Equality of Opportunity and National Integrity," 144.

[17] Boxill, "Global Equality of Opportunity and National Integrity," 145.

Various questions might be raised about Rawls's theory of international justice,[18] including one concerning the possible lexical ordering of Rawls's Law of Peoples principles ([1]–[8]) because such an ordering is essential to the proper application of such principles under conditions of uncertainty and rights conflicts.[19] But whether or not, and, if so, how the principles ought to be lexically ordered, this set of principles is importantly incomplete, especially in light of Rawls's repeated claim that "decent" peoples have rights to property, territory, and life. And consonant with Rawls's admission that "other principles need to be added, . . ."[20] we offer a new international principle of justice that complements Rawls's own list.

## INTERNATIONAL JUSTICE AND COMPENSATORY JUSTICE

While recognizing Boxill's seminal extension of Rawls's fair equality of opportunity and difference principles to global contexts, we shall focus on Rawls's global justice principles as he states and defends them in *The Law of Peoples*.[21] Rawls's eight principles of international justice seem to lack any mention or guarantee of compensatory justice between peoples. Yet without such a principle, there can hardly be a realistic global utopia as Rawls desires in that part of what helps to ensure social stability at the global level would be absent: remediation through compensation when certain rights are violated. Insofar as Rawls's principles of international justice are to protect basic rights that would best ensure global stability, and insofar as rights of remediation are basic rights along with substantive rights,[22] then Rawls's principles lack an important aspect of what is essential to international justice in a realistic utopia. Liberal and decent Peoples simply must compensate those whom they wrongfully harm, as is implied by the equal protection clause of the Fourteenth Amendment to the U.S. Constitution. It is their duty correlated with the right of those they wrongfully harm to be compensated. And it simply will not do to argue in Rawls's defense that matters of compensatory justice are not the proper domain of Rawls's theory of

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[18] Thomas Pogge, "Rawls on Global Justice," *Canadian Journal of Philosophy*, 18 (1988): 227–56; "Rawls on International Justice," *The Philosophical Quarterly*, 51 (2001): 246–54.

[19] Burleigh T. Wilkins, "Principles for the Law of Peoples," *The Journal of Ethics*, 11 (2007): 161–75.

[20] Rawls, *The Law of Peoples*, 37.

[21] We return to Boxill's extension of Rawls's fair equality of opportunity principle to global contexts below when we assess a cosmopolitanism critique of Rawls.

[22] Hence the old legal adage: "Absence of remedy is absence of right." One author repeatedly accuses Rawls of devising a "lean" and "truncated" list of rights (Buchanan, *Justice, Legitimacy, and Self-Determination*, 160–61). Apparently, the author fails to take Rawls seriously when Rawls prefaces his listing of human rights with the locution: "Among the human rights are . . ." (Rawls, *The Law of Peoples*, 65).

international justice, as Rawls's principles reflect a concern for conditions of war and poverty and so imply remedial rights. Thus it is an omission on Rawls's part—not to mention on the parts of various other philosophers who write on global justice—that there is not even a mention of a basic principle of compensatory justice. This omission would appear to imply that reasonably just societies have no duties to compensate other societies they have harmed by way of, say, reparations for past and severe injustices. Because such injustices are so prevalent even in societies that Rawls believes are reasonably just, the issue of compensatory justice is especially important. Why would a party in the international original position select principles 1–8 above without some principle(s) of remedial rights that help(s) to guarantee them—either by their deterrent effect or by their granting the authority to an international court of justice to award reparations or other appropriate compensation to wrongfully harmed peoples by those who have wrongfully harmed them? It is reasonable and rational for those Peoples in the original position to select not only Rawls's principles, but principles of compensatory justice that properly and fairly undergird them. But precisely what might some such principle be in the context of international justice?

Consider the following principle of compensation, which we shall call the "principle of international compensatory justice" (PICJ) as it is intended to supplement Rawls's eight principles of international justice, though in such a way that it does not indicate a lexical ordering:

> PICJ: To the extent that Peoples wrongfully harm other Peoples, they have a duty to compensate those they wrongfully harm in proportion to the harm caused them, all things considered.

This principle of international justice is phrased in terms of a *duty* of Peoples to compensate others whom they wrongfully harm wherein the object of the duty has a corresponding right to the compensation in question. But it might also be couched in terms of a *right* that all Peoples have to such compensation for experienced harmful wrongdoings wherein the object of the right (the agent against whom the right holds) has a duty to compensate the Peoples they have wrongfully harmed:

> PICJ: To the extent that Peoples are wrongfully harmed, they have a right to be compensated in proportion to the harms suffered, all things considered.

Yet these principles of international justice are themselves vague, as they do not indicate precisely who ought to compensate whom. For it is open for someone to argue that even third parties have a duty of compensation toward those who have been wronged, whether or not the third parties have served as contributory causes of the harmful wrongdoing in question. Perhaps the precedent of anti-bad Samaritan legislation in certain jurisdictions of the U.S. and elsewhere, for example,

might serve as grounds for such a claim. Thus clarification is in order if sense is to be made of the idea of international compensatory justice as a principle of international justice.

Consider this revised version of the duty of compensatory justice for the Law of Peoples:

> PICJ*: To the extent that Peoples wrongfully harm other Peoples, they have the primary *duty* to compensate those they wrongfully harm in proportion to the harm caused them, all things considered.

According to our revised principle of international justice, Peoples who wrongfully harm other Peoples have a duty of compensation to them pursuant to our newly revised principle of international compensatory justice, and the corollary rights version of the PICJ seems likewise to hold:

> PICJ*: Peoples have a *right* to be compensated in proportion to the harms wrongfully suffered, all things considered, at the hands of their primary offender(s).

One point here is that no third-party Peoples have a duty to compensate what another People has a primary duty to compensate. Additionally, what Rawls himself refers to as "outlaw" states or societies are not to escape their compensatory duties toward those they have wrongfully harmed. And it is inconceivable that free and equal parties in the international original position would ignore compensatory justice considerations. For if they were to do so, then the Law of Peoples would lack a basic remedial component to any legitimate and workable legal order. And recall that it is Rawls himself who seeks to articulate and defend principles of international justice that can be implemented with reasonable workability in a *realistic* utopia. Even in a realistic utopia rights are violated now and then, and require rectification if it is to remain a reasonably just social scenario. Nothing about Rawls's globalized original position excludes the possibility of the international principle of compensatory justice.

Moreover, PICJ* fits well into Rawls's list of eight principles. It supports principle one in that it provides a basic rule in cases wherein a People's rights to independence and freedom are violated by other Peoples. Peoples wrongfully harming other Peoples are to compensate those they harm to the extent of their harming them, all things considered. Furthermore, PICJ* implies that Rawls's fourth and fifth rules can be broken by decent Peoples in certain cases where the ninth rule is violated in a flagrant manner by an outlaw state. Indeed, third-party Peoples might consider it their duty to confront the guilty Peoples who refuse to adequately compensate the wronged party. In cases wherein an outlaw state refuses to compensate Peoples it has wrongfully and severely harmed, Rawls's

fifth principle must be supplemented by a corollary one stating that in defense of others war and certain other forms of political violence may be justified. We have in mind here cases where generations of race-based slavery (a case Rawls himself discusses) go uncompensated, or where indigenous peoples are victimized by genocide for the sake of societal expansion—again, without compensation. In such instances, it is clear that Rawls's fifth principle can be broken in light of his claim (a claim that he never recanted) that at times militancy is justified.[23] It would appear that the PICJ* upholds Rawls's sixth principle insofar as it is plausible to think that the first principle relies on such general rights being protected by compensatory rights. The PICJ* further implies that, in the waging of war or other means of political violence, certain restrictions are to be obeyed in terms of going to war or engaging in political violence for the sake of enforcing laws of compensation and protecting compensatory rights. Finally, as mentioned earlier, PICJ* is congruent with Rawls's eighth principle in that the former allows for the assistance of third-party Peoples to involve themselves in the administration of compensatory justice in cases where offender Peoples refuse to compensate those Peoples whom they have wrongfully harmed, or where such compensation is forthcoming but grossly inadequate to return the compensated Peoples to a decent level of living subsequent to the harms caused by the wrongful action of the offender Peoples.

Thus a plausible PICJ* is both necessary for the Rawlsian analysis of international justice, and congruent with many of the Rawlsian principles as stated. The revised version of the duty of compensatory justice should be added to Rawls's eight principles in order to better locate Peoples in Rawls's realistic utopia. For if consistently respected, such a principle would serve to maintain stability between Peoples with good intentions regarding a reasonably just global order. Thus principles of remedial justice are needed to complement Rawls's principles of domestic and global justice.

## HABERMAS'S CRITIQUE OF RAWLSIAN GLOBAL JUSTICE

In *Between Naturalism and Religion*, Habermas raises several objections to "realistically utopian" conceptions such as Rawls's as it is articulated in *Political Liberalism*. In what follows, we shall address what we consider to be the four most important of these concerns. Both the first and second of these objections, the "unfair burden objection" and the "objection from impotence," respectively, are objections to the idea of public reason. The third objection, the "objection to tolerance of non-liberal peoples," is an objection to the insistence that non-liberal

[23] Rawls, *A Theory of Justice*, 368: "Now in certain circumstances militant action and other kinds of resistance are surely justified."

peoples be afforded membership without sanction into the Society of Peoples. The fourth such objection is the "normative content" objection. It states that Rawls's view lacks normative content and is also unattainable.

According to the unfair burden objection, Rawls's insistence that all citizens, religious or not, be held to the standard of public reason places an unfair burden on those citizens who are religious. The language of public reason is the language of secularism. Secular citizens are readily equipped for public reason, whereas religious citizens must work to translate their own religious reasons into public reasons if they wish to participate in public discourse. It would better serve justice, equality, and fairness if secular citizens were expected to assist believers in the translation.[24]

The defender of Rawls's political liberalism might respond to this objection by explaining the standard of public reason as a standard of acceptability, not necessarily a standard of secular language as Habermas claims. The scope of deliberation is important in this regard. If public discourse were confined to a reasonably homogeneous, religious society, religious reasons might well be sufficiently acceptable to obtain consensus in political matters. However, in a reasonably pluralistic society where the religious worldviews of many citizens differ greatly and secular interests are equally represented in the citizenry, religious reasons might not suffice. If secular people cannot themselves form a majority opinion, they may find it necessary to translate their positions into language specifically acceptable to religious peoples.

The impotence objection is another objection to the duty of public reason in public discourse. This objection relies on the notion that *ought* implies *can*. The liberal political ideal entails an expectation that religious citizens engage in public reason and that secular citizens recognize religious reasoning in the form of public reason. Religious adherents often do not have justification for their political positions.[25] As Habermas states, ". . . many religious citizens would not be able to undertake such an artificial division within their own minds without jeopardizing the pious conduct of their lives."[26] Even with the assistance of secular citizens, translation of religious reasons into public reasons may not be possible. If not, then this demand is unreasonable, argues Habermas. Thus Rawls's political liberalism fails to accommodate reasonable pluralism.

A liberal reply to the impotence objection may be to concede that some religious citizens may not be capable of full participation in public discourse. That some citizens cannot live up the standard of public reason is not a sufficiently good reason to believe that none can. The liberal apologist might even take this a step

[24] Habermas, *Between Naturalism and Religion*, 130–32.
[25] Habermas, *Between Naturalism and Religion*, 127.
[26] Ibid.

further and assert that, in fact, most religious citizens do live up to the standard of public reason. It is not sure how one might go about demonstrating this except to point out that, in a reasonably diverse, largely religious population, like that of the U.S., it is possible for religious politicians to win the majority, time and time again, at all levels of government.

An observation may be worthwhile at this point. In a liberal constitutional democracy, it is the democratic process of public opinion and will-formation through inclusive deliberation that legitimates law. Therefore, a law is only legitimate to the extent that it was enacted through inclusive discourse.[27] If political discourse must be conducted in terms of public reason, citizens who are unable to deliberate in those terms cannot be included in public discourse. Their absence from public discourse diminishes the legitimacy of the law. It would seem, then, that it would serve the public interest to take all reasonable measures to exclude no one, even if all that can be done is to encourage others to assist those who struggle to meet the standard of public reason.[28] Thus Habermas's second concern with Rawls's political liberalism is not telling.

The third of Habermas's objections is the one to tolerance of non-liberal peoples. The acceptance of non-liberal peoples into the Society of Peoples does not accord with the liberal conception of justice insofar as the notion of equality is concerned. Tolerance of decent hierarchical peoples, in which societies individuals are not fully equal members, but are granted rights based on their group association, may even violate the duty of assistance to burdened societies.

As stated earlier, justice is the primary good of liberal social, political, and legal philosophies. The ideally just liberal society, argues Habermas, would realize universal egalitarianism, an essential feature of liberal justice.[29] Bringing non-liberal peoples into the Society of Peoples without sanction would be, in effect, rewarding them for injustice. The systematic violation of justice in a society should be considered a sufficient burden to warrant intervention.

In reply to Habermas's third criticism, Rawls might argue that sufficient moral conditions would be met in a society of decent hierarchical peoples to override political reasons for such sanctions against them.[30] The reasonable pluralism of a constitutional democracy should extend to the Society of Peoples as acceptance of different, but decent, social structure. As a practical matter, liberal peoples should tolerate decent peoples in order to respect the validity of alternative forms of society, and recognize the positive role decent peoples can play in the Society of Peoples.

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[27] Habermas, *Between Naturalism and Religion*, 134.
[28] Habermas, *Between Naturalism and Religion*, 131–32.
[29] Habermas, *Between Naturalism and Religion*, 274.
[30] Rawls, *The Law of Peoples*, 83.

A fourth and more general criticism of Habermas's is that Rawls's political liberalism fails because it lacks the normative content and the original position is unattainable. Habermas is correct in that Rawls is working out a political theory that does not embrace an ideology or a particular normative ethic. For Habermas this is a significant problem because the original position fails to be neutral, resulting in insensitivity to the suffering of the individual.

However, we think it is misleading to insist that the original position or the veil of ignorance could not minimize such suffering indirectly. The principles in the original position, though not normative principles, are effective because the original position is "deployed in a serial fashion, in a way that reflects a developing normative attitude toward that practical problem."[31] The requisite of justice in the original position balances individual interests by insuring a free and equal people. Furthermore, attempting to revise or alter each comprehensive doctrine people hold will not get us very far, partly because some of the views are diametrically opposing and may be irreconcilable, but this is not the job of justice to make positions compatible. Rawls argues that with a few well-placed principles as a starting point and the original position, a reasonable form of political justice is possible.

Habermas's critique of Rawls is reminiscent of other deconstructionist and postmodernist claims that there are no underlying principles that can be had for an adequate theory of justice. However, Habermas is not arguing that point as explicitly as Christoph Menke seems to do.[32] Instead Habermas argues what he sees as an *almost* insurmountable paradox that requires reform, sensitivity, and cosmopolitanism, not abstract theory, to deal with this problem.

## HABERMAS'S COSMOPOLITANISM

Habermas's version of cosmopolitanism suggests a move from state-centered international law to cosmopolitan law. He does so with both existing realities and future possibilities in mind. He envisages "the constitutionalized world . . . a multi-leveled system that can make possible a global domestic politics that has hitherto been lacking, especially in fields of global economic and environmental policies, even without a world government."[33] Current aspects of international law recognize the nation-state as the key player and two playing fields domestic and foreign, where the new structure recognizes three arenas and three kinds of collective actors.

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[31] Larry Krasoff, "Consensus, Stability, and Normativity in Rawls's Political Liberalism," *The Journal of Philosophy* (1998): 269–92.

[32] Christoph Menke, "Grenzen der Gleichheit," *Deutche Zeitschrift für Philosophie*, 50 (2002): 901f.

[33] Habermas, *Between Naturalism and Religion*, 322.

The first arena Habermas calls the "supranational." It is the international community acting as the dominant presence as a world organization with the ability to act like a state in a specific restricted way without being a state. He uses the United Nations (U.N.) as an example. It can have a similar purpose and is limited in scope to securing peace and human rights on a global scale.[34] For Habermas, there can be no world government without the loss of individual national sovereignty. The creation of a world republic is untenable, but what is possible is a properly reformed world organization that closely resembles a league of nations akin to Kant's notion of a universal state of nations. The nation-state is still the important actor. But it is in league with other states or in a universal treaty supporting the organization. The international organization must be supported permanently with the power bases of the nation-state. Habermas asserts that the state power is "to constitute the main pillars of a legal pacifism backed up by power. Alongside individuals, states remain subjects of an international law transformed into a cosmopolitan human rights regime that is capable of protecting individual citizens, if necessary against their own governments."[35] The power of the international community as coordinating nation-states is a vital program that is to be sufficiently broad to affect the serious issues facing the world. For example the U.N.'s "Millennium Development Goals" go beyond security and human rights in a basic sense and includes "empowering" material conditions. However, this puts a strain on the abilities and the political will of the world organization concerning what Habermas calls "transnational networks" and other organizations created to deal with and coordinate the higher demands. These organizations can improve the chances of success through the ever more complex set of issues that arise, though, he points out, "the devil is always in the details, these problems also call for balancing of conflicting interests."[36] Working out the political networks requires "policy regulations and positive integration," which is not present in the current international legal framework.

Habermas continues, "What I have in mind are *regional* or *continental* regimes equipped with a sufficiently representative mandate to negotiate for whole continents and to wield necessary powers of implementation for larger territories."[37] This is the intermediate area where a reasonably manageable number of global players working to deal with their local to continental issues while coordinating with the other regional regimes. However, according to Habermas, there are no intermediate or transnational- level counties except the U.S.

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[34] Ibid.

[35] Habermas, *Between Naturalism and Religion*, 323.

[36] Habermas, *Between Naturalism and Religion*, 324.

[37] Habermas, *Between Naturalism and Religion*, 324 (italics in original).

The third level only started to appear around the time of decolonization. In the latter half of the twentieth century there was the creation of the U.N. and it has grown to 192 member nations. The increase in globalization has facilitated a greater global interdependence and has created an environment in which many small nations have become economically over-extended. Thus, many small nations have sought to create regional economic coalitions but they are weak and lack deeper alliances beyond cooperation.

Habermas uses the European Union (E.U.) as an example of a possible candidate at the intermediate level to be a global player whose political strength may be equivalent to China or Russia. The E.U. may serve as model of high-level political integration of nation states. Yet Habermas reminds us that there are two issues that may pose problems for the world organization at all levels. The first is cultural pluralism and the second is religions. Each can cause tension at the international level between and within states. This potential "clash of civilizations" would be troublesome for the cosmopolitan order and hamper the transnational systems ability to communicate effectively.[38]

Habermas suggests that the way to overcome these problems is "nation-states have to learn to change both their behavior and the self-image within the multi-level system outline would make it easier to cope with such conflicts."[39] Part of this learning process is for states to understand sincerely the importance of a world organization that is able to establish transnational systems. Nation-states need to see beyond their national interests and perceive themselves as part of a "constitutional world society as peaceful members of the international community and at the same time as capable players in international organizations."[40] Habermas goes on to assert that the consciousness of nations ought to move to a higher level of abstraction to realize the integration of nation state to transnational systems of governing. He states, "Needless to say, a philosophical thought experiment describing how the normative substance of the idea can be *conceptually* preserved in a cosmopolitan society without a world government does not go far enough. The idea must also find *empirical* support in the real world."[41] Habermas is unclear what empirical content would count for "going far enough" toward a proper real world perspective.

Habermas's description of a multi-level world order with three levels and three arenas of a global society is interesting and has merit. However, he writes at length that nation-states need to change, reform, and raise their consciousness to see themselves in the global community. But this smacks of hard paternalism that

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[38] Habermas, *Between Naturalism and Religion*, 326.
[39] Ibid.
[40] Habermas, *Between Naturalism and Religion*, 326–27.
[41] Habermas, *Between Naturalism and Religion*, 333.

would seem to undermine state sovereignty. Moreover, he does not provide (at least not in *Between Naturalism and Religion*) satisfactory answers as to how the reformation is to occur. Habermas seems to suggest that we have to get nations to think at a higher level of abstraction so they can see themselves part of a transnational organization. But in the next sentence he criticizes thought experiments for lacking empirical real-world support without thorough explanation.[42]

Habermas's cosmopolitanism is an interesting contrast to Rawls's Law of Peoples. But does cosmopolitanism reconcile the comprehensive doctrines or assert principles for a just global system? It is unclear whether Habermas's cosmopolitanism is intended to help reconcile the comprehensive doctrines or assert principles for a just global system, but at the *prima facie* level Habermas's idea of a global justice system is an appealing notion. However, Habermas's position is open to at least one of the same charges that he levels against Rawls's theory, the impotence of a mere ought, without providing a more in-depth account of how free and equal peoples can work with individual rights and evade the problem. The suggestion of global reformation without a reasonable framework for ensuring justice among nation-states or transnational states renders Habermas's cosmopolitanism problematic.

Given the above considerations, it would appear that Habermasian cosmopolitanism has an empirical burden of demonstrating how cultural diversity can be maintained in the midst of addressing the needy. For as Boxill argues, "if cultural diversity can thrive in a world without poverty, and if the distinct cultures can, while changing, yet retain distinct standards of success, global fair equality of opportunity may remain an unapproachable ideal."[43] Why is the preservation of cultural diversity important? It is here where Boxill grounds the Objection from Cultural Diversity in the Objection from Individual Self-Respect. As Boxill notes, cultural diversity lies at the heart of self-respect,[44] which is, he implies, a necessary condition of justice. There simply cannot be a just social order, domestically or globally, without those in it being respectful of themselves. And community life is essential to cultural elements that ground self-respect. After all, "By what reasoning do we know that desires for higher incomes will be satiated before pluralism is obliterated? And if they are not, why should we believe that any ideal will displace the sole and triumphant desire for wealth?"[45] The concern, of course, is to realize a world of autonomous, sovereign, and culturally diverse states, each with its own sustaining power of growth[46] within environmental limits. Yet "a nation

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[42] Habermas, *Between Naturalism and Religion*, 324.
[43] Boxill, "Global Equality of Opportunity and National Integrity," 152.
[44] Boxill, "Global Equality of Opportunity and National Integrity," 154.
[45] Boxill, "Global Equality of Opportunity and National Integrity," 155.
[46] Boxill, "Global Equality of Opportunity and National Integrity," 168.

which is less affluent than others can still be autonomous. A nation which is the least-advantaged class of other nations is likely to lose its autonomy, and to have to order its affairs according to their dictates."[47]

It is dubious, then, that Habermas's quest for global distributive justice is realizable in that of the problems that it seems to pose for diverse cultures which serve as bases for self-respect, which in turn is necessary for justice. Global poverty and need must be dealt with in ways that retain cultural diversity as much as practically possible, and when that is not possible, cultures ought not to be modified or changed by economic or other coercive means. Intuitively, it seems possible to address at least most needs of global peoples with no economic or cultural strings attached. But this sort of an approach to the needy tests the motives of those who address the needs. And some of Rawls's principles for global justice are precisely intended to speak to this problem, delimiting the conditions under which it is justified to assist in the eradication of need.

Additionally, Habermas's critique of Rawls's theory in *Between Naturalism and Religion* is curious in its exclusive use of *Political Liberalism* as opposed to *The Law of Peoples*, the targeting of the latter of which would have been more appropriate for the discussion of global justice since *The Law of Peoples* addresses directly matters of global justice. This makes Habermas's critique of Rawlsian global justice rather incomplete, if not misleading. The problem here is not that Habermas seeks to assess Rawls's ideas on global justice in terms of Rawls's earlier work.[48] Rather, Habermas's error is that he does not even seem to recognize the existence and importance of *The Law of Peoples* to Rawls's theory of global justice. More specifically, Habermas makes the point that the methodology of the original position and the veil of ignorance fail. But one question is whether or not this criticism can legitimately be extended to these concepts as they are carefully articulated in *The Law of Peoples*. In *The Law of Peoples*, Rawls modifies the domestic original position and applies it to a global theory of justice in a way that renders Habermas's critique otiose. Rawls proposes a theory of global justice that could alleviate the need to merely change nation-states' internal characteristics, and instead provides a basis for all societies to live freely on the global scale.

But what about need and injustices that are caused, wrongfully, by human doings, for instance? Do the victims of such harmful wrongdoings have *rights* that are global insofar as who the duty bearers is concerned? It would seem to distort plausible notions of collective responsibility to think that anyone but those who

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[47] Boxill, "Global Equality of Opportunity and National Integrity," 158.

[48] That is done remarkably well in Boxill, "Global Equality of Opportunity and National Integrity," 143–68.

are significantly responsible for non-natural harmful wrongdoings have duties of *reparative compensation* to address the problems. This is not to imply that reparations are all about monetary compensation. Non-monetary means of rectification are also important to effective reparations policies.[49] But reparations are typically nothing less than compensatory.

While Rawls's Law of Peoples omits a principle of international justice that protects the rights of peoples to compensation for damages suffered at the hands of outlaw states, this point also applies to Habermas's cosmopolitanism, wherein no mention is made of the right to compensation of peoples who have suffered wrongful harms at the hands of others. But surely the right to compensatory reparations is a basic (remedial) right, if not a human right.[50] Whereas the criticism can be accommodated by Rawls's Law of Peoples, it renders Habermas's theory of global justice problematic. For on a Rawlsian account of global justice, room can be made for another principle of global justice, as is shown above and as he implies with his admission that his set of principles is incomplete.[51] So the addition to his theory of global justice of a remedial right of wrongfully harmed groups to compensatory reparations serves to protect other rights, including those that are deemed human ones. However, there seems to be no obvious and principled room in Habermas's theory for the remedial right of groups to compensatory reparations.

So one difficulty with Habermas's approach to global justice is that it wrongly construes the solution to the problem, not as one of reparative justice in terms of (at least) compensation for the wrongfully harmed by those who have wrongfully harmed them as outlined above, but in terms of global justice for those who are the least advantaged by historic injustice. In short, it subsumes any right to compensatory justice under the alleged and highly controversial right to global equality. Intuitions will vary on such matters. But it is at least just as reasonable, if not more reasonable, to hold to the moral legitimacy of the legal right to compensation for damages for harmful wrongdoings as it is typically articulated in U.S. law as (or than) it is to hold to some alleged moral claim to global equality. It would appear that the former conception (and *practice*) of justice is significantly more *realistically* utopian than the latter conception of justice within and between global communities.[52]

Habermas does mention "reparations for past injustices by the state" in reference especially to the treatment of indigenous peoples in Australia, Canada, and

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[49] Howard McGary, *Race and Social Justice* (London: Blackwell Publishers, 1999).

[50] J. Angelo Corlett, *Heirs of Oppression* (Lanham: Rowman & Littlefield Publishers, 2010).

[51] Rawls, *The Law of Peoples*, 37.

[52] More on how Rawls's Law of Peoples can address problems of implementation of compensatory justice between Peoples, see Corlett.

the U.S.[53] And to his credit, Rawls does none of this even in his Law of Peoples.[54] But not only does he fail to define what he means by "reparations," he does not in any way discuss them as a right, human or otherwise, that groups have when their rights are violated—especially in the horrific ways in which American Indians's rights were and to some degree still are. Thus Habermas, for all of his discussion of cosmopolitan "justice," fails to see reparations as a group right of compensation that implies a duty of oppressors to fulfill in payment for wrongful harms of a most serious nature. Perhaps this is because Habermas has a distorted understanding of the relations of the ways in which such peoples were and are treated by the governments of Australia and Canada, on the one hand, and by the U.S. government, on the other. Consider what he writes about such relations in general:

> . . . there are tribal societies and forms of life and ritual practices that are not compatible with the political framework of an egalitarian and individualist legal order. This is shown by the commendable attempts of the United States, Canada, and Australia to rectify the historical injustice to indigenous peoples who were subjugated, forcibly integrated, and subjected to centuries of discrimination.[55]

This description of the treatment of American Indians by the U.S. government and its people are concerned is misleading, historically and morally speaking. While it is true that "there are tribal societies and forms of life and ritual practices that are not compatible with the political framework of an egalitarian and individualist legal order," it is misleading to suggest that the U.S. government has "attempted" to "rectify the historical injustice" wrought on American Indians by it and its citizens *commendably*. Moreover, Habermas's description of the nature of the historical injustice is misleading, as it includes only the "subjugation," forced integration, and "centuries of discrimination" of such Indians. It is important, however, that Habermas fails to clarify what any of this means. Yet the facts of U.S.–Indian relations are of crucial importance regarding discussions of possible remedies to Indians by the U.S.

More specifically, Habermas does nothing to clarify what he means by "discrimination," but surely his choice of words could only mean something like maltreatment in much the same ways as Latino Americans, Asian Americans and the like are discriminated against in the U.S. in generations past and even today. But nowhere does Habermas even mention the severest oppression experienced by Indians at the hands of the U.S. government and its citizenry. Surely he could have mentioned the *genocide and massive land theft* by the U.S., what some refer to as

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[53] Habermas, *Between Naturalism and Religion*, 305.

[54] This point is made by an anonymous referee for *The Philosophical Forum*.

[55] Habermas, *Between Naturalism and Religion*, 304.

the "American Holocaust"![56] Along with the Indian Boarding Schools, these are, cumulatively, perhaps the worse human rights violations in history, and Habermas fails to mention them! Perhaps this is why he thinks that the U.S. has made a "commendable" attempt to rectify such evils, namely, because Habermas is either ignorant of their moral significance or does not consider them to be worthy of mention in the context of reparations. Had he consulted the most highly regarded and responsible works on U.S.–Indian relations, Habermas would have become knowledgeable of the myriad of ways in which the U.S. has not even begun to take seriously the rectification of its massive evils committed against Indians. This is precisely one of the reasons why increasing numbers of philosophers argue that reparations are still owed, and that the owing of them hardly withers with the passage of time.[57]

Perhaps what Habermas has in mind by "rectify" is a kind of toleration of Indians by the U.S. government, as indicated by the broader context of the chapters on tolerance in which his claim about rectification is found.[58] But toleration is clearly not the same thing as rectification. However, if human rights violations and their rectification are what are included in reparations for such gross forms of injustice, then toleration is irrelevant—especially the toleration by the oppressor of the oppressed. How strange it is to think that reparations for oppression amounts to the toleration of the unrectified oppressed! It is as if Habermas has no understanding of the legal or moral models of rectification and reparations. Under what model of either is it considered reasonable to not make the victims of oppression as reasonably whole as possible, but rather to tolerate them? And it is irrelevant to claim that "Law and morality conflict in a different way in cases of claims for reparations for the descendants of the victims of the criminal policies of past governments for which their legal successors are made responsible."[59] This is a fundamental misunderstanding of law and morality as they pertain to reparations for oppression. On what grounds would a reasonable person think that any government other than the oppressive one is to be "made responsible" for what the oppressive government did? It is one thing, for example, for the post-World War II German government to pay reparations for what its Nazis did oppressively to others; it is quite another thing for the U.S., for instance, to be

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[56] David E. Stannard, *The American Holocaust* (Oxford: Oxford University Press, 1992).

[57] Bernard Boxill, "The Morality of Reparations," *Social Theory & Practice*; also in *Injustice and Rectification*, ed. Rodney C. Roberts (New York: Peter Lang, 2002), 124–30; see also J. Angelo Corlett, "Chapter 8," *Race, Racism, and Reparations* (Ithaca: Cornell UP, 2003); *Responsibility and Punishment*, 3rd ed. (Library of Ethics and Applied Philosophy, Volume 9, Chapter 9) (Dordrecht: Springer, 2006); *Heirs of Oppression*; McGary, *Race and Social Justice*.

[58] Habermas, *Between Naturalism and Religion*, 271–352.

[59] Habermas, *Between Naturalism and Religion*, 305.

responsible for what the French, British, and Spanish governments did oppressively to Indians prior to the establishment of the U.S. Again, this reflects Habermas's fundamental confusion about responsibility for oppression and rights to reparations—especially in the case of North America.

Habermas criticizes the Rawlsian notion of global justice, especially in terms of its idea of toleration between peoples. However, what the Rawlsian Law of Peoples can accommodate that the Habermasian view cannot are principles of international compensatory justice that can make the right to reparative justice a major priority. For example, one such principle might read that *significantly wrongfully harmed peoples have a right to be compensated by their oppressors, and that the oppressors have a duty of compensation to those they wrongfully harm*. And it is precisely such a right and corresponding duty that can provide the wealth required to, in practical terms, bring a measure of stability to oppressed cultures in light of the conflicts that arise between, say, the American Indian peoples and the U.S. government.[60] For American Indians can, among other things, secure their own territories within the U.S., and if they are adequately (proportionately) compensated, provide for their own military defense and political power because of their newfound economic wealth by way of such reparations. In these ways, they can take serious steps toward the preservation of their cultures absent U.S. or other foreign interference.

Habermas's confusion is also exemplified in his statement that "When tribal communities, whose ancestors were forcibly integrated into the state of the conquerors are compensated with extensive self-administration rights . . ."[61] While Habermas recognizes that American Indians do not possess sovereignty because of their oppression by the U.S., how does the granting of self-administration rights amount to "compensation"? Surely he is not operating with an understanding of compensation that is deeply imbedded in U.S. law. And while Habermas is sufficiently sensitive to recognize the self-contradictory nature of a state within a state, he fails to understand the nature of compensatory justice regarding such oppression, and the right of oppressed groups to compensation by their oppressors. For cosmopolitans such as him who make so much of the language of human rights, one would think that the group right to compensatory reparations would accrue precisely to such groups. Apparently, however, Habermas and other cosmopolitans are more interested in cultural rights and "egalitarian justice" than the moral and legal bases of material compensation to those most oppressed. One gets the impression that cosmopolitanism suffers from the malady of purist utopianism where some vague and ambiguous plea for universal equality means much more than the legal provision of material compensation for those made poor through

[60] These conflicts are mentioned in Habermas, *Between Naturalism and Religion*, 304–05.
[61] Habermas, *Between Naturalism and Religion*, 304.

oppression. And where the offending and offended parties, or their heirs, are identifiable, it is difficult to understand why the reparative approach is dismissed, ignored, or refused by cosmopolitans like Habermas, except for reasons that it does not promote some ill-defined notion of egalitarianism, which presupposes a vague sense of "justice." But what can possibly count as justice if it does not include serious attempts by oppressors to rectify the victims of substantial harmful wrongdoing?

## CONCLUSION

Habermas's critique of Rawls's theory of global justice is weak as it directs itself toward Rawls's views in *Political Liberalism* rather than toward Rawls's Law of Peoples. Nonetheless, there are plausible Rawlsian replies to Habermas's critique as it is articulated in *Between Naturalism and Religion*. Moreover, Habermasian cosmopolitanism is itself subject to numerous objections. In the end, Habermas has not provided sufficient reason to think Rawls's theory of global justice is seriously problematic, though there is substantial reason to infer the dubiousness of Habermas's cosmopolitanism.

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