

No Migration in a Realistic Utopia? Rawls's The Law of Peoples and the Topic of Migration

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Abstract

The current debate on migration and ethics is to a high extent informed by Rawlsian thinking. The ideas Rawls himself has put forward on this topic, however, are rarely discussed. One reason for that is Rawls's explicit exclusion of all questions related to migratory movements in his work *The Law of Peoples*. In this paper I argue that it is still valuable to examine this work on the foreign relations of liberal democracies more closely, especially if one is concerned with the moral and ethical challenges migration brings about: I will show that Rawls brings forward substantial arguments on these matters. The paper is divided into three sections. After a first introductory part I will discuss Rawls's ideas on migration in more detail. In the concluding part of my paper, I will summarize my findings and present some more general considerations on the implications my discussion of *The Law of Peoples* might have.

Keywords: Rawls, *The Law of Peoples*, migration

1. Introduction

The current debate on migration and ethics is to a high extent informed by Rawlsian thinking: Not only Rawlsian cosmopolitans refer to John Rawls's ideas, but also other authors who are not advocates of his basic assumptions comment his writings in their work. Though Rawlsian ideas seem to have a huge impact on our thinking about migration and ethics, the ideas Rawls himself has put forward on this topic are rarely discussed.

One reason for that might stem from Rawls's own treatment of this topic: In his book *The Law of Peoples* he extends his contractualist theory of domestic justice to the international realm. His main question here is, what principles should govern the foreign policy of a liberal democracy. Since migration seems to be a basic feature of our world one would expect that a work on the international relations of liberal democracies is also the place to talk about, for instance, immigration policies and the duties liberal democracies have towards refugees. But on the contrary, in the introduction to *The Law of Peoples* Rawls explicitly excludes the discussion of these matters: "There are numerous causes of immigration. I mention several and suggest that they would disappear in the Society of liberal and decent Peoples. [...] The problem of immigration is not, then, simply left aside, but is eliminated as a serious problem in a realistic utopia" (Rawls 1999: 8f.). Rawls acknowledges that there are, in fact, various causes of immigration, but he holds the position that the causes that make migratory movements a "serious problem" will not come about in the Society of Peoples – his vision of a "realistic utopia".

In the light of Rawls's exclusion of migration from his discussions in *The Law of Peoples*, one might ask, why should we talk at all about this work, if one is concerned with the moral challenges migration brings about. In this paper, I will argue that it is still valuable to examine *The Law of Peoples* more closely, especially if one is concerned with the ethical questions related to migration. At least three reasons speak in favor of my point:

Firstly, Rawls's explicit exclusion of migration from his discussion presupposes an assumption about the main causes of migration, which is of interest in its own right and needs further discussion. For Rawls the main causes of migration are the persecution of religious and ethnic minorities, political oppression, famines, and population pressure (Rawls 1999: 9). In his opinion all these causes are linked to the injustice of domestic political institutions. A further inquiry of this assumption seems to be of interest not only for Rawls exegesis, but also in its own right.

Secondly, in spite of the fact that Rawls wants to leave the topic of migration aside, he still brings forward substantial arguments concerning this topic. In my eyes, Rawls makes three main points: a) Migration is mainly caused by domestic injustice. b) Every "people"¹ should have a qualified right to the limitation of immigration (Rawls 1999: 39). c) Every liberal and decent people shall allow for a right to emigration (ibid. 74).

Finally, the ideas Rawls puts forward depend on widespread assumptions on migration. Assumptions that are needed to be addressed in any further discussion of migration and ethics.

The paper is divided into three sections. After this first introductory part I will discuss Rawls's ideas on migration in more detail: first of all, his assumption that migration would not be a serious problem in the Society of Peoples; then, his argument for the right to limit immigration and, finally, his ideas on a right to emigration. In the concluding part of my paper, I will summarize my findings and put forward some more general considerations on the implications my discussion of *The Law of Peoples* might have.

¹ Through out this paper I will stick to Rawls's notion of „peoples“. I want to note, however, that it is rather ideosyncratic and was subject to substantial criticism. See for instance: Beitz (2000: 678 ff.), Buchanan (2000: 716), Pettit (2006), Nussbaum (2007: 246).

2. Migration and *The Law of Peoples*

Despite the alleged lack of discussion concerning migration in Rawls's piece *The Law of Peoples*, we find remarks and footnotes spread over all the chapters of the book that, put together, give us a picture of Rawls's view on the matter. Without getting too deep into "Rawls exegesis", I would like to suggest that one might summarize Rawls's position on migration as follows: Firstly, according to Rawls the main causes of migration would disappear in his Society of Peoples. Secondly, a people has a right to limit immigration. Thirdly and finally, individuals should have a right to leave their home country - under certain specified conditions. In what follows I want to discuss these points in further detail.

2.1. *No Migration in the Society of Peoples*

Let us start with Rawls's first thesis. According to Rawls, the main causes of migration would disappear in the Society of Peoples that he envisions – an international society that is governed by certain principles regarding international conduct: the freedom and independence of all peoples, observance of treaties, equality of peoples, a duty of non-intervention, a right to self-defense, respect of human rights, compliance with certain restrictions in the conduct of war, and a duty of assistance (Rawls 1999: 37). Furthermore, this society consists of liberal and what he calls "decent" peoples, peoples that are not governed by a liberal conception of justice but, nevertheless, act non-aggressively, honor human rights and fulfill the rule of law.

For Rawls the main causes of migration are the persecution of religious and ethnic minorities, political oppression, famines, and population pressure (Rawls 1999: 9). In his opinion all of these causes are linked to the justice, respectively, injustice of the domestic political institutions. In other words, in a world of justly governed societies migratory movements would not be a serious problem. Migration is then, according to Rawls, basically a question of domestic political justice. Rawls legitimates his exclusion of the topic of migration with this assumption. But is Rawls's proceeding, here, convincing? A detailed answer to this question would need to show that, firstly, Rawls is right in claiming that the mentioned causes of migration would not come about within the members of his Society of Peoples. Secondly, that migration would not be "a serious problem" any longer, if only these causes disappeared. And thirdly, that if only migration is no longer a problem *within* the Society of Peoples, it is no longer a problem *for* the Society of Peoples.

2.1.1. *Oppression*

The first main causes of migration that Rawls mentions are the oppression of ethnic and religious minorities, and political oppression. According to Rawls's terminology, peoples are only to be called "liberal", if their basic structure prevents any form of oppression - be it for ethnic, religious or political reasons. So, by definition there does not occur any form of oppression within liberal peoples.

Rawls also assumes that what he calls "decent societies" would not act any different. It is unclear, though, what his conviction is based on. For being "decent" a society needs to respect human rights – again by definition. Presumably Rawls thinks that is enough to prevent oppression in this type of society. The problem is that Rawls's conception of human rights is rather minimalistic. It contains only the right to life, freedom from slavery and serfdom, liberty of conscience, the right to property, the right to formal equality and security of ethnic groups from mass murder and genocide (Rawls 1999: 65, 79). So, members of ethnic, or religious minorities and political dissenters are to be protected against violations of these human rights by liberal and decent governments. Therefore, Rawls can rightfully say that some forms of oppression, (quite severe forms of oppression) would not occur in a decent society, though presumably not all forms.

Let me elaborate this point a bit further: Concerning decent peoples Rawls restrains the requirements for freedom of conscience. He writes that in decent societies prevails a situation that he rerefers to “as permitting ‘liberty of conscience, though not equal liberty’” (Rawls 1999: 65). Regarding freedom of conscience decent peoples might treat individuals differently. Rawls gives an example that illuminates the impact of this statement quite well: “for instance one religion may legally predominate in the state government, while other religions, though tolerated, may be denied the right to hold certain positions” (Rawls 1999: 65). Members of other religious groups might be excluded from certain political positions. They also might not have the right to build temples, or to give religious education. Just to name some examples. All these things might be systematically prohibited in a decent society. These cases are not covered by Rawls’s list of human rights - especially not when the right to freedom of conscience is as limited.

The case is pretty similar concerning ethnic minorities. In Rawls’s decent peoples they are protected against mass murder and genocide, but they may lack traditional minority rights, as the right to found associations and clubs to uphold their language and culture. These rights are not guaranteed by Rawls’s list of human rights. The protection against political oppression also seems to be not as robust as one might want it to be. Rawls’s list of human rights forbids only some means of political oppression, not all. There might exist severe limitations of the freedom of press; political dissenters might be not allowed to found political associations and parties. Rawls’s human rights do not warrant against the systematic use of these classical means of political oppression.

The systematic usage of these means and the systematic denial of certain rights to religious and ethnic minorities, and/or political dissenters (that we’ve talked about) does not necessarily, but might amount to what we call oppression. To sum up: Oppression as a cause of migration would not necessarily disappear in Rawls’s Society of Peoples.

2.1.2. Famines and Population Pressure

Famines and population pressure are the two further causes of migration Rawls mentions. Here again, it seems unclear why Rawls assumes that they would disappear in his Society of Peoples. In his discussion of the causes and the preventability of famines, Rawls draws on findings of Amartya Sen, especially on his work *Poverty and Famines* (Sen 1981). In Sen’s opinion, many famines were caused by political mismanagement. They were a problem of distribution of resources, not of supply. Rawls interprets Sen’s results in the following way: “A government’s allowing people to starve when it is preventable reflects a lack of concern for human rights” (Rawls 1999: 109), and liberal and decent peoples would not allow this to happen.

I do not want to contest Rawls’s interpretation of Sen, here, though it had been subject to some criticism (see for instance: Nussbaum 2007: 438). What I want to emphasize, anyway, is: If Sen is right, then some famines are preventable - the ones that are caused by the political structures in question -, others are not. We might think of scenarios in which even in a Society of Peoples, as Rawls envisions it, famines would occur.

The same seems to be true regarding population pressure. Rawls holds the opinion that this possible cause of migration might be eliminated by strengthening the rights of women in a society (Rawls 1999: 9). However, even if the birth rate and therefore population growth rates might be reduced, this does not necessarily lead to a reduction of population pressure. A relatively low birth rate might still be not sustainable for a given economic system.

In a nutshell: Rawls does not succeed in showing that the causes of migration that he mentions would disappear in his Society of Peoples. And even if they would, one question remains: Even if migration were no longer a problem *within* the Society of Peoples, is it no longer a problem *for* the Society of Peoples? What about migratory movements from outside

the Society of Peoples; from those societies which Rawls calls “outlaw states”, “burdened societies” and “societies that are governed by a benevolent absolutism”, which are, though not part of his ideal theory, still part of the possible world he talks about in *The Law of Peoples*.

2.2. *The right to limit immigration*

Rawls’s second thesis on migration is: A people should have a qualified right to limit immigration. This thesis is found in a footnote to his discussion of the role of national borders (Rawls 1999: 39). His argument for the establishment of borders is that an asset tends to deteriorate, if nobody is given responsibility to maintain it. Similarly, a people is given responsibility for a defined territory. A particular border line might be historically arbitrary, but the existence of borders is necessary for maintaining the land and natural resources of a given territory. This is the background of Rawls’s first argument for a people’s right to limit immigration.

According to Rawls, a people bears responsibility for the condition of its territory “and they cannot make up for their irresponsibility in caring for their land and its natural resources by conquest in war or by migrating into other people’s territory without their consent” (Rawls 1999: 39). The point Rawls is trying to make here is probably, that a people has a right to limit immigration because other peoples do not have a universal right to leave their territory. The basis for this point is, presumably, again the empirical premise we have already discussed earlier: The condition of a country, especially its economic situation, is, according to Rawls, attributable to political mismanagement and structural problems.

Again, I do not want to discuss whether there are good reasons to hold this empirical assumption or not, but I want to point out that even if this assumption is true, it is at least questionable why the political mismanagement - that is to say *a collective fault* - should lead to the denial of *individual demands*. It seems to be possible to argue this way, if we were only talking about democracies here. One might say that in a democratic political structure persons bear responsibility for the outcome of these structures *qua* participation, respectively non-participation, in the democratic process. They might be regarded as the co-authors of the laws and political decisions made in these structures. However, the less democratic the basic structure of a given society is, the less clear it becomes in what way the population of this society bears responsibility for the outcome of the political system. It appears to be difficult to make sense of this kind of collective responsibility regarding political structures - like decent societies - that only allow for political participation in a very limited sense. It seems to be rather awkward, then, to deny possible individual demands for leaving one’s home country on the premise that a people is responsible for the kind of situation its country is in, when one’s opportunity to actually take on any responsibility for one’s country is rather limited. Unfortunately, Rawls does not give us any argument here.

He does give us, however, a second argument for a people’s right to limit immigration. He says: “Another reason for limiting immigration is to protect a people’s political culture and its constitutional principles” (Rawls 1999: 39). As far as I can see, his point is based on two assumptions: Firstly, that the political culture and the constitutional principles of a people are something of value; something worthy of protection. Secondly, that immigration might threaten this value.

It is, however, unclear in what way they are threatened. It seems to be obvious that a state might reach its limits confronted with large-scale migratory movements. One might of course argue for a limitation of immigration along the lines of Otfried Höffe. He argues that even the resources of a very wealthy state might be overburdened by a certain amount of immigrants and he gives a quite impressive example for his point: “Imagine if the [...] 15 million refugees the world witnessed at the turn of the twenty-first century, had all wanted to immigrate into a prosperous but small state as Liechtenstein” (Höffe 2007: 254). In such a case one could say,

that a political culture is threatened, because the functioning of a whole political system would be uncertain. However, this is not the direction Rawls's argument actually takes. He is in fact quoting Michael Walzer's *Spheres of Justice* (1983) in this footnote on a peoples right to limit immigration. On the one hand, one might think that this puts his argument closer to a communitarian approach to these matters. On the other hand Rawls quotes a passage in *Spheres of Justice* where Walzer is referring to Sidgwick in saying "to tear down the walls of the state is not, [...] to create a world without walls, but rather to create a thousand petty fortresses", which makes it less clear where Rawls is actually heading, because this does not seem to be a genuine communitarian point. Unfortunately Rawls does not tell us more about his reasoning concerning these matters, here.

2.3. *The Right of Emigration*

Let us now take a look on Rawls's third thesis on migration: the right of emigration. Rawls argues that in view of the possible inequality of religious freedom in what he calls decent societies these societies must allow for the right of emigration (Rawls 1999: 74). He adds in a footnote that liberal peoples would also need to allow for this right and he clarifies there as well that the right of emigration does not imply a corresponding right to immigrate somewhere else (ibd.).

From a liberal perspective, it seems to be unproblematic that a person should be allowed to leave her home country to live somewhere else. Rawls's presentation of this point, however, gives rise to some questions. He himself mentions a possible objection: "It may be objected that the right of emigration lacks the point without the right to be accepted somewhere as an immigrant" (Rawls 1999: 74). Rawls responds to this possible objection in saying that "many rights are without point in this sense: to give a few examples, the right to marry, to invite people into one's house, or even to make a promise. It takes two to make good on these rights" (ibd.). This point has been widely discussed in the literature on *The Law of Peoples*. Kok-Chor Tan argues for instance: "A right to emigrate from a country without a corresponding right to immigrate a country is a facile right" (Tan 1998: 293). In Tan's opinion it is impossible to "leave one's country unless adopted by another country" (ibd.).

In my eyes at least two questions would need to be addressed in further research on the right for emigration: Firstly, is Tan's objection convincing? Is it really impossible to make use of a right for emigration only if it implies a corresponding right for immigration? Or, does Tan jump too quickly to this conclusion and in doing so obscures the important distinction of simply *going somewhere else* and *adopting the citizenship* of another country? Secondly, the usage of the notion *having a right to something* seems to be rather opaque in this discussion on the right for emigration: It is in fact questionable whether the examples that Rawls gives for other rights that allegedly "take two" are at all analogous to the right to emigration and whether the right to make a promise and the right to emigration are rights in the same sense.

3. Conclusions

In the following last part of my talk I will not only summarize the findings of this examination of *The Law of Peoples* from a migration perspective, but I also want to show what implications these findings might have for the further research on the question which challenges the topic of migration poses for political philosophy.

Rawls does not discuss the topic of migration in detail, but we have seen that he still brings forward substantial theses on this phenomenon in *The Law of Peoples*. In his view, migration would not be a serious problem in a Society of Peoples. Rawls further argues that a people has a qualified right to limit immigration and that a person has a right to exit, a right to emigration.

We have seen that his first thesis begs the question: Even if there were only liberal and decent peoples in the world, there would still be migratory movements - and the ethical challenges they pose would remain. A philosophical work on international relations should cover the pressing topic of migration. It also became clear that Rawls's second and third thesis, though they incorporate widespread opinions on migration, are not that easy to underpin argumentatively. There are indeed significant problems in Rawls's own argumentation for a people's right to the limitation of immigration and a person's right to emigrate.

But what does it tell us, if a theory of domestic political justice gets enormous problems to deal with a particular phenomenon when it is extended to the international realm, as it is the case with Rawls's theory with the phenomenon of international migration? One answer would be, that the extension is carried out imperfectly. From this standpoint, Rawls simply did not extend his own theory of domestic justice correctly to the international sphere. This is probably the stance that "Rawlsian Cosmopolitans" would take, as Charles Beitz (2000). Another answer would be, that a theory of domestic political justice is just not extendable, since the domestic and the international sphere are structurally too different. Therefore, we need new concepts to cover the obligations we have internationally, or globally. That is the way Thomas Nagel (2005) argues, for instance. A further answer would be that the problems of the extension show us that the domestic theory is actually flawed. This is the thesis of Martha Nussbaum (2007).

It would be interesting to investigate these options in further research. What became clear, anyway, is that migration is not only a topic of immense importance in its own right but also for political philosophy in general, because it can help us to get clear on certain central notions and questions that go beyond what we refer to as "Applied Ethics".

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