

Global Justice and the Challenge of Radical Pluralism

Paul Voice

Political philosophy has been under the sway of a certain picture since Rawls's *A Theory of Justice* was published in 1971. This picture combines the idea that the problem of justice should be approached from the direction of *ideal* normative theory, and that there are some anchoring ideas that secure the justificatory role of a hypothetical agreement. I think this picture and the hold it has over political philosophy is beginning to fragment. This fragmentation I think is most evident in the skepticism that has become a routine response to the Kantian idea that 'we' can 'discover' the terms of an agreement that has both a categorical force and a universal scope. But as the picture fragments we are still left with the framework and vocabulary of Rawls's difficult and elaborate theory. The major difficulty confronting the Rawlsian project (the problem of pluralism as I will argue below) is itself defined in terms of Rawls's conceptual language. And this serves only to obscure the real challenge and keep us 'bewitched' by Rawls's narrow way of seeing issues. In being bewitched in this way we do not see that the problem of pluralism confronts Rawls's project *as a whole*, rather than requiring adjustments and accommodations.

Given this account of the state of Rawls's approach to the problem of justice (and I understand that Rawlsians will not give), it seems to me problematic to use this framework as the beginning point for tackling the philosophical questions associated with the issue of global justice. Doubtless the issue of global justice needs a philosophical treatment, but the question for me is whether this treatment should look to Rawls for answers. Clearly I think not and this paper sets out some of my reasons for claiming this. My aim is to further disturb the 'bewitching picture' that Rawls and his followers present. To achieve this I will try to show that Rawls's own answer to the challenge of pluralism fails for *structural* reasons, reasons that are beyond the capacity of the theory to adjust to and accommodate. Secondly, I want to show that those theorists who I call the 'neo-Rawlsians' now engaged in applying the Rawlsian framework to the problem of global justice inherit and thus succumb to the same structural defects. Furthermore,

I will attempt to unsettle the presuppositions, the anchoring ideas, that constitute the foundation of the neo-Rawlsian approach.

In particular, I will argue that the 'neo-Rawlsian' response to the problem of global justice fails. By neo-Rawlsian I mean those who argue, against Rawls himself, that the domestic original position (DOP) as laid out in *A Theory of Justice*, should form the framework for deciding global principles of justice. I do not mean to defend Rawls's own account of international justice as set out in *The Law of Peoples*; rather, I intend to show that the fatal difficulties the DOP suffers are also suffered by any construal of an international original position (IOP). The problem I focus on is the challenge of radical pluralism. This difficulty is particularly problematic for the issue of global justice on the plausible assumption that the greater the intended scope of a principle of justice, the more extensive people's differences are likely to be. So, the question I wish to examine here is whether the neo-Rawlsians, in particular Moellendorf, Pogge and Hayden, meet the challenge of radical pluralism. The general plan of the paper is the following: first, I say what I mean by radical pluralism; second, I recount the neo-Rawlsian argument on global justice in abbreviated form; third, I show why Rawls's own pre-*Law of Peoples* response to pluralism is unsuccessful. In the final section of the paper I critically examine the neo-Rawlsian response to pluralism, focusing primarily on Moellendorf's recent work.

Pluralism and Radical Pluralism

The weakness of the Rawlsian project is already signaled in *A Theory of Justice*. There Rawls says that the parties in the original position would reject candidate principles of justice that could not generate their own support in civil society. In fact, it would be *irrational* to subscribe to a principle that failed this test. A well-ordered society is one where citizens have an effective sense of justice, one that allows them to understand the normative significance of the principles that structure the basic institutions of their society, and that motivates them in suitable ways to act in accord with these principles. The idea of a shared sense of justice among citizens is Rawls's answer to the problem of stability. Principles that do not generate their own support in society threaten the stability of a well-ordered society, and this threat in turn disqualifies such principles from the consideration of rational agents in the original position.

Once we introduce the idea that democratic societies with free institutions promote and indeed encourage a multiplicity of different 'conceptions of the good', we see that the stability of Rawls's post-contract society is threatened. This threat is serious indeed because we can trace the consequences of it back to the rationality of the choices in the original position itself. Rawls's later work, in particular *Political Liberalism*, confronts this challenge to the basic framework of his approach. What is at stake, I believe, is the plausibility of the Rawlsian project itself. If pluralities of conceptions of the good are an ongoing, deep, and intractable feature of a democratic politics, then figuring out what the parties to an original position would agree to answers only the most limited of questions.

I think the language of 'conceptions of the good' is flawed as a way to capture the issue of pluralism. Nonetheless, for the moment I will use this language to define what I mean by radical pluralism, and wait until later to say why I think it is problematic. The presence of radical pluralism, as I understand it, is defined in the following way. There exist at least two sets of values, each constituting a conception of the good, and the existing basic structure of society (its basic institutions) is incompatible with the political realization of at least one of these conceptions (and this fact matters to the people whose conceptions they are). So, to be clear, a theocratic conception of the good and a liberal conception of the good are in a situation of radical plurality *in a single society* since no *one set* of basic institutions could accommodate both of these conceptions. A democratic socialist conception and a liberal conception in a democratic state are not radical pluralities in the relevant sense since these conceptions can be realized (although not, of course, jointly) and accommodated by the basic institutions of a democratic state. Non-democratic conceptions of the good (or more accurately, conceptions of the good whose political instantiation requires a non-democratic political form) are in a situation of radical plurality in democratic societies because the basic institutions of a democratic society *cannot* accommodate them. I call this 'radical pluralism' to distinguish it from 'reasonable pluralism'. The latter is the only kind of pluralism Rawls addresses¹ and by which he means a pluralism among 'reasonable comprehensive doctrines'. Reasonableness itself is defined as a 'willingness to enter into and abide by fair terms of agreement'. I will look much more closely at what Rawls means by reasonableness later in this paper. For now I want to signal that the pluralism I am concerned with is much deeper than Rawls allows, and I suspect, deeper than he recognizes. It is also

necessary to distinguish my use of this term from the school of democratic theorists who describe their position as radical pluralism. These writers, in particular Chantal Mouffe and William Connolly, argue for an agonistic conception of a democratic politics and take as their (non-empirical) first premise the idea that politics is essentially conflictual.² While I sympathize with this orientation I take no stand here on whether radical pluralism is a permanent and universal feature of a democratic politics. I mean only to point to a situation in which radical pluralism exists and abstain here from any metaphysical claims about its permanence. So my question in this paper is directed towards the challenge that radical pluralism offers for those neo-Rawlsians who wish to take Rawls's basic framework in *A Theory of Justice* as a guide for global justice.

The neo-Rawlsian Argument

In *A Theory of Justice* Rawls suggests in several places that the device of the original position is one that can be applied to a variety of normative questions in a variety of contexts. In other words, the idea of a hypothetical agreement behind a veil of ignorance between defined parties, bargaining in a set fashion, is one that can be used to answer questions other than the limited one of domestic social justice that Rawls himself poses.³ Rawls thus says:⁴

Let us assume that we have already derived the principles of justice as these apply to societies as units and to the basic structure. Imagine also that the various principles of natural duty have been adopted ... Now at this point one may extend the interpretation of the original position and think of the parties as representatives of different nations who must choose together the fundamental principles to adjudicate conflicting claims among states.

Here Rawls clearly advances the idea that principles of global justice could be decided on, and thus in a fundamental sense, legitimized, by determining what would be agreed to in an original position. However, the DOP and the IOP differ in one crucial respect for Rawls. Instead of placing individuals behind the veil of ignorance, Rawls puts 'representatives of states' in their place. The DOP differs from the IOP therefore insofar as the interests represented by the parties to the agreement differ. The argument that there ought to be this difference is elaborated in Rawls's *The Law of Peoples*. Since I do not

want to defend Rawls's own account I will not rehearse this argument here. What is significant for my purpose is the distinction itself for it is here that the neo-Rawlsians gain purchase for their argument that the problem of global justice is best addressed by making Rawls's approach to international justice consistent with his approach to domestic justice.

Here I will identify three philosophers whose work best exemplifies this neo-Rawlsian move: Thomas Pogge ('Rawls and Global Justice'), Patrick Hayden (*John Rawls: Towards a Just World Order*), and Darrel Moellendorf (*Cosmopolitan Justice*). Each of these authors demand consistency from Rawls and argue that Rawls's distinction between the domestic and the international position is, in some important moral sense, arbitrary. Although they argue different agendas (Hayden for example uses the Rawlsian foundation to argue towards a robust international human rights position and Moellendorf argues towards a democratic interpretation of the requirements of the IOP), they mount very similar arguments in establishing their claim that Rawls should have, and must, extend the original position beyond domestic boundaries.

Pogge asks, 'How should we assess a global institutional framework from a moral point of view?'⁵ Using one of the centerpieces of Rawls's own theory, namely that the justice of institutions should be judged from the perspective of the least advantaged, he argues that Rawls's restriction in the IOP to representatives of states is incompatible with 'the central commitments of his theory, chiefly: with his focus on the basic structure and with his Kantian conception of all human beings as free and equal moral persons'.⁶ He goes on to argue that these 'commitments would rather ... lead one to abandon Rawls's primary emphasis on domestic institutions in favor of globalizing his entire conception of justice'.⁷ He goes on to argue that the best interpretation of Rawls's own theory, especially the 'liberal conviction that, in matters of social justice, only *persons* are to be viewed as ultimate units of (equal) moral concern'.⁸ And once we accept that persons rather than states are behind the veil of ignorance it becomes clear that arguments for prioritizing the domestic and the national fail and that we owe duties of justice to the least well off in the global population. The major criticism of his argument he considers is what he calls 'the challenge of cultural diversity'. Since this challenge is adjacent to my own concerns about pluralism I will reserve my comments until later.

Hayden argues that the difficulty of the distinction between persons and states and the 'prioritization of the domestic over the inter-

national choice situation is that it negates the ethical advantages gained through the utilization of the veil of ignorance'.⁹ He goes on to say that whereas the original position is considered fair because, as Rawls says, it 'nullifies the contingencies and biases of historical fate',¹⁰ the 'nation-state is a uniquely modern, historical contingent factor'.¹¹ And so in the 'international choice situation ... the aim and method of ideal theory appears to be relegated to a secondary status behind the dictates of a realist view of international politics'.¹² In other words, Hayden argues that the justificatory function of the original position is compromised by the morally arbitrary inclusion of nation-states as sources of interest behind the veil of ignorance. On the question of cultural diversity Hayden argues the IOP would in fact be an opportunity to protect rather than to compromise diversity.

In his chapter on Rawlsian constructivism¹³ Moellendorf mounts a sustained argument against Rawls's position in *The Law of Peoples* that the states represented behind the veil of ignorance should include 'certain well-ordered nonliberal' ones. Those states Rawls characterizes as 'decent hierarchical peoples'. The consequence of allowing the representatives of such societies in the IOP is to remove the democratic and egalitarian features that an IOP would agree to if individuals rather than states or 'peoples' were included. In Moellendorf's 'cosmopolitan construction ... the interests of persons are represented directly and the interests of corporate bodies are represented indirectly, just insofar as they serve the interests of their citizens'.¹⁴ The consequence of this is that the eight principles Rawls argues would be agreed to as determining the requirements of international justice would be amended and added to.¹⁵ Specifically, Moellendorf argues that Rawls's eighth principle should be replaced by one requiring 'political arrangements' to 'honor principles of substantive egalitarian distributive justice', and that a further ninth principle be added, saying that 'political arrangements are to honor the institutions of constitutional democracy'. With these principles reflecting the interests of 'rational and reasonable' individuals, Moellendorf goes on to defend a 'democratic conception' of persons in the original position, the idea that the principles that emerge from the IOP are, in an important sense, true, and that his cosmopolitan theory incorporates the value of toleration. His argument relies heavily on a distinction Rawls makes in *Political Liberalism* between the political and the metaphysical, that is between 'freestanding political conceptions' and 'comprehensive conceptions of the good'. Since it is this distinction that I will be most concerned with in my critique of

Rawls I will return to Moellendorf's arguments towards the end of the paper.

This then is, in brief, the neo-Rawlsian position. As it depends so much on the plausibility of widening the scope of Rawls's DOP I want to review some of the major features of the original position and point to some of its most fragile aspects.

The Problem of Pluralism and Normative Depth

Rawls attempts to meet the challenge of pluralism by distinguishing the political from the metaphysical.¹⁶ The plurality that threatens the possibility of a democratic society with free institutions is placed in the category of the metaphysical while what unifies democratic citizens in a just, well-ordered society is placed in the category of the political. Democratic citizens can affirm a shared political conception while tolerating their metaphysical differences. I want to challenge Rawls's understanding of the 'metaphysical'.

In one sense of the metaphysical Rawls means to identify religious, moral and philosophical doctrines that have a normative content. For example, religious prescriptions that identify a Sabbath day, moral imperatives that proscribe certain sexual relations and, say, philosophical doctrines that specify a meaning in life. When confronted with such doctrines Rawls's reasonable person will recognize the 'burdens of judgement' and agree that there is no accepted way to settle disputes about such prescriptions. The boundary of the metaphysical is marked by the epistemological. Where we do not have a generally agreed procedure for settling disputes we place the disputed question in the category of the metaphysical. Normative claims (although not quite all normative claims) have this characteristic and are therefore 'metaphysical'. Another class of metaphysical claims is theoretical judgements about which reasonable people can disagree, again because there is no settled, generally accepted procedure, for deciding the issue—judgements for example about the immortality of the soul, the character of the afterlife, the existence of god, some conception of human nature, and so on. Again, the deciding criterion is epistemological.

A comprehensive doctrine is committed to the truth of some normative and theoretical metaphysical claims. This then is what Rawls means by pluralism—the existence of competing comprehensive doctrines. A political doctrine is not committed to metaphysical claims in

the epistemological sense. It is impartial between comprehensive doctrines because it seeks and finds a *practical* space where agreement can be reached concerning the minimum set of beliefs and commitments required to stabilize a democratic society. A political conception is, in a very strong Kantian sense, a practical conception. No claim is made about the truth of any political judgement, rather a judgement is deemed practical for democratic citizens in a particular society. Reasonable citizens concerned to advance their own conceptions of the good, committed to their comprehensive doctrines and the metaphysical elements they contain, converge on a set of practical (political) principles to govern the background institutions of their society. They are *reasonable* in part because they are capable of distinguishing the metaphysical from the political. They are committed to the political doctrine as a practical arrangement, compatible with their comprehensive doctrine, as a 'rational faith'. Moreover, this 'faith' is more than a 'mere modus operandi' since it connects with central normative features of the comprehensive doctrines of reasonable people. In this way an 'overlapping consensus' is achieved and a normative grip is given to the political.

What matters at this junction is how the political conception is filled in because for it to function as a practical source in a pluralistic society it has to be free of metaphysical claims of the sort identified above. The metaphysical contaminates the political. Given the epistemological criterion, the metaphysical can be excised from the political either by a general agreement on what constitutes the boundary between the metaphysical and the political, or by a 'meta-metaphysical' claim that objectively establishes the boundary. The latter would be a claim of the sort that any judgement whose truth-value was not decidable by empiricist methods was thereby 'metaphysical'. This would neatly place the normative and the theoretical claims concerning souls, god and human nature in the metaphysical. I have described it as 'meta-metaphysical' but really it is just a metaphysical claim itself. The alternative idea that there is a general agreement is best cashed out in a historical/descriptive manner. The traditions and 'ideas implicit in the culture of democratic society' settle where the epistemological axe falls. So citizens in a democratic society are formed by a tradition that accepts other citizens as 'free and equal' and since this is not disputed, it is not therefore metaphysical in the intended sense. But it *would be* metaphysical to someone not party to that tradition.

The epistemological distinction that yields the separation of the political from the metaphysical is therefore *relative* to some claims

concerning either or both 'meta-metaphysical' and historical/descriptive judgements. These claims themselves either are or could be metaphysical depending on the context. The epistemological distinction is therefore messy but perhaps workable providing we stay alert to the differences between the various meanings of 'metaphysics' outlined in the previous paragraphs.

Rawls fills in the political dimension by an elaboration of a constructivist epistemology tied to a particular conception of the person and a particular conception of society. I will say more about constructivism below. For now I want to say what conception of a person Rawls has in mind. Rawls says that persons are regarded as 'free and equal' because they possess a moral personality which is to say that they are capable of forming a conception of the good (they are rational), and they are willing to enter into and abide by fair terms of agreement (they are reasonable). Now, in one sense this conception is a mere unpacking of what it means to be a practical agent. Practical agency requires that a person *wants* something and that she is capable of *co-operating* with others to get it. It is plausible to understand this as what practical agency *is*, and therefore not a metaphysical claim (it is analytical). However, calling persons who meet this minimum criterion 'free and equal' seems too much. It is surely a metaphysical leap to claim that people who can want and can co-operate are thereby (analytically) 'free and equal'. For example, an advocate of a sexist society could agree that everyone is capable of practical agency in the former sense but that only men are (should) enjoy the political status of being free and equal. This objection is met of course by arguing that the tradition of a particular society interprets the minimum criterion of practical agency (wanting and co-operating) as being free and equal. Another way of meeting this objection is to say that only comprehensive doctrines that can regard members of society in their political personas as free and equal are reasonable.

The task here is to make coherent elements of a comprehensive doctrine and the public political conception of practical agency (to achieve an overlapping consensus). This is how Rawls's conception of the person can be political rather than metaphysical. But again, the line between the political and the metaphysical is sharp only to those who *antecedently* draw the line exactly there—that is, those whose comprehensive doctrines are reasonable and/or who share a particular political tradition. So what looked like a point about the logic of statements, metaphysical statements and political statements, turns out to be a point about contingent beliefs and histories of particular per-

sons. What looked like a move away from metaphysics is really more metaphysics, except *our* metaphysics is what we call 'political'.

To make what is confusing clear we should return to the epistemological criterion identified above. This says that where there are no settled, generally agreed upon standards for determining the truth of a claim, then this claim is, for the purposes of public discourse, metaphysical. In other words, no one in their public persona asserts the truth of such claims as a basis for organizing and determining the nature and character of the background institutions in society. Once we have cleared the field of the metaphysical claims what remains are the political claims—those that are uncontested because they are true (according to some generally accepted standard) or uncontroversial, overlapping parts of comprehensive doctrines. So while a citizen may believe that women are ethically subordinate to men, he does not assert this as a truth in the public sphere where questions of political justice are settled.

The epistemological criterion is connected to a general thesis about how values are known. This general thesis is constructivism. Constructivism is a thesis in the epistemology of values. It is a way of setting out an idea of objectivity that differs from what objectivity requires in the theoretical case, but suited to the practical purposes (either moral or political). What recommends it as a general procedure is that it is non-realist, but nonetheless cognitivist (as opposed to subjectivist). It is non-realist in that the measure of objectivity lies within the constructivist procedure itself rather than the procedure *tracking* the real and thereby obtaining its claim to objectivity in that way. In other words, objectivity which is the source of justification for our value judgements, lies not 'in the world' independent of us, but in a procedure of construction the outcome of which is an objective set of values. The idea of objectivity here can be misleading. It is not an absolute, universal objectivity, but rather an idea of objectivity in the sense that Nagel means it—it is the construction of view that sets aside *some* of the particularities and subjective viewpoints and reaches for view that is less subjective, that is outside the confines of a particular individual perspective on the world.¹⁷ It is a conception of objectivity that is tailored to practical rather than theoretical purposes. Objectivity is what does the work of justification and the agent to whom this justification is addressed is the reasonable person, one who has a conception of the good and a capacity to enter into and abide by agreements. This agent is not looking for truth because she understands that in practical matters truth is the wrong standard.

So, the point of constructivism is to construct an objective point of view that yields principles to govern the basic, justice-determining, institutions of society. How is this achieved? Rawls's own answer is familiar. The original position, he says, 'lays out' the procedure for arriving at an objective point of view, and the two principles of justice (the greatest equal liberty principle and the difference principle) are the outcome of the procedure. The crucial idea at the centre of this procedure is the idea of agreement. What yields the objective standpoint is the fact of agreement between the parties in the original position. Rawls's principles of justice are 'acceptable from all points of view' because they are agreed on in circumstances of fairness. The normative potential of the constructivist procedure is therefore animated by the aim of agreement.

The contractarian form of the constructivist procedure leads us, finally, to what is particular about Rawls's use of this procedure. As with any contractarian theory what makes it distinctive is the way the elements of agreement are specified. In particular, how the parties to the agreement are specified, how they reason towards agreement, and what the circumstances of the bargaining are. Once these specifics are filled in then it is possible to generate, as Rawls does, actual principles. It is at this point that we can see why Rawls's constructivism is Kantian. He specifies the parties to the agreement and their circumstances in Kantian terms as 'free and equal', he defines their practical agency in Kantian terms. What they agree to as the principles to define the basic structure of their society is therefore the outcome of a point of view which is objective for persons who share this essentially Kantian agency. For such persons these principles are justified. The political (as opposed the metaphysical) is thus defined in relation to this conception of persons.

We can make things even clearer by saying that within the Rawlsian contractarian scheme candidate principles of justice emerge only once some constraint is placed on how persons and their circumstances are to be defined. Without some constraint anything could be agreed to, and so the moral and political dimension of an agreement is secured only when some constraints are specified. When Rawls ties his constructivist account to a particular conception of persons, he puts such a constraint in place and he guarantees the normative bite of his principles of justice. Now, different constraints can be put in place and the principles that emerge will differ accordingly. It is in fact these constraints that constitute the differences between various contractarian theories of justice from Hobbes onwards.

We are now in a position to say that such constraints identify the domain of the political and thereby identify the metaphysical as well. We can also say that this division will shift according to how the constraints are specified. So any shift of a constraint will render the political as metaphysical and so it is obvious that the political will always be a contested idea, given Rawls's agreement with Mill that free institutions generate competing conceptions of the good over time. It is also clear that political liberalism is not a solution to pluralism except to those conceptions of the good that share the resources that enable them to accept a Kantian interpretation of practical agency. This suggests two research programs, first, one that seeks resources for sharing the liberal view of agency in the comprehensive doctrines of culturally non-liberal groups, and another that seeks to modify and adjust the liberal view to fit various forms of diversity. And so finally we can see that the political-metaphysical distinction does no philosophical work, at best it fulfils only an ideological task. We move forward by bringing to the surface and making explicit what the constraints on agreement are and seeking to maximize the scope of agreement with the constraints specified.

I have allowed to pass without critical comment Rawls's claim that the practical is not theoretical, that the former is the domain of the reasonable and the latter the domain of truth. I share the Kantian instinct that this articulates, however the distinction itself needs closer examination. Of course, as Rawls seems to acknowledge,¹⁸ separating the true from the reasonable is a metaphysical task itself. But there is something more significant to be noticed. The values that constitute the political are, as we have said, normative insofar as they connect with the 'metaphysical' attachments, beliefs and concerns of citizens' conceptions of the good. The metaphor of surface and depth best captures the difference here. Public, political and practical values are surface values whereas values that structure the meaning and purpose of individual lives are deep. There is nothing in the values themselves make them deep or surface, it is rather the perspective adopted towards them. A surface value is one that meets the requirements of objectivity and that can be publicly shared. A depth value on the other hand is one that is subjective, that defines the inner meaning of the lives of some but not all citizens. Employing this new metaphor we may say that the problem of pluralism is a problem about either constructing surface values, or bringing to the surface values that can be shared. And since every surface value is, from another perspective a depth value, the idea that there are *values*

that can be identified by a philosophical procedure as surface will always be contested.

Surface values are always, or can always be, someone's depth values. The metaphor of surface and depth helps us to see another structural problem. Once we define the terms of the problem of pluralism in this way we can see that the task is to maximize the scope of some values across pluralities of conceptions. Now how deep can these values be within individual conceptions of the good? There seems to be no restrictions, provided each conception recognizes the value. But this surely is not good enough. Let's take the value of autonomy as an example. Some conceptions may take autonomy to be a defining feature of their conception while others may regard it as less important than other values, loyalty for example. Once we see that values have depth (their metaphysical dimension if you like) we also notice that the idea of depth yields relative commitments. Here then is another source of trouble for Rawls's political liberalism. The values that make it to the surface should not only be shared but they should also be equally or approximately significant for citizens. In the absence of this a new avenue is opened for controversy and dispute.

The distinction between surface and depth is supposedly a distinction between the practical (reasonable) and the theoretical (true), but problems arise because the distinction is always one of perspective. Perspective is required by Rawls in order to give his principles a moral dimension (rather than being principles of a mere *modus operandi*). Here he participates in a long metaphysical tradition that views moral values as signifying the deep, the inner, dimensionality of the soul. Morality belongs to a realm other than the phenomenal, the surface events and actions of people's lives. Saying what we ought to do is something radically different from saying what we in fact do. We cannot live a life that is governed by purely practical motivations, not even for Kant who requires a 'rational faith' in the postulates of freedom and the existence of God. There cannot therefore be values that are entirely on the surface. Thus the distinction between the practical and the theoretical and between the values of depth and surface is bogus if we mean to identify anything other than perspectives. And, importantly, these perspectives are relative to the contingencies of history, tradition and the limits of imagination. In conclusion we might say that the closer we get to the surface the greater the scope of values across conceptions of the good. But the surface itself, where the scope reaches its maximum and the problem of pluralism is finally 'solved', is precisely the place where moral normativity is lost. Depth

is required for normativity, but depth is what separates conceptions of the *good*.

Where does this leave us? The problem of pluralism is not met except for a limited range of comprehensive doctrines deemed reasonable from a particular historical and/or metaphysical perspective. The distinction between the political and the metaphysical that is supposed to do so much philosophical work identifies the limits of Rawls's liberalism rather than providing a way of making it inclusive of perspectives other than those of a narrow liberal view of the normative world. If we remind ourselves that Rawls means his distinction to meet the challenge of pluralism only in the nation-state, then we should be doubly skeptical of the idea that this move will achieve very much in a global setting where possible pluralities are greater.

The neo-Rawlsian Reply

The Claim of Objectivity

Employing the language of the previous section we can say that claims to objectivity in value arguments are attempts to reach towards the surface by finding prescriptions that command general agreement. Moellendorf makes a claim of objectivity for his conception of 'democratic persons'. If there is a plurality of conceptions of the good and these conceptions include, as they will, a plurality of conceptions of persons, then the claim to objectivity is false if it is meant in the sense of a meta-metaphysical claim, as Moellendorf does mean it. Notice that we can say, as Rawls does, that *for* such persons as described by Moellendorf there might be principles of justice that are objective *from their point of view*, but Moellendorf goes further to argue that the conception of persons is itself objective.¹⁹ This conception is a 'moral truth', he says, that does not vary with 'cultural tradition', since 'if the account of persons ... offered ... is sound, then relativism is false'.²⁰ Furthermore, since this conception is true 'then the fact that the conception of persons originates in the democratic tradition cannot count as reason not to apply it elsewhere'.²¹

Moellendorf follows Rawls's ascription of a 'moral personality' to democratic persons. A moral personality indicates that they have two highest order interests:²²

One is the interest in developing and exercising the power rationally to form, revise, and pursue a conception of the good. The second is the inter-

est in developing and exercising the power to apply and act upon publicly acknowledged fair terms of agreement.

Moellendorf goes on to argue for the following objective claims:

- (1) 'All persons necessarily value their conception of the good.'²³
- (2) All persons have an interest in having the capacity for a conception of the good.
- (3) (2) is more fundamental than (1).
- (4) 'In valuing our conception of the good, we take it to be correct or true.'²⁴
- (5) Our ability to revise our conception of the good is more important than (1).

Each of these claims is contestable in a very fundamental sense. They presuppose ways of looking at the world, a particular theoretical vocabulary with its 'bewitching' views on the nature of the good and the right, and assumptions that can easily be brought to the surface. These five claims are precisely what anchor Moellendorf's argument and they allegedly shield him from the challenges of pluralism. In the following paragraphs I want to show just how easy it is to question these 'objective' claims. And once we see this we will also see that the *constraints* that Moellendorf imposes on his global agreement are likewise fundamentally contestable.

Firstly, I think Rawls and Rawlsians take the idea that each of us has a conception of the good too uncritically. What does it really mean to have a *conception* of the good? Must a conception be explicit or can it be implicit? If the latter, can I have a conception that I am not aware of? In what sense, then, is this a *conception*? Perhaps my 'conception of the good' merely makes my choices predictable by others (perhaps even by myself)? Perhaps it offers a backwards narration of my choices so that my life appears to have unity and a purpose? Perhaps a conception of the good represents a set of dispositional attitudes towards possible states of affairs? My point is that it is really unclear what in the end it even means to say of someone that they have a conception of the good. Secondly, there is an ambiguity between saying that individuals have conceptions of the good and saying that individuals share in a collective conception. It really makes no sense to suggest that an individual can have *her own* conception of the good.

Conceptions of the good, if any real sense can be attached to them, are historical and contingent, so our valuing them is uninteresting

because our doing so presupposes what is false, namely, that we could, but do not, choose an alternative conception. This is not to say that we cannot and do not change our minds about what we value. But we do this in small pieces rather than an overt trading in of one 'conception' for another. At best, after a 'conception' has been chipped away at for long enough we might find ourselves with a new one (although again what this really means is difficult to say). Besides, rather than valuing my conception of the good I might resist the one I have. I might become aware that my 'conception' is founded on the values of the Anglican church in which I was brought up and I might regret and resist these values, but nonetheless find myself making choices and having attitudes that are deeply informed by this conception (what else could I do?). Therefore the claim that all persons *have* a conception of the good which they *necessarily* value is not only not objective, but is deeply unclear and most probably false.

The second proposition above presupposes the truth of the first one. I can only be interested in having the capacity to have a conception of the good if I in fact have something as elaborate as a conception of the good in the first place. But suppose I do. The claim looks like this: if I value playing soccer I therefore must have an interest in having the capacity to play soccer. A legless man might have an interest in playing soccer, indeed value playing soccer, even though he does not have the capacity. However we must agree that his sincerity in these claims would be questionable if we offered him sufficiently sophisticated robotic limbs that would enable him to play but he declined. However, surely you can value something you have no interest in and have an interest in something you do not value. So, for example, I might value the conception of the good represented in Buddhist practices without wishing to develop a capacity to pursue these practices myself. And a free-rider surely has an interest in occasionally co-operating with his fellows without valuing this co-operation. So if I have a conception of the good I do not value, I might wish not have the capacity to have it. In fact I might seek to destroy this capacity. I might also value a conception of the good but not wish to develop the capacity to have it (it might be too demanding, for example). Thus, even if *definitionally* I have to have some conception of the good, it does not follow either that I value it, or that I have an interest in my capacity to exercise it.

But surely, it might be claimed, I have an interest in having the capacity to exercise *some* conception of the good even if I don't have an interest in having the capacity to have any *particular* one. This is

an entirely obscure claim for what could it mean to deny it? Besides, if I can separate my interest in having the capacity from every possible candidate conception of the good what does it mean to say I have an interest in having the capacity nonetheless? It would be like arguing that I have an interest in having the capacity to play ball games even though there is no actual ball game I have an interest in playing.

A response to some of these objections might be the following: that since a particular conception is my conception of the good, I must therefore value it and want the capacity to exercise it, otherwise it is not really a conception of the *good*. But this move makes 1, 2 and 3 definitional announcements rather than arguments. When we are told that a triangle has three sides we are not being offered an argument. Presumably when Moellendorf asserts that, for example, all persons necessarily value their conception of the good, he is making an argument and not merely informing us about the meaning of the words he is using.

Moving on to the fourth claim. For the most part people do not take their beliefs about justice and morality to be true. Most often they say that their beliefs are 'true for them', they think about them in a modest conjectural way. Philosophers who think prescriptive judgements are always universalizable have a low opinion of the phrase 'true for me'. However, even if prescriptive judgements are always universalizable it doesn't follow obviously that they are true, or that the person asserting them means them to be or ought to mean them to be true. Moellendorf does say 'true or correct' but it is unclear to me what the disjunction conveys ('correct for me'). Anyway, I can be, and I hopefully am, uncertain, tentative, puzzled, reluctant and sometimes sheepish about my value judgements. I am, and should be, unwilling to baptize my opinions with the authoritative stamp of truth or correctness.

In response to the fifth claim, I might not want to develop an ability to revise my conception of the good (again if any sense can be made of having such a thing). When revision threatens my conception I might seek to destroy my capacity to have it. The claim that this is not rational is wrong. On an instrumental account of rationality I might be better off with my present conception rather than undergoing the turmoil of a revision. On a justificatory account of rationality, I might take my source of justification to lie externally (in a deity, for example, or a church or the state) and see the possibility of revision as a threat to the proper source of justification.

The point of these remarks is to show that the idea of truth and universal objectivity in our conceptions of persons for the original posi-

tion is entirely contestable. The constraints that Moellendorf uses to shape his democratic conception of persons are constraints that prescribe a particular view of persons that might have no grip whatsoever on a reasonable person whose idea of practical agency differs.

Moving on to the second part of Moellendorf's argument: After giving the argument for the objectivity of interests he attributes to his democratic persons, he goes on to defend the second highest order interest, namely the 'capacity to apply and act upon publicly acknowledged fair terms of co-operation'.²⁵ He argues that although not all conceptions of justice include this particular interest, 'the fact that they establish a basis for an interest in justice is enough for this particular interest under contingent conditions that *currently exist globally*'.²⁶ These contingent conditions are the following:

- (1) There exists a moderate scarcity of resources.
- (2) There exists a reasonable pluralism of comprehensive moral conceptions.
- (3) One may be justified in holding moral beliefs that one cannot rationally convince other reasonable and rational persons of, and vice versa.

The first condition is either not contestable at all (for technical reasons), is contestable, or is meaningless. The idea goes back to Hume and the 'circumstances of justice'. Clearly, if resources are so minimal that no amount of co-operation will increase the total share of any of the participants in a co-operative scheme, then there would be no point entering such a scheme. And if there is an abundance of resources then there would likewise be no point in co-operating with others. So the idea of a moderate scarcity of resources gets everyone into the game of justice. However, what counts as resources and as a moderate scarcity of them is, once again, entirely contestable. Moreover, this claim is ambiguous between a scarcity that arises because of distributional reasons and one that arises because certain resources either do not yet exist or there is an insufficiency of them.

Since Moellendorf's claim is that this scarcity 'currently exists globally', he must have in mind more than a technical point but rather a gloss that he expects general agreement about. But this is to expect too much. Suppose the resource in question is food. Someone might argue that there exists enough food so there is no scarcity as such, only a maldistribution of food that makes it scarce for some people. In reply another might (cruelly) argue that the distribution is just and so there is no scarcity of food and the distribution does not create a

scarcity that is relevant for the question of justice (anymore than the 'scarcity' of good looks does). If there is, or can be, general disagreement about what is to count as resources (natural talents for example?), and what constitutes a relevant sense of scarcity, then there can be disagreement about what it even means to say that there currently exists a 'moderate scarcity of resources'. This is particularly relevant to Moellendorf because he is not just using this as a technical device or presupposition, but making the larger claim that this is a fact about our current world.

Finally, the second and third conditions immediately invite skepticism since they both employ the highly contestable term 'reasonable' in crucial places. They are not descriptive claims and nor are they claims remotely likely to gain general agreement in global plurality of conceptions of the good. The description of differences as reasonable already suggests that a radical pluralism is omitted from consideration.

The point of this nitpicking is to rough up Moellendorf's claims to universal objectivity, agreement and truth. We have seen why these claims are inviting, namely, because of the challenge of pluralism which threatens to fragment the justification for applying the principles worked out behind the veil of ignorance in the original position. However, I hope to have shown that such invitations cannot be accepted. There simply is not a universally acceptable (by whatever measure or standard) description of practical agency suitable for deciding questions of justice behind the veil of ignorance (either in the DOP or the IOP).

The Relativist Reply

This response to the challenge of pluralism comes in two parts. The first response is offered by Pogge. If moral truth is relative to conceptions of the good then it follows that the truth of the generally liberal and Rawlsian conception is true (relatively speaking), and therefore worthy of being advocated and implemented if possible. Pogge writes:

... if global interdependence poses a genuine problem of background justice, how then can Rawls even hesitate to globalize the two principles: *his* standard for assessing social institutions?²⁷

This is obviously correct in one sense. A value relativist has no grounds to forbid someone whose relative set of values includes a commitment to universal norms from acting on her principles. After

all, whose principles could she act on? So the challenge of pluralism does not, as Pogge points out, tell against anyone advocating and trying to persuade others of a particular set of values. However, it should be emphasized that the relativity of values and a plurality of conceptions of the good will give one pause, providing one's conception of the good includes valuing and tolerating the values of others. Anyway this move by Pogge does not, of course, answer the challenge of pluralism. It just accepts it.

The most comprehensive reply is offered by Rawls himself and accepted for the most part by all the neo-Rawlsians. This is to look for an overlapping consensus between that subset of comprehensive doctrines that can share the conceptions of persons and the descriptions of the circumstances of their deliberation in the original position. Now, I have already argued that this notion of sharing as it is cashed out in terms of a divide between the 'political' and the 'metaphysical' is arbitrary and unstable. I think the idea of an overlapping consensus insofar as it depends on these notions of the 'political', of a 'free-standing conception' and so on, is likewise arbitrary and unstable. As I argued in the previous section, it reaches for the maximum scope of its principles by identifying values and commitments close to the surface across a range of comprehensive doctrines. At best this strategy achieves a narrow consensus and answers in a very limited way the real challenge of a plurality of value schemes. I think it is even more limited than the neo-Rawlsians think it is. Both Pogge and Hayden offer an argument that suggests a greater possible scope for an overlapping consensus. Pogge writes:

What counts then—regardless of the considered judgements and other reasons that may motivate a particular person—is convergence upon the principles themselves. And the present objection to the globalization of Rawlsian principles must show that cultural diversity: namely, at least, that agreement on such principles is out of reach.²⁸

Hayden writes:

Despite the great intercultural diversity of considered judgements on justice due to the diversity of histories and traditions, what matters at the global level, as at the domestic level, is convergence on the Rawlsian criterion itself.²⁹

The idea of convergence and agreement in these quotations is ambiguous between a number of interpretations. Converging on the

same set of principles is not the same thing as understanding those principles in the same way. It is only in the practice of *applying* those principles that differences in understanding will emerge. So, for example, you and I might have different motivations for agreeing to play soccer and playing by the rules set out by the Football Association. Our agreement to these rules itself can be motivated by different considerations. I, for example, agree to the offside rule because I believe it makes the game fair for defenders (being myself a defender, say), while you agree to it because you think that it makes the game flow more smoothly (concerned perhaps to keep the interest of spectators). Now, our 'convergence' is complete for as long as a situation does not arise in which applying the rule interferes with the flow of the game. Then your motivation and reason for agreeing to a rule bears importantly on whether you think it ought to be applied.

It seems then that agreeing or converging on a rule implies the expectation that the agreement *includes* agreement about its application in particular situations. It is here that differences in motivations and reasons will emerge and since, even for quite simple rules, all the situations in which it might be applied cannot be specified in advance, it follows that the greater the diversity of motive and reason, the greater the likelihood of divergence in practice. Mere convergence and 'agreement' on the 'Rawlsian criterion', given a real plurality of motives and reasons suggests the likelihood that the particularities of future situations will show that there was no real agreement in the first place. Therefore, the issue is not, as Pogge says it is, for critics to show that agreement between culturally diverse groups is out of reach, but rather for the neo-Rawlsians to show that mere convergence on principles represents a real agreement. It is true that this is a problem for any agreement and in some important sense there can be no closure to the issue. This is because even if there is consensus on all the applications of the rule until now, it is always possible that the next situation will reveal a divergence. My point here though is, once again, that the neo-Rawlsians are working with the very thinnest notion of agreement when they argue that culturally diverse peoples can converge on a set of principles. It is this that needs to be brought to the surface. And when we see this, we also see that retreating to the relativist position of including only that subset of comprehensive doctrines that meet the criterion of reasonableness is to leave the real issue of pluralism unaddressed.

Conclusion

Rawls fails in his attempt to address the challenge of pluralism and the neo-Rawlsians in taking on the theoretical framework of Rawls's programme cannot escape this failure as well. Moreover, by globalizing the DOP the neo-Rawlsians accentuate the problem if we reasonably suppose that the difficulties of pluralism are greater the more peoples we include in the founding agreement. I have tried to show in this paper how Rawls fails in his own efforts to avoid the difficulties of pluralism, and how these difficulties extend to undermine the neo-Rawlsian project.

NOTES

1. John Rawls, *Political Liberalism*, New York: Columbia University Press, 1993, pp.36-37.
2. See, for example, Chantal Mouffe, 'Democracy, Power and the "Political"', in Seyla Benhabib (ed.), *Democracy and Difference: Contesting the Boundaries of the Political*, Princeton: Princeton University Press, 1996; Mouffe, *The Democratic Paradox*. London: Verso, 2000; and William Connolly, *Identity/Difference: Democratic Negotiations of Political Paradox*, Ithaca: Cornell University Press, 1991.
3. John Rawls, *A Theory of Justice*, Cambridge: Harvard University Press, 1971, p.17.
4. *Ibid.*, p.377.
5. Thomas Pogge, 'Rawls and Global Justice', *Canadian Journal of Philosophy*, 18: 2, 1988, p.232.
6. *Ibid.*, pp.232-3.
7. *Ibid.*, p.233.
8. *Ibid.*, p.238.
9. Patrick Hayden, *John Rawls: Towards a Just World Order*, Cardiff: University of Wales Press, p.89.
10. *Ibid.*
11. *Ibid.*
12. *Ibid.*, p.91.
13. Darrel Moellendorf, *Cosmopolitan Justice*, Boulder: Westview Press, 2002, pp.7-29.
14. *Ibid.*, p.17.
15. Rawls's eight principles are set out in Rawls, *The Law of Peoples*, Cambridge: Harvard University Press, 1999, p.37.

16. Ibid., pp.388-414; Rawls, *Political Liberalism*, Lectures I and IV.
17. Thomas Nagel, *The View From Nowhere*, New York: Oxford University Press, 1986.
18. Rawls, *Political Liberalism*, p.49.
19. Moellendorf, *Cosmopolitan Justice*, p.21.
20. Ibid., p.112.
21. Ibid., p.23.
22. Ibid., p.23.
23. Ibid., p.20.
24. Ibid., p.21.
25. Ibid.
26. Ibid.
27. Pogge, 'Rawls and Global Justice', p.252.
28. Ibid., p.253.
29. Hayden, *John Rawls*, p.116.

REFERENCES

- Connolly, W. 1991. *Identity/Difference: Democratic Negotiations of Political Paradox*. Ithaca, New York: Cornell University Press.
- Hayden, P. 2002. *John Rawls: Towards a Just World Order*. Cardiff: University of Wales Press.
- Moellendorf, D. 2002. *Cosmopolitan Justice*. Boulder: Westview Press.
- Mouffe, C. 1996. 'Democracy, Power and the "Political"', in S. Benhabib, (ed.), *Democracy and Difference: Contesting the Boundaries of the Political*. Princeton: Princeton University Press.
- _____. 2000. *The Democratic Paradox*. London: Verso.
- Nagel, T. 1986. *The View From Nowhere*. New York: Oxford University Press.
- Pogge, T. 1988. 'Rawls and Global Justice', *Canadian Journal of Philosophy*, Vol. 18, Number 2.
- Rawls, J. 1971. *A Theory of Justice*. Cambridge, Massachusetts: Harvard University Press.
- _____. 1993. *Political Liberalism*. New York: Columbia University Press.
- _____. 1999. *The Law of Peoples*. Cambridge, Massachusetts: Harvard University Press.

Copyright of Theoria: A Journal of Social & Political Theory is the property of Berghahn Books and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.