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Diametros nr 17, 45-59

2008

Artykuł został opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej bazhum.muzhp.pl, gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

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Introduction

In the 20th century modern political and moral philosophy has returned, thanks to John Rawls, to the considerations of justice. However, these reflections regarding 'what justice is' were strictly limited to the borders of states. Peter Singer, one of the first philosophers in the 20th century who argued for a global approach to ethics, was extremely amazed, as he said, that the most influential work on justice – Rawls's *A Theory of Justice*, failed to discuss the issue of injustice between different societies.¹ The question of global justice gained great concern with such a significant contribution to the debate of the works written by Charles Beitz, Brian Barry, Thomas Pogge, Onora O'Neill and Peter Singer – to name only the most important ones.² The central question of the current liberal debate over global justice is how the requirements of justice are to be transformed from a domestic to global scope. And since Rawlsian justice as fairness is still the main inspiration for all discussions on justice, many philosophers concentrated their research on the question, whether *to globalize or not to globalize* Rawls. It confirms the Robert Nozick thesis that: 'political philosophers now must either work within Rawls' theory or explain why not'.³ Such cosmopolitans as Pogge or Beitz argue for globalizing Rawls, i.e. extending Rawlsian justice as fairness to the world at large.⁴ They derive all the consequences from *A Theory of Justice*, applied to the global realm and argue for the global difference principle and protection of universal human rights. But John Rawls himself rejects the cosmopolitan idea and formulates his own conception of international justice⁵ in *The Law of Peoples*.

¹ Rawls considers in his *A Theory of Justice* the question of justice in international relations only in one paragraph concerned with a matter of conscientious refusal (in the book 514 pages long, this question takes 4 pages – see Rawls [1999a], §58, p. 331-335.

² I refer to such significant positions on global justice as: Beitz [1979], Barry [1991], Pogge [1989] and [2005], O'Neill [2003], Singer [1972] and [2002].

³ Nozick [1974] p. 183.

⁴ Pogge [1989] p. 211-280; Beitz [1979] p. 129-184. See also Buchanan [2004] p. 132 ff.

⁵ One may distinguish international justice from global justice. International justice is usually defined as justice concerning international relations – a set of principles to govern international con-

The main goal of this essay is to analyse the problem of limiting distributive justice to state borders in Rawlsian conception. Let me start with a short presentation of Rawlsian arguments. Then I will turn to five objections that may, in my opinion, arise here: (1) consistency problem; (2) status of principles of a law of peoples; (3) a method of justification; (4) self-sufficiency of states; (5) tolerance.

A duty of assistance

The only redistributive principle of justice among peoples according to Rawlsian idea of the law of peoples is *a duty of assistance to the so-called burdened societies* that experience unfavourable conditions. These societies should be assisted to reach the conditions which make establishing and maintaining just political institutions possible. The main idea is, that by a duty of assistance basic human rights should be secured everywhere, and basic human needs should be met. In a domestic case, Rawls means by basic needs those that will be met, if persons are in a position to take intelligent and effective advantage of their liberties and to have a reasonable and decent life. By the way of analogy, *basic needs for peoples* are those that will be met, if peoples are in a position to take advantage of the rights, liberties, and opportunities of their society. In other words, basic needs guarantee societies the *possibility of having functional liberal or decent government*.⁶ The only aim of the law of peoples, is to guarantee the transformation of all societies into well-ordered ones that are the full members of a society of peoples. This mere duty of assistance is not aimed at reducing social and economic inequalities among the societies, since the law of peoples has no other aims, as for example: making the standard of life higher than is needed to maintain the institutions. Moreover, a duty of assistance refers only to assistance towards burdened societies, which are neither liberal, nor well-ordered. According to the law of peoples, the well-ordered societies have no duties of distribution or redistribution of goods towards each other. Of course, the law of peoples does not exclude the possibility that well-

duct (i.e. justice at the level of states, not individuals). Global justice, on the other hand, is usually defined as justice concerning a single regime to the whole world (i.e. justice at the level of individuals but extended to the world at large, irrespective of state borders). In my further consideration I shall use the term 'global justice' in wider meaning – as any kind of justice that provide principles of just conduct beyond state borders.

⁶ The term 'decency' referred to peoples has a normative character (as the notion 'reasonable'). Peoples have to meet two conditions to be recognised as decent (well-ordered ones): (1) they respect political and social order of the other societies and honour rights of peaceful conduct (they are not aggressive and expansionist states); (2) their legal systems secure for all their citizens basic human rights, impose duties and obligations on all persons within its territory and are legitimated by their citizens (recognised as consistent with the common good and idea of justice). Rawls [1999c] §8.2., p. 64-67.

ordered societies establish a cooperative association which provides the other obligations or regulations of mutual assistance but this remains beyond the domain of duties. Two main reasons, according to Rawls for limiting demands of distributive justice in international realm to a mere duty of assistance are: (1) an assumption of the *self-sufficiency of states* and (2) *tolerance* as a basic requirement of liberalism.

Objection 1: consistency problem

One of the most frequently given objections to the law of peoples is that it is inconsistent with the main Rawlsian project – justice as fairness. However conservative and complicated the law of peoples seems to be, this objection has failed, in my opinion.

Cosmopolitans usually argue that Rawls does not care about persons, but only cares about societies and favours common good over individual rights. As cosmopolitans maintain, if we grant that all individuals are free and equal in their rights, there should be one global original position where individuals, not representatives of states, choose principles of justice. If we proceed from the world as a whole and create a global original position, so the argument goes, we would work out a liberal global justice, where the principle of equality of rights and liberties for all individuals would be accepted just as it were within a state. To take this argument one step further, in a global original position, a question, whether there should be states or peoples at all, should be examined. Supporters of the cosmopolitan idea maintain that state borders are another arbitrary reason, just as sex, talents and race, that should be rejected while considering principles of justice. Therefore, individuals placed behind the veil of ignorance should choose such principles of justice that will guarantee the best possible position of the globally least advantaged individual.

Rawls presents in *The Law of Peoples* another point of view and it does not remain in contradiction with justice as fairness. Let me explain it briefly. As far as state borders are concerned, Rawls claims that 'there *must* be boundaries of some kind' to define the responsibility for the land which is our common property.⁷ Having the government, which is an effective agent of the people, we can determine the responsibility for the particular territory, maintaining its environmental integrity and the size of population. Otherwise, if nobody or everybody is responsible for maintaining an asset, that asset tends to deteriorate. The law of peoples is not aimed at establishing a world state which, according to Kant, would be either

⁷ Ibid., §4.3., p. 39; see also: Walzer [1985] p. 38 ff.

a global despotism or a global anarchy.⁸ And since there is no global state, state boundaries are to be taken as natural facts, however arbitrary they seem to appear from the historical point of view. As he argues: 'The Law of Peoples proceeds from the international political world as we see it, and concerns what the foreign policy of a reasonably just liberal people should be.'⁹

What is more, peoples represent different conceptions of justice and have different forms of government or legal order. In accordance with a reasonable political conception of justice, a liberal society is obliged *to respect other societies organized by comprehensive doctrines, provided their political and social institutions*. We should respect a right for a group of people joined in one state to decide about themselves, their conception of justice and their rights. And an individualistic approach is impossible in the global dimension since nonliberal states would never agree to it. Claiming for one global original position for all inhabitants of the world, we would claim that all of them have the same rights as inhabitants of liberal democratic societies. Liberal democratic order is not a universal paradigm but a product of long-lasting process – efforts and acquires of western civilisation. Of course its historical, local origin does not imply that the liberal values that it promotes are not universal ones. But it does entail that liberal democratic principles are to a certain degree dependent on specific political culture that has been developed by western countries for years. Even if we find liberal democratic constitutions as the best ones, we cannot assume that it would be seen as the best ones by all peoples and that it would bring about the same results in all cultures. Thus, we definitely cannot force any societies to adopt them. For the same reason we have to reject the global difference principle that would not be accepted in international pluralistic realm as too egalitarian and peculiarly liberal one. What is more, a difference principle is suitable only between persons who are relevantly situated within the form of cooperation found within a territorial state. If there is no global state, so the argument goes, there is no global basic structure, i.e. institutional framework of social cooperation to which two principles of justice as fairness can be applied.¹⁰

⁸ See: Kant [1999], first supplement, p. 113.

⁹ Rawls [1999c] §11.1., p. 83.

¹⁰ A basic structure of a society is a subject of social justice and means a scheme of the major social institutions (i.e. the political constitution and the principal economic and social arrangements) that distribute fundamental rights and duties and determine division of a cooperative surplus in a society (Rawls [1999a] p. 6 ff.).

Objection 2: status of principles of a law of peoples

But even granted that Rawlsian conception of global justice is compatible with justice as fairness, there arise some other important questions. First of all, the status of the principles of justice is not clear. Rawls does not make it evident whether a duty of assistance and guaranteeing basic human rights are real principles of global justice enforced by law or only mere declarations of morality of states. The question is *whether burdened societies have a claim-right to be assisted* or it is left to the decision and benevolence of well-ordered states. And if burdened societies have a claim-right to be assisted, it remains an open question *what kind of institutions are responsible for enforcing these duties*. There is no global government or above-national institutions but only an agreement which is a source of rights and duties. And burdened societies are not parties to this agreement so only well-ordered societies can demand enforcement of the principles of agreement. It seems unconvincing that well-ordered societies feel bounded and obliged *to each other* with this common duty of assistance to other societies that are not parties to their contract. The same objection regards the duty of guaranteeing basic human rights. It is clear that this condition is to be met by all members of a society of peoples but the relation between members and non-members of a society of peoples remains unclear. It is said that states should only intervene if, the so-called outlaw societies violate basic human rights, but it is not evident *if they ought to*. If we find a duty of assistance as only a kind of moral duty of charity, and guarantee of basic human rights as imperfect declaration, the law of peoples would not differ from weak international law applied in the current world order based on mutual advantage and unbinding agreements. This is the reason why Rawlsian law of peoples is frequently objected as granting the *status quo*.

Trying to read the law of peoples in accordance to justice as fairness, I claim for interpreting the principles of the law of peoples as principles of justice – *duties that are to be enforced*. The problem I pointed out above means that the law of peoples is *not fully worked out* and that it should be supported by some kind of above-national institutional framework. It does not have to be a global government but it has to be capable of enforcing the principles of justice by some coercive instruments. How it is possible – is quite another question. If the principles of justice are accepted by everybody, development of appropriate institutions to enforce these principles would be the next step, consequently accepted on the same grounds of necessity of limiting sovereignty.

Objection 3: a method of justification

My further objection, or the whole set of objections, regards a matter of justification and the method used by Rawls. The international original position seems unclear to me. Rawls aims in *The Law of Peoples* at proving that liberal principles of global justice are reasonable and that they would be accepted by nonliberal decent peoples too. But actually I think that he assumes something that he wants to prove. If it is true that we first assume that liberal peoples are to develop principles of global justice that are to be accepted by nonliberal decent peoples, we can ask why do they not meet in an original position to do this job together. Rawls argues that the whole idea of a social contract has a liberal character and that the principles of global justice are a consequence of adopting domestic liberal conceptions of justice (based on the liberal idea of public reason that is not known to nonliberal peoples). But then, I cannot understand why nonliberal peoples actually accept these liberal principles. If nonliberal decent peoples are domestically governed by comprehensive doctrines that determine their internal policy and lead to favouritism of some citizens over other ones, it is not clear why their international conduct is not governed by their comprehensive doctrines in the same way as it is domestically. Why should they accept pluralism in international relations and equality of peoples if it is inconsistent with their comprehensive doctrines?

Rawls answers that we should distinguish between respect to the right of equality between peoples and respect to the right of equality to citizens of a state.¹¹ He suggests that states that are nonliberal domestically (but well-ordered), can be liberal, in the weak meaning of this word, in international relations. Rawls maintains that acceptance to nonliberal peoples is derived from the law of peoples, not assumed *a priori*. He claims that liberal peoples develop the law of peoples to govern their foreign policy, not knowing if nonliberal peoples are to be accepted or not. And since the rules of law of peoples are so minimal (and do not consist of something peculiar to liberal states), nonliberal decent peoples would have good reasons to accept and to follow them. But granted this two-stepped procedure of the original position, it is quite unclear *why representatives of liberal democratic states who know that they come from such regimes, do not accept more demanding rules of justice working on liberal values that they all share*. This is why I suggest that it must be assumed that liberal peoples choose the rules of global justice that are to be ac-

¹¹ For instance, it is possible that hierarchic institutions like churches or universities that do not treat their members equally respect the right of equality in relations between them, the same regard states (see Rawls [1999c] §8.4., pp. 69-70).

cepted by nonliberal peoples too. And this undermines the whole constructivist idea of an international original position. If it is not assumed that the principles of international conduct should not be peculiar liberal ones, one may ask why peoples reject any distribution of wealth between them that go beyond a scope of a mere duty of assistance. Coming up with similar arguments to those which Rawls advanced for a difference principle in a theory of justice, one may ask why existing inequalities between societies should not be reduced, if distribution of primary goods is arbitrary (some societies have more natural resources and some have not at all) and it is not anybody's fault that he or she was born in a particular society. If they were making principles for their societies and did not know if they represent a poor or a wealthy society, it is tempting to suggest that they would adopt a difference principle which ensures a distribution of wealth among societies. Why are they indifferent between wealth and poverty in their agreement on justice? The argument that egalitarian principles of distribution are to be rejected since they are unacceptable by nonliberal peoples has failed. There must be then another argument to justify this. This argument can be found in an assumption of self-sufficiency of states. Let us consider it.

Objection 4: self-sufficiency of states

Rawls maintains that *inequalities of wealth do not matter in international relations* because of two reasons: (1) internal origins of wealth and poverty; (2) illegitimacy of paying bills by one society for another one. First of all, poverty depends in Rawls's opinion on domestic policy and the political culture of a state and no financial foreign aid can do much about combating it. Secondly, Rawls claims that the domestic argument of unequal chances is inapplicable since a state's poverty is not determined by external factors (by distribution of goods among states). Peoples are seen by Rawls as *closed institutional schemes*, economically *self-sufficient* (i.e. each society can produce all the goods its citizens need) and *distributionally autonomous* (i.e. each society can determine a distribution of goods among its citizens). Their wealth and position is dependent neither on the natural resources they have nor any other external factors but on their political culture and own efforts. And political culture cannot be imported from outside but has to be developed by the inhabitants. Thus, any kind of redistribution of goods or resources cannot make people affluent. Rawls agrees that there are situations in which peoples are too poor to develop their institutions and political culture by themselves and this is the only situation in which some kind of redistribution is foreseen. Rawls rejects the idea of global egalitarian principle, because in his opinion, a society that is 'liberal' or 'decent' has freely decided how much to invest.

Consequently the law of peoples aims at guaranteeing the conditions in which all societies are in a position to create just institutions and therefore to determine their future on their own. Rawls gives two counterexamples to illustrate that a difference principle cannot be applied in a society of peoples and one of them sounds:

Two liberal or decent countries are at the same level of wealth and have the same size population. The first decides to industrialize and to increase its rate of (real) saving, while the second does not. Being content with things as they are, and preferring a more pastoral and leisurely society, the second reaffirms its social values. Some decades later, the first is twice as wealthy as the second. Assuming, as we do, that both societies are liberal or decent, and their peoples free and responsible, and able to make their own decisions, should the industrializing country be taxed to give funds to the second? [...] This seems unacceptable.¹²

The point Rawls is trying to make is simply that the only aim of the law of peoples is to realise and maintain internal justice of all members of society of peoples. In keeping with this, the representatives of well-ordered societies in an international original position do not care about being wealthy or poor, but about being just. So long as societies are in a position to have just institutions, their impressions of unjust inequalities among the societies are, in the opinion of Rawls, not legitimate. A duty of assistance, which Rawls prefers in international relations, has its strictly defined aim and a cut-off point, beyond which it is no longer required since, 'surely there is a point at which a people's basic needs (estimated in primary goods) are fulfilled and a people can stand on its own.'¹³ Individuals within a society are in another situation, as Rawls argues, because their status in life is to a large degree, determined by an arbitrary distribution of primary goods. Rawls distinguishes between the notion of 'equality' at the level of individuals and at the level of states. Both kinds of equality regard equality of opportunity but this should be in the opinion of Rawls understood differently in both dimensions. Equality of opportunity among individuals entails equality of economic and social distribution of goods and should be guaranteed by two principles of justice as fairness. Equality of opportunity between peoples, on the other hand, entails equality of rights in a society of peoples guaranteed by the principles of the law of peoples. Peoples acquire to preserve and secure their own autonomy and equality, but they do not acquire to reduce inequalities in wealth and power among them since it has no meaning for their equality and autonomy in Rawls' opinion.

¹² Rawls [1999c] p. 121.

¹³ Ibid., p. 117.

One may argue that such criteria of global justice would be sufficient if modern states were indeed self-sufficient and closed associations that do not influence one another. Actually, discussing a problem of justice in a world of self-sufficient and absolutely isolated states that do not interact with each other seems to be purely academic since all agree that there is and will be extensive global interdependence. And therefore, all should agree that wealth and power are not solely matters of our domestic institutions but they are to a certain degree, determined by international relations with other states. What is more, wealth and power of a state are not indifferent in international relations and may distort equal position and equal rights of states in international realm, especially when they can affect the bargaining power of states in international agreements. If we want to guarantee equal rights and opportunities of states, their equal access to the global market and global decisions, we cannot disregard global distribution of wealth among states. The point is that global interactions have profound effects and influence on states and their citizens, partly determining the prospects of individuals and also the whole of societies. Appealing to Rawlsian example given above, we cannot assume that states have an equal starting position, but some of them invest properly and some of them not. In fact, *there is no such a situation of equal starting positions*. Positions of states are determined, but miscellaneous factors besides domestic institutions and political culture, such as: difficult geopolitical position of a state, long lasting occupation, totalitarian government, natural disasters etc. The question is if citizens of such a state that has just institutions but is very poor and need a long time to achieve a level of affluence of some other luckier societies, have to suffer just because they have bad luck to be born in a state that had bad luck too?

What is more, Rawls does not concern himself with such problems as famine or extreme poverty. He overlooks that it may happen that a society has just democratic institutions (such as Ghana) but nevertheless suffers from extreme poverty.

Objection 5: tolerance

Last but not least, there is another serious problem that arises here – a problem of including nonliberal decent states into a society of peoples.¹⁴ Rawls argues

¹⁴ See an insightful analysis of this problem in Tan [2000]. The author analysis two conceptions of liberalism – political liberalism and comprehensive liberalism – applied to the global realm. He criticizes the former one which fails to meet requirements of global justice because of its mistaken stress on toleration as the fundamental principle (see especially chapter 2 and 3, p. 19-77). Actually,

that it is required because *tolerance*, is the core liberal principle. 'Tolerance' means that we do not accept some kind of beliefs or practices of others but we self-restrain ourselves from intervening to change them because we recognise the right of others to think and to act in a different way. Intolerance, on the other hand, is a lack of tolerance and results with intervening to change someone's beliefs or practices that we do not accept.

In the law of peoples any kind of intolerance is rejected. The principles that say about conditions of humanitarian intervention (in the case of outlaw societies) and about a duty of assistance (in the case of burdened societies) are based on some kind of paternalism. And paternalism should be distinguished from intolerance. Paternalism is a way of treating subordinates by a person or a government in a fatherly manner, i.e. intervene in their life for their own good, providing their needs without assigning them responsibilities for their own actions and by depriving them of rights to decide by themselves. It is based on two assumptions: (1) that from some reason some people do not know what is good for them and (2) their current beliefs and practices are harmful for them but are not recognised as such by themselves.

Within a society of peoples there is no place for paternalism since all peoples are equal. Decent peoples are treated within a society of peoples according to the principle of tolerance that is not equivalent with acceptance of their governments, political values and internal inequalities. But Rawls does not stop here with a negative requirement of a general prohibition of intervention that could be derived from the principle of tolerance. He goes one step further, claiming for a positive requirement of including decent peoples into a society of peoples. This is based on something more than tolerance – on *respect to all well-ordered societies that meet weak conditions of being decent*. It means that we must assume that in an international realm just some urgent human rights (i.e. the right to life, to liberty, to property and formal justice)¹⁵ are to be met and that the more demanding list of

I do not refer to this distinction and develop only some general objections, leaving this interesting internal debate within liberal doctrine aside.

¹⁵ By *the right to life* Rawls means right to the means of subsistence and security since 'the sensible and rational exercise of all liberties [...] as well as the intelligent use of property, always implies having general all-purpose economic means' (Rawls [1999c] §8.2., p. 65, footnote 1). By *the right of liberty* he means right to freedom from slavery, serfdom and forced occupation, and liberty (but not equal liberty) of conscience. By *the right to property* he means the right to personal property. By *the right to formal justice* he means that the rule that similar cases should be treated similarly. These set of basic human rights Rawls calls *urgent rights* that have universal meaning and cannot be treated as peculiarly liberal or characteristic for Western civilization only (ibid., §8.2., p. 65). These rights are to be respected by all peoples according to the law of peoples. These basic human rights indi-

human rights is a matter of domestic legal order only. Thus, Rawls (like defenders of moderate nationalism) calls for a split-level justice. This is the reason why apologists of egalitarian Rawlsian doctrine of liberal justice feel 'betrayed' by Rawls in the global realm and deeply unsatisfied with the conclusions that he drives in the law of peoples.

From the point of view of my analysis, it is important how Rawls justifies this limiting scope of some liberal principles of justice that are universal in their assumptions. And this justification is based on a normative assumption of people's autonomy and independence, i.e. state's sovereignty. However limited this sovereignty is by the law of peoples, it is guaranteed as the essential right of each state. We cannot intervene in internal matters that are on the other side of borders (except a special situations of violating basic human rights by outlaw societies) because of this state's right to autonomy, so the argument goes. And because of this right to autonomy, we owe toleration to each state that meet conditions of decency. This argument is based on an analogy between tolerance within individuals – citizens of a liberal states that have different, usually contradictory, comprehensive doctrines. But is this analogy between corporate bodies such as states and individuals really adequate?

If we claim for tolerance between individuals, we mean that every person should have an equal right to determine his or her life by one's own (that nobody, but me, should decide what is good for me, what kind of life should I live). The Rawlsian idea of tolerance between peoples provides, by analogy, that each society should have an equal right to determine its future and order by its own. But the difference is that such corporate bodies as states determine the lives of their citizens. Neglecting this distinction between autonomy at the level of individuals and at the level of states could be justified only if we assume that state's government represents the interests of its citizens (assuming democratic legitimacy). In such a situation tolerance towards nonliberal well-ordered societies would be identified with respect given to a group of people to organize themselves in a kind of institutional framework governed by a conception of justice they accept. This seems to be suggested by Rawls in his previous version of the law of peoples that he presented in his article, where we can read: 'its members [*members of a nonliberal society* – M.S.] accept basic inequalities among themselves'.¹⁶ But this passage from Rawls's article has been changed in his book version where we can read only that

cate the limits of tolerance, reasonable pluralism and state's autonomy – if they are violated, well-ordered peoples can even intervene to force them.

¹⁶ Rawls [1999b] p. 549.

an idea of justice in a decent nonliberal society allows basic inequalities but, not that these inequalities are accepted by its members.¹⁷ Description of the necessary and sufficient conditions of a decent society may suggest that if such a society has a decent consultation hierarchy, it would represent all members' interests since it allows them to take part in making political decisions. But these members are not represented equally in their government since it is not a democratic society.¹⁸ A government of a nonliberal state does not have a democratic legitimacy over all its citizens since it rejects the recognition of a moral equality of all its citizens, which is a peculiarly liberal feature. Hence, Rawls by claiming that tolerance towards nonliberal societies 'is defending the rights of states to enforce inegalitarian policies against its own citizens, even if these citizens are not united in agreement with the inegalitarian policy' as Blake points out.¹⁹ It means that tolerance among peoples can be at the price of freedom of each individual to choose his or her way of life.

It would be better, in my opinion, to consider a situation of nonliberal peoples in a society of peoples by the analogy to a situation of nonliberal involuntary associations within a liberal society (such as families, churches, ethnic minorities etc. to which one may belong by birth and that may be governed in a non-democratic way).²⁰ In a liberal democratic society where the fact of reasonable pluralism is granted, its citizens owe toleration to each other and to groups in which they are joined. As Michael Walzer writes, tolerance becomes more difficult and complicated if we take into consideration that in the subject of tolerance we have to count both: individuals and groups.²¹ And we also have to take into consideration that people belong to different groups at the same time and that some of these groups give priority to the common good of the group over the individual. In such a situation, very often there are conflicts between individual and collective rights or values. However liberal democratic societies give priority to protection of individual rights of their citizens, there is tolerance to existence of groups that deprive their members from some of their rights. But one of the conditions that membership in such nonliberal involuntary associations should meet is – *escape clause*, i.e.

¹⁷ See Rawls [1999c] §8.4., p. 70.

¹⁸ E.g. people that do not share a comprehensive doctrine of a society can be tolerated and even represented in a government but as a group they do not have equal right to all political positions and offices; there is no democratic rule that each person has one equal voice, but different people may have different places in a hierarchy of groups to which they belong.

¹⁹ Blake [2005] p. 32.

²⁰ See Walzer [2006] pp. 14-40.

²¹ See Walzer [1999] p. 57.

the right of each member to leave the group he or she belongs to. We could apply the same requirement to justify tolerance in the international realm within a society of peoples. And in the article version of *The Law of Peoples*, Rawls writes explicitly that hierarchical societies that are not liberal but decent ones, must allow for *the right of emigration*.²² But in his book version, Rawls decides to leave the problem of migration aside, since, as he argues, it cannot occur in a society of peoples where basic human rights are met (he means that people have no good reason to emigrate). This latter statement of the law of peoples seems very unconvincing to me.

The tension between individual rights and the rights of corporate bodies seems dissolvable. Blake claims that this is a problem of tension between stability and justice that domestically go together, but in the international realm we have to choose between them.²³ Stability means respecting the state's autonomy, justice means guaranteeing individual rights and liberties. Does it always have to stay a matter of choice? This is one of the crucial points of each political liberalism – the problem of the boundaries of tolerance that occurs in both the domestic and global realm. Within a society the problem of reconciling the duties of each citizen, which she has towards other co-citizens and towards the common good with the right of citizens to associate themselves and to realise their comprehensive doctrines they represent. Within a society of peoples there is the problem of reconciling the duties of each person that they have towards other peoples (and I shall add here, however the law of peoples does not entail this, towards the common good of our humanity and our planet) with the right of people to realise their comprehensive doctrines or conceptions of justice they represent. Rawls specifies these borders of tolerance quite precisely – we owe tolerance only to tolerant ones, it is justified by the rule of reciprocity. But he means tolerance at the level of states and overlooks a problem of internal tolerance and individual rights of those who are not represented by their undemocratic governments. Rawls tries to solve this problem in both realms in the same way, on the basis of political liberalism (invoking an overlapping consensus) but neglects troubling differences of these realms and its consequences. This is the pivotal problem of liberal conceptions of global justice that either accept equality and autonomy of states or equality and freedom of individuals. The former ones avoid paternalism but fall into dangerous acceptance of violating individual equality and freedom. The latter ones, on the other hand, fall into paternalism and violate state's autonomy and equality.

²² Rawls [1999b] p. 547.

²³ Blake [2005] p. 32.

Conclusions

To sum up, distribution of burdens and benefits goes far beyond state borders and Rawlsian conception though consequent seems to be either unjustified with its limited scope or incomplete. As Michael Blake argues, Rawls's conception of the law of peoples is not misleading, but incomplete and his methodology stands in need of justification.²⁴ Cosmopolitan ideas of globalizing justice as fairness, on the other hand, are misleading, by overlooking a significant difference between the domestic and global situation to which the principles of justice are applied. There is no reason to suppose that the principles satisfactory for the basic structure of a society would also be satisfactory for the world order of sovereign states: 'the conditions for the law of nations may require different principles arrived at in a somewhat different way'²⁵ – as Rawls suggests. The global difference principle is too demanding and not justified in the global realm. Nevertheless, it does not exclude distributive justice at the level of states.

References

- Barry [1991] – B. Barry, *Liberty and Justice. Essays in Political Theory 2*, Oxford 1991.
- Beitz [1979] – Ch. Beitz, *Political Theory and International Relations*, Princeton University Press 1979.
- Blake [2005] – M. Blake, *International Justice*, [in:] Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/entries/international-justice/>
- Buchanan [2004] – A. Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*, Oxford 2004.
- Kant [1999] – I. Kant, *Perpetual Peace: A Philosophical Sketch*, trans. H.B. Nisbet, [in:] H. Reiss (ed.), *Political Writings*, Cambridge University Press, New York 1999, p. 93-130.
- Nozick [1974] – R. Nozick, *Anarchy, State and Utopia*, Basic Books Inc., New York 1974.
- O'Neill [2003] – O. O'Neill, *Bounds of Justice*, Cambridge University Press 2003.
- Pogge [1989] – T. Pogge, *Realizing Rawls*, Cornell University Press 1989.
- Pogge [2005] – T. Pogge, *World Poverty and Human Rights. Cosmopolitan Responsibilities and Reforms*, Polity Press 2005.
- Rawls [1999a] – J. Rawls, *A Theory of Justice*, Revised Edition, Oxford 1999.
- Rawls [1999b] – J. Rawls, *Collected Papers*, (ed.) S. Freeman, Harvard University Press 1999.

²⁴ Blake [2005] p. 35.

²⁵ Rawls [1999a] par. 2, p. 7.

- Rawls [1999c] – J. Rawls, *Law of Peoples*, Harvard University Press, Cambridge, MA 1999.
- Singer [1972] – P. Singer, *Famine, Affluence and Morality*, “Philosophy and Public Affairs”, 1 (1972), pp. 229-43. <http://www.utilitarian.net/singer/by/1972----.htm>
- Singer [2002] – P. Singer, *One World: The Ethics of Globalization*, Yale University Press, New Haven 2002.
- Tan [2000] – K.-C. Tan, *Toleration, Diversity, and Global Justice*, The Pennsylvania State University Press, University Park, Pennsylvania 2000.
- Walzer [1985] – M. Walzer, *Spheres of Justice. A Defense of Pluralism and Equality*, Oxford 1985.
- Walzer [1999] – M. Walzer, *O tolerancji [On Toleration]*, trans. T. Baszniak, PIW, Warszawa 1999.
- Walzer [2006] – M. Walzer, *Polityka i namiętność. O bardziej egalitarnym liberalizmie [Politics and Passion]*, trans. H. Jankowska, MUZA S.A., Warszawa 2006.