

**EYES WIDE SHUT: THE CURIOUS SILENCE OF *THE LAW*
OF PEOPLES ON QUESTIONS OF IMMIGRATION AND CITIZENSHIP**

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RESUMEN

En un mundo independiente de identidades y membresías políticas superpuestas, los estados y ciudadanos democráticos enfrentan difíciles elecciones al momento de responder al fenómeno de la migración a gran escala y a la cuestión sobre quién debe tener derecho a acceder a la ciudadanía. En un influyente intento por establecer un marco normativo para un orden global más justo, El derecho de gentes, John Rawls curiosamente guarda silencio respecto a qué significado tendría este marco para las políticas de migración. En este artículo considero las complicaciones que causan la desatención de Rawls en su visión más amplia de la justicia global. Sin embargo, también intento mostrar cómo estos aspectos de la teoría de Rawls surgen de una tensión subyacente que confrontan todas las concepciones democráticas de justicia, en teoría y práctica. En mi conclusión, esbozo una alternativa basada en las intuiciones del pluralismo agnóstico que “rompen” el silencio rawlsiano y teoriza activamente la legitimación democrática de las fronteras políticas.

PALABRAS CLAVE

Immigración, migración, ciudadanía, El derecho de gentes.

ABSTRACT

In an interdependent world of overlapping political memberships and identities, states and democratic citizens face difficult choices in responding to large-scale migration and the related question of who ought to have access to citizenship. In an influential attempt to provide a normative framework for a more just global order, The Law of Peoples, John Rawls is curiously silent regarding what his framework would mean for the politics of migration. In this piece, I consider the complications Rawls's inattention to these issues creates for his broader vision of global justice. Yet I also attempt to show how these aspects of Rawls's theory emerge from an underlying tension which confronts all liberal democratic conceptions of justice, both in theory and in practice. In my conclusion, I sketch an alternative rooted in the insights of agonistic pluralism, which “breaks” the Rawlsian silence and actively theorizes the democratic legitimation of political borders.

KEY WORDS

Immigration, migration, citizenship, Rawls, The Law of Peoples.

INTRODUCTION

The title of this piece references a 1999 film by Stanley Kubrick, *Eyes Wide Shut*. In the film, a seemingly perfect bourgeois couple's masked disregard and disinterest in one another sets in motion a flight from their stagnant reality into a surreal world of fantasy, animalistic sexuality, and death. The film circumnavigates the space between mundane reality and the liberating realm of fantasy and imagination, charting the near-destruction of a relationship in the process. However, the interpersonal conflict which emerges is not due to the clash between fantasy and reality. Instead these problems surface due to the repression of one to satisfy the other. In this vein, the film "represents the tendency to flee the tragic; to shut one's eyes to it, or to escape into an empty fantasmatic realm devoid of life" (Brand, 2007, p. 1).

In contemporary world politics, we encounter a situation where policymakers and democratic citizens cannot shut their eyes to the difficult ethical questions raised by increased global migration. In the year 2000, roughly 150 million individuals were living outside the country of their birth, with as many as 50 million being forcibly displaced as a result of persecution, conflict, and human rights violations (Human Rights Watch, 2007). Millions of others are driven to migration via a complex constellation of social and economic "push" and "pull" factors. This places new pressures on net recipient societies, torn between domestic forces pressing for fragmentation and localism as well as those in favor of greater global integration (Rosenau, 2000). As we begin the 21st century, immigration and the question of when migrants ought to have access to membership in the political community seem poised to be perennial political and ethical dilemmas. For some, these contemporary ambiguities of membership lead to optimistic claims that once-powerless migrants now reside in "complex networks of power" which transcend national bound-

aries (Held & McGrew, 2000, p. 39). Yet for those who exist on the wrong side of such boundaries, greater global integration still may not prevent territorial borders from being menacing impediments to the realization of their most basic needs (Carens, 1995, p. 229). Thus, a sober and critical perspective on immigration politics engages a world in which one's citizenship and migration status "bequeaths to some a world replete with opportunity and condemns others to a life with little hope" (Schachar, 2007, p. 257).

Despite migration's salience as an issue in world politics, recent international theory has been largely silent about the dual issues of migration and access to citizenship. Similar to Kubrick's troubled couple, many prominent international theorists have tended to flee the tragic choices which these issues entail, and construct a fictive theoretical realm in which the intractable conflict between the rights of individuals and the needs of the political community has subsided. One such account, *The Law of Peoples* (Henceforth *TLoP*), by esteemed political philosopher John Rawls, offers a vision of how contemporary societies might move towards a more just global order, yet provides only a cursory treatment of the issue of transnational migration. As Baubock writes, "nowhere does Rawls consider the problem of how to resolve conflicts that are not about different conceptions of the good, but about political boundaries *between* self-governing polities" (2007, p. 87. Italics added).

Nor is this a problem one encounters only within Rawls's theory. Benhabib has characterized the silence of liberal theories of justice with regard to migration and membership as "curious", given the importance of these issues in contemporary world politics (2004, p. 2)¹.

The absence of these issues speaks to an often under-acknowledged "blind-spot" within liberal democratic approaches to in-

¹ See also Walzer (1983) and Bader (1995, pp. 212-213) on this point.

ternational justice: how to conceptualize justice and obligation when the claims and controversies involve those who are in some sense beyond the boundaries of the political community.

Liberal democratic conceptions of international justice necessarily entail an uneasy relationship between the particularistic notion of the political community or demos, which can only endure through acts of exclusion, and the universalistic liberal values which legitimate and undergird those communities, making membership valuable and consequential (Benhabib, 2004, p. 19). Rather than eliding this tension, those seeking a more just global order should treat it as a starting point, the basis on which to build domestic democratic institutions capable of recognizing and engaging the traces of exclusion left in their wake. In *TLoP*, Rawls tends towards the former, constructing a global order which is largely devoid of the contentious substance of migratory politics amidst intensifying global interaction and interdependence. Even when Rawls engages the present realities of world politics within his “non-ideal” theory, he fails to devote any sustained attention to such issues. Nevertheless, Rawls’s limited treatment of these issues is instructive in drawing out the competing particularistic and universalistic normative principles packed within an approach to migration and citizenship which attempts to be attentive to both the rights of individuals and the will of the community.

Thus, this analysis begins by examining the handful of instances in which Rawls does address migration issues within *TLoP*, while also surveying a number of critiques which have been leveled at his justifications for in this area of his theory. I argue that while these critiques bring to light a number of problematic aspects with Rawls’s conception of global justice, they do not adequately consider the source of these deficiencies, a failure by Rawls to acknowledge the unstable normative tension on which his theory is based. Lastly, this piece sketches an alternative conceptualization of immigration and access to citizenship, rooted in the recent insights of agonistic pluralism, a post-foundationalist

strain of political theory that has yet to find extensive use within international theory². I will argue that agonistic pluralism offers us a novel means of dealing with contemporary challenges of global migration. This is due to its tendency to celebrate and embrace points of paradox, tension, and conflict, utilizing such conditions as a means to achieve greater democratic engagement and a more robust conception of popular sovereignty.

RAWLS'S GLOBAL EXTENSION OF HIS DOMESTIC THEORY

In examining Rawls's *TLoP*, we must first note the distinct nature of this work vis-à-vis his earlier accounts of domestic justice in *A Theory of Justice* (Henceforth *AToJ*) and *Political Liberalism* (Henceforth *PL*). *AToJ*, Rawl's earliest full-length treatment of justice, proceeded from the assumption that individuals within a society share a certain notion, a "comprehensive doctrine", of their ethical life and the individual goods which they value (1971, p. 6)³. By *PL* however, Rawls had recognized this assumption to be untenable in light of the deep pluralism encountered within modern democratic societies. In *PL*, Rawls writes that "the diversity of reasonable comprehensive religious, philosophical, and moral doctrines" is not a transient feature of our societies but a "permanent feature of the public culture of democracy" which he calls "the fact of reasonable pluralism" (Rawls, 1996, p. 36). The task of a liberal theory of justice in light of this fact of mo-

² For exceptions to this rule in international relations, as well as international theory and ethics, see Escobar, 1995, 2000; Doucet, 2001; Kapoor, 2002; Connolly, 2002-Ch. 7, 2005-Ch. 5; Schaap, 2006; Hayward, 2007; Shinko, 2008; and Honig, 2001b, 2009.

³ Rawls writes in the introduction of *PL*, that the impetus for this later treatment of justice was "the unrealistic idea of a well-ordered society as it appears in [*AToJ*]. An essential feature of a well-ordered society associated with justice as fairness is that all its citizens endorse this conception on the basis of what I now call a comprehensive political doctrine" (1996, p. xvi).

modern political life is to arrive at foundations which can serve as an enduring system of mutual social cooperation, while also not unjustly disadvantaging any single, reasonable conception of the good (Rawls, 2001, p. 4).

In *TLoP*, Rawls understands the diversity of the contemporary international realm in way analogous to modern democratic societies in *PL*. The task is to articulate a framework in which incompatible cultural and societal pluralism does not preclude our ability to act with toleration, respect, and notions of reciprocity for those peoples who do not share our fundamental philosophical, moral, and religious doctrines⁴. Thus, *TLoP* is Rawls's attempt to articulate a liberal theory of foreign policy, albeit one that does not dominate and repress the views of decent, non-liberal, peoples. *TLoP* begins with a set of eight principles which ought to guide the conduct of an ideally just society of peoples,⁵

⁴ The meaning of a "people" is not immediately evident, yet for basic purposes, it can be understood as a society sharing some common political culture, albeit one which retains at least some of the basic functions of the modern state (i.e. crafting foreign policy, possessing institutions of law and law-making, etc.). However, Rawls rejects Westphalian notions of sovereignty that would grant such entities complete autonomy over their domestic populations, as well as the right to go to war as a means to pursue state policies (1999, p. 25). Rawls utilizes "peoples" as opposed to states in order to enable a conception of the political community which extends beyond mere calculation of shared material interest (1999, p. 28). The distinguishing characteristic of a people seems to be its capacity to act not only rationally but "reasonably", that is, "with a concern for reciprocity and the interests of others" (Brown 2002, p. 11). As Onora O'Neill writes, "[i]n Rawls's view, peoples can be reasonable, but states are wedded—or condemned—to rational self-interest" (2000, p. 51). Nevertheless, she later notes the only peoples who are likely to possess clear boundaries and the capacity to negotiate with outsiders are peoples already attached to states (p. 51). The concept "peoples" will be discussed in more detail when addressing some of the critiques of Rawls.

⁵ The eight principles which Rawls lays out are: 1) Peoples are free and independent, and their freedom and independence are to be respected by other peoples, 2) Peoples are to observe treaties and undertakings, 3) Peoples are equal and are parties to the agreements that bind them, 4) Peoples are to observe a duty of non-intervention, 5) Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense, 6) Peoples are to honor human rights, 7) Peoples are to observe certain specified restrictions in the conduct of war, 8) Peoples have a duty

then offers a justification of these principles (in which he extends the original position of his domestic theory to the international),⁶ and concludes with the implications of the Law of Peoples for liberal and decent societies operating in a non-ideal world, in which all societies are not well-ordered.

The abstract category of “peoples” merits a brief explanation, however. Rawls categorizes existing societies into five basic types: reasonable liberal peoples, decent peoples, outlaw peoples, peoples burdened by unfavorable conditions, and benevolent absolutisms (Rawls, 1999, pp. 4-5)⁷. Only “liberal” and “decent” peoples, respectively, are considered “well-ordered” and deserving of mutual respect, reciprocity, and unconditional non-domination. Liberal peoples are characterized by three basic features: 1) a reasonably just and representative constitutional democratic government, 2) a shared sense of political culture and what Mill referred to as “common sympathies” and 3) a certain moral character (corresponding to the two moral powers—the capacity to have, revise and pursue a conception of the good as well as the capacity to act on and apply a sense of justice) (Rawls, 1999, pp. 23-25). Rawls outlines only one type of decent people, the decent hierarchical society (DHS), although he notes that there may be other types (1999, p. 4). A DHS is characterized by two features:

to assist other peoples living under favorable conditions that prevent their having a just or decent political and social regime (1999, p. 11).

⁶ The veil of ignorance implied in the international original position is somewhat different, as representatives are now representing “peoples” and not individual “persons”. Rawls writes, “they do not know, for example, the size of the territory, or the population or the relative strength of the people whose fundamental interests they represent [...] they do not know the extent of their natural resources, or the level of their economic development, or other such information” (pp. 32-33). Representatives in the international original position *would* know, however, whether they represent a reasonable liberal society or a decent one, as Rawls considers these two types of peoples separately and constructs two different original positions for them.

⁷ The reader will note that I tend to use “societies” and “peoples” interchangeably in this piece. Though aware of the difficulties of using the terms in this way, I do so mainly for ease of use and in light of the fact that Rawls tends to do the same in *TLoP*.

1) the society is not externally aggressive, and 2) it possesses three interrelated internal features— a. commitment to human rights, b. members of the society are regarded as responsible participants in systems of social and political cooperation, and c. the law is guided by a common good idea of justice (Rawls, 1999, p. 66)⁸.

In addition to these two types of well-ordered states, outlaw societies are defined as those societies which are externally aggressive and/or violate human rights (Rawls, 1999, pp. 4-5, 80-81, 90). Societies burdened by unfavorable conditions are those which would be well-ordered where they not hampered by the lack of institutional resources or a suitable political culture (Rawls, 1999, p. 4)⁹. Benevolent absolutisms refer to despotisms which may honor some human rights but do not consult or involve their people in social and political processes (Rawls, 1999, p. 4). Thus, beyond simply dealing with reciprocal and respectful relations between well-ordered peoples, Rawls wants to address the proper response to those peoples which violate these fundamental principles. In so doing, Rawls addresses much of the substance of contemporary international politics: the justifiable grounds for humanitarian intervention, the proper conduct of states during war, the duty of well-ordered societies to assist (financially or otherwise) so-called “burdened societies”, and the extent of liberal toleration for non-liberal societies.

Yet this list is notable for what it lacks. Rawls excludes those instances which make problematic the boundaries between overly tidy conceptions of “peoples” characterized by a deep political unity and uncommon, perhaps non-existent, homogeneity. The

⁸ Rawls’s definition of human rights is addressed on p. 65 of *TLoP* and generally conforms to a “thin” conception of human rights and does not include rights of democratic governance, free speech, freedom of conscience.

⁹ Though what is noteworthy here is that Rawls’s “unfavorable conditions” do not include lack of material or natural resources much to the chagrin of cosmopolitan thinkers such as Thomas Pogge or Charles Beitz. As Michael Doyle notes, “advice, much more than money may be useful to assist societies to appreciate the importance of protecting the interests of the least advantaged” (2006, p. 116).

section that follows examines Rawls's limited treatment of migration and citizenship issues, their practical implications in the non-ideal realm of contemporary global politics, followed by critiques of his approach to these issues. In addressing critiques and responses to Rawls's understanding of migration issues, it is important to note first and foremost that few theorists have directly addressed this issue. This arises out a number of factors, above and beyond Rawls's limited treatment of the topic. One reason for this is a general glut of examination of the rights attached to immigration within political theory more generally (Seglow, 2005, p. 317).

However, much of the debate around *TLoP* thus far has centered on questions of international distributive justice, considering immigration rights to be a subset of this area of normative theorizing, if the issue is raised at all. If, as Brown notes, the "Rawlsian 'mother lode' is sufficiently rich and productive that workers in this particular quarry ill not run out of subjects to develop", this remains a seam largely untouched by the theoretical pick-axes (Brown, 2006, p. 131). Due to the subtle and somewhat opaque relationships between these two areas of international justice, many of the critiques discussed below focus more on the underlying assumptions which drive Rawls's position on these issues, rather than directly critiquing Rawls on migration. Yet these critiques are introduced in order to demonstrate the difficult and volatile philosophical terrain in which Rawls finds himself while trying to navigate a course between particularistic conceptions of national interest and universalistic conceptions of the fundamental equality of all human beings.

RAWLS ON THE RESTRICTION OF IMMIGRATION:
TERRITORY AS PROPERTY

In the course of *TLoP*, Rawls mentions migration issues only twice (pp. 8-9, 38-39, 39 ff) and the related issue of emigration only once. (p. 74 ff) Rawls begins his discussion of these issues

by noting why there is such limited attention devoted to immigration throughout the rest of this work. Much of the responsibility for dealing with immigration falls upon national governments, being “the effective agent of a people as they take responsibility for their territory and the size of their population, as well as maintaining the land’s environmental integrity” (1999, p. 8). Thus, Rawls argues that the territorial space of a country ought to be considered as an “asset” of a clearly-defined people. To the extent that no authority is put in charge regulating the borders of this property, there is a potential for overuse or misuse and the risk that this resource cannot support the inhabitants in perpetuity. Throughout the piece, this will be referred to as Rawls’s property-based justification for the limitation of immigration.

The practical implications of Rawls’s property-based justification for the limitation of immigration are far from clear. Clearly, Rawls’s conception challenges the extreme liberal egalitarian position that modern territorial borders exist as neo-feudalistic remnants of past patterns of domination and subjugation and should be replaced by a policy of open borders (Carens, 1995)¹⁰. Echoing particularistic themes found within communitarian and liberal nationalist conceptions of global justice,¹¹ Rawls argues rather that the very notion of justice in a well-ordered state rests upon the existence of clearly defined borders, without which the state’s ability to provide for its people would be drastically compromised. Along these same lines, Heath argues in a defense of Rawls that “freedom of movement of individuals across national borders [...] if left unchecked, would destroy all of the ‘universal’ social insurance programs currently administered on the national level” (2007, p. 26)¹².

¹⁰ See Ypi (2008, pp. 406-407) for a critique of this Carens’s now-famous analogy, in which she notes the fundamental disconnect between feudal servitude and modern citizenship.

¹¹ See Walzer 1983, 1992; Miller 1995, 2005, 2008; Wellman, 2008.

¹² While Heath (2007) does not substantiate his claim by offering any empirical

Yet there seems to be no clear “tipping-point” at which we could decide that an influx of migrants is hindering the government’s ability to provide for its already existing pool of citizens. In laying out his justification in this way, Rawls authorizes recipient governments to restrict migrant access to residency or citizenship on the basis of the way in which they (acting as the effective agent of a people) perceive the threat. The contentious discourse of immigration rights expansion, however, shows the vast discrepancies in how this threat to public goods and services is understood, defined, and acted upon in terms of policy. Cornelius and Rosenblum note that, “[e]ven if the actual effects of immigration on receiving countries are typically modest, many citizens of migrant receiving states perceive negative consequences—economic and noneconomic—that lead them to prefer more restrictive immigration policies” (2005, p. 104). Thus any normative theory of international justice which replicates these assumptions risks enabling malleable and potentially inaccurate popular perceptions to determine a society’s immigration restrictions.

Unsurprisingly, for cosmopolitan theorists of international justice such as Charles Beitz and Thomas Pogge, Rawls’s line of reasoning with regard to territorial “ownership” has been a frequent point of contention, due to its minimization of the moral consequences which flow from our contemporary state of global interdependence. Charles Beitz concedes to Rawls the sense of collective responsibility flowing from being a member within a political community (2000, p. 682). Yet Beitz feels the argument that there must be a territorially delimited, exclusive notion of property to achieve this sense of common enterprise risks reifying existing conceptions of territoriality and state sovereignty. Beitz points to the fact that the “circles of affinity” which Rawls de-

proof, for the sake of argument, one can assume it to be rather plausible scenario, at least in relation to *some* level of unrestricted migration. However, see Benhabib (2004, pp. 89-90) for critiques of this common argument in the politics of immigration.

scribes are historically variable, evident in the existence of the contemporary multicultural state itself (2000, p. 683). The fact that most liberal-democratic citizens express their affinities in terms of an expansive civic identity as a member of a political community rather than identifying themselves as a member of their family, clan, tribe, or ethnic group is evidence that the scope of our concern for collective resources evolves over time.

Even if we are to conceive of territory as the “property” of the “effective agent” of the state, however, Thomas Pogge argues that Rawls pays insignificant attention to the broader context in which this property resides, one of deteriorating structures and rules for less wealthy and powerful societies (2001b, pp. 250-251) Pogge notes that while in his domestic theory Rawls was willing to accept the notion that even a series of fair transactions could result in an outcome which favored the interests of a few necessitating rectification (see Rawls, 1996, p. 267), there is no international analogue to this. Thus, while individual societies may have a sense of ownership over their territorially delimited space, the global economic structures which impact to what ends they utilize this asset vary tremendously. Pogge is intensely critical of the fact that the domestic commitment to preserving “economic background justice”, present in *AToJ* and *PL*, is almost completely absent in *TLoP*. In light of the economic interdependence of our contemporary world and a concern for the individual human being as the “ultimate unit of moral concern”, Pogge thus calls for a global extension of the “difference principle” contained within Rawls’s domestic theory of justice (2002, p. 169)¹³.

In addition to these concerns with Rawls’s conceptualization of territory as property, there remains the basic fact that his fear of overuse, misuse, or degradation rests upon a highly-disputed empirical claim. The notion that migrants, as new members to a

¹³ See also Beitz (1979, p. 144), Buchanan (2000, pp. 684-686), although Beitz has subsequently away from position (See Beitz, 1983).

political community constitute only a “cost” to the society and do not also provide the society with an equal or greater degree of benefits, benefiting all members of the community in the process, remains in dispute. Benhabib writes “there is sufficient empirical evidence [...] that open and porous borders which enable the free movement of peoples, goods, and services across state boundaries are highly beneficial to the functioning of free-market economies” (2004, p. 88). Thus, Benhabib argues that we ought to consider this claim in light of many of the characteristics of migrant communities: migrants tend to be disproportionately of working age, many of them are pushed to migration by economic factors meaning that they are willing to work, and the fact that the host country often does not have pay for their education due to their age (2004, p. 88 fn).

RAWLS ON THE RESTRICTION OF IMMIGRATION:
THE “WITHERING AWAY” OF STRUCTURAL CAUSES

Rawls goes on to say that many of the domestic scenarios which provoke immigration (religious and ethnic persecution, political repression, denial of human rights, starvation and famine, population pressures) would become less pronounced or disappear in world with greater numbers of well-ordered societies. He writes, “[t]he problem of immigration is not, then, simply left aside, but is eliminated as a serious problem in a realistic utopia” (Rawls, 1999, p. 9). Rawls is asserting that many of the causes of immigration result from domestic inefficiencies and injustices which, within a more just global order, would cease to be a pressing international concern. This is not so much a justification for limiting immigration as an expression of the hope that in the context of a realistic utopia, there will be little to no migration to regulate. This is referred to throughout the paper as Rawls’s notion of the “withering away” of the structural causes for large-scale migration.

Again, it is unclear what practical implications one would draw from Rawls's notion of the gradual erosion of immigration. Rawls does assert that well-ordered societies have a duty to assist "burdened societies", although strictly in terms of helping to establish the proper institutions and culture so as to become well-ordered, as he discounts the value of foreign aid in this regard (Rawls, 1999, pp. 106-112, 118). In addition, well-ordered states may also intervene to stop the most egregious and threatening injustices committed by "outlaw states" (Rawls, 1999, pp. 80-81). Yet beyond these extreme instances which compel a state to action, well-ordered states are fairly limited in the strategies they might employ to encourage societies to move in more liberal directions, due to Rawls's emphasis on toleration and his hesitancy to impose a liberal upon vision upon non-liberal societies. To the extent that we are to witness a gradual conversion of the world's societies towards a more liberal orientation, much of that process is presumably going to occur via the internal dynamics of individual peoples.

The problematic aspect of Rawls's faith in the gradual emergence of a more well-ordered, and eventually more liberal world, is that it remains unclear the channels via which this dissemination might actually occur. Rawls puts into place significant restraints regarding public criticism of decent hierarchical societies and limits intervention in non well-ordered societies to only the most extreme cases. Liberal societies may not publicly criticize the internal structures of decent societies, and liberal societies are not to give bilateral incentives to encourage political liberalization as it compromises a society's right to self determination (1999, pp. 80-81, 84-85). The question remains by what mechanisms would transformation by which large-scale migration would cease to be a pressing issue. Kok-Chor Tan suggests, "the one possible liberalizing tendency I can think of within the global setting would be the effects of cultural exchanges [...] films, books, intellectual changes and art" (1998, p. 205). However, even this

may in fact be negated by the restrictions on freedom of speech which Rawls is willing to accept in decent, non-liberal societies. Thus, the wave of internal liberalization which Rawls see gradually dissolving the “push-pull” factors of international migration may be undermined by the very conditions he proposes to protect self-determination and advance toleration among the society of well-ordered peoples.

Even to the extent that this broader liberalizing process could happen, there remain doubts whether a world of immobile individuals locked within the borders of their own societies would be in any way desirable. Responding to this question, Seyla Benhabib eloquently writes, [in] Rawls’s ideal utopia, peoples become windowless monads who have no interest in mixing, mingling, and interacting with others. This is certainly a vision of an ordered world but it is also the vision of a static, dull world of self-satisfied peoples, who are indifferent not only to each other’s plight but to each other’s charms as well (2004, p. 92).

Similarly, Bonnie Honig writes, “the novelties of foreignness, the mysteries of strangeness, the perspective of an outside may represent the departure or disruption that is necessary for change” (2001b, p. 4). Migration, conceived of as an instrumental means to an end by Rawls, may actually be an intrinsically rewarding end in itself.

RAWLS ON THE RESTRICTION OF IMMIGRATION: THE RIGHTS OF THE COMMUNITY

Later in *TLoP*, Rawls reasserts his property-based justification for limiting immigration, reiterating that a “tragedy of the commons” scenario would be the inevitable result of any system which did not place an agent in charge for granting access to the community and promoting an ownership-based sense of responsibility. However, Rawls buttresses this claim with justifications that strongly resonate with communitarian conceptions of inter-

national justice. He writes that “a people has at least a qualified right to limit immigration” in order “to protect a people’s political culture and its constitutional principles” (1999, p. 39 n). In Rawls’s eyes, unrestricted immigration opens up a society to a host of potentially hostile outside influences which risk degrading the integral character of the political community. This latter claim is referred to as Rawls’s communitarian justification for immigration restriction.

Once again, the practical implications of Rawls’s communitarian justification are somewhat murky. At what point a migrant population constitutes a threat to either political culture or the foundational political principles of a society is not as clear-cut a notion as Rawls would like to make it. As with the threat to shared resources, the lack of an objective basis by which to determine the threat to culture and institutions would again risk making such restrictions subject to unstable perceptions of threat. Yet, the basic point that Rawls makes is fairly straightforward. To the extent that citizenship no longer exists as a concrete political identity that delineates an inside-group from an outside-group, it can no longer instill unity among citizens and be a status towards which they look with pride and a sense of belonging. In short, Rawls fears membership in the political community may become one status among many, rendered unstable by competing loyalties and ineffectively cementing the bond between fellow citizens.

Yet many have seen complications arising from the “communitarian turn” within Rawls’s international theory of justice. Many critics have highlighted the incongruity of the notion of a “people”, conceived of as a bounded territorial entity possessing a set of shared normative and institutional characteristics, with the reality of world of shifting and overlapping identities and power structures. Pogge feels that Rawls’s concept of “peoples” offers what he calls a “double vagueness”. First, it remains unclear what types of groups should count as a people and whether groups which do not reside within a recognized sovereign state

have any standing in the Law of Peoples. Secondly, it remains unclear how the notion of a people should be delimited; an array of options present themselves—culture, descent, residency, self-selection, etc. (Pogge, 2004, p. 1743). Benhabib writes that the very notion of a clearly delineated and contiguous peoplehood, which informs so much of Rawls's theorizing at the international level, is ultimately “an aspiration, not a fact” (2004, p. 82). Simon Caney similarly argues that Rawls's typology of “peoples” at the international level is simply too rigid to allow us to theorize concretely about the tangible international system (2002, pp. 104-105). As existing societies are highly unlikely to fall into one category or another, Caney suggests a continuum as representing a more realistic way of categorizing the complex multi-faceted societies we encounter in the current international system¹⁴. Lastly, Michael Doyle (2006) examines the existing state system to determine whether Rawls's theoretical category of “decent hierarchical societies” actually manifests itself with any frequency. He notes that relatively few examples exist, and there remains no evidence that liberal states actually view them in a different light, and thus more deserving of respect, than the more expansive category of “non-liberal” societies (p. 115).

Other critics charge that Rawls's conception of peoples leads to distortions in his conceptualization of human rights at the international level. Beitz (2000) writes Rawls's notion of peoples leaves him unable to develop a “freestanding” conception of fundamental human rights. From the cosmopolitan position of the fundamental moral worth of the individual, Beitz argues that

¹⁴ However, in addressing Rawls's potential contributions to international relations, Chris Brown has noted that “no classification of states exists that comes close to Rawls in complexity or utility” and criticized the prevailing tendency to classify dualistically on the basis of democracy or non-democracy (2002, p. 17). Similarly, Doyle notes one of the felicitous aspects of Rawls's schema is its challenge to Neo-Kantian conceptions of liberal v. non-liberal states, and his raising of the degree of respect and toleration the former ought to afford to the latter (2006, p. 116).

our notions of human rights ought to be justified on the basis of the negative effects which abuses have on “persons”, rather than their potential externalities for abstract “peoples”. Rawls’s notion of respecting human rights is ultimately not based on the injustice that human rights abuses inflict upon the individual, but the broader threat that they cause to the international community. Rawls characterizes those “outlaw states” which abuse human rights as “aggressive and dangerous” stating that, “all peoples are safer and more secure if such states change, or are forced to change their ways” (1999, p. 81).

The notion that human rights abusers always constitute an external threat, however, is ultimately another unresolved empirical question, and Rawls’s stance seems to imply that other members of the society of peoples would lack sufficient reasons to confront a society which can brutally oppress its own people, while keeping the horrors confined within its own borders and remaining externally passive. Though Rawls notes that such instances may arise in a footnote, he offers little guidance here saying only that such states “may be subject to some kind of intervention in severe cases” (1999, p. 90 fn). This seems to imply that victims of such regimes would have to make their claims and appeals for justice on the basis of the threats that violations pose to the international community, rather than appealing on the basis of their own basic human rights. As a result, cosmopolitans argue that the foundational basis for “human rights” becomes uprooted in Rawls’s thought, no longer tied to the individual but the positive externalities that respect for human rights has for international stability.

One should also note that while Rawls draws in a communitarian argument to justify exclusion on the basis of protecting a society’s political culture and principles, he does not flesh out any qualifications to this potentially extreme view. Rawls cites Walzer’s *Spheres of Justice* (1983) to support his argument for the necessity of concrete territorial borders with the right to ex-

clude as they see fit, Walzer's treatment of the issue is much more nuanced. For example, Walzer is willing to advance a right to immigration in instances of homeland status, such as for refugees pushed abroad by conflict or economic devastation. He writes that in the context of "turbulent historical instances" these individuals have a right to look to their homeland with "hope and expectation", citing past instances in which this reintegration has occurred (1983, p. 42) Furthermore, Walzer's discussion of guest-worker in Europe shows an attentiveness to the use of expulsion as a political tool, and a desire to avoid this precarious status becoming an "indirect means of keeping the alien from exercising any civil rights she might formally be permitted" (Bosniak, 2006, p. 45) Rawls's unqualified view leaves the grounds by which the state can restrict immigration largely unchecked, possibly even justifying immigration restriction on the part of societies which commit themselves to some modicum of external assistance rather than admitting migrants from the sending country.

A RELATED ISSUE: RAWLS ON THE RIGHT TO EMIGRATION

Turning lastly to Rawls's comments on emigration and the role it plays in his larger theory, he addresses the issue in the context of religious toleration within a non-liberal decent hierarchical society. While many of the elements of Rawls's theory of justice discussed previously seem to imply a form of liberal communitarianism, here we see Rawls trying to explicitly try incorporate protections for the rights of individuals. Rawls stipulates that a DHS must allow for "a sufficient measure of liberty of conscience and freedom of religion and thought", though these societies may still have an "established religion" that enjoys certain privileges vis-à-vis the other minority faiths (1999, p. 74). Nevertheless what is "essential", in Rawls's own words, is that no minority religion should be denied the ability to practice in peace, absent fear of persecution. To this end, Rawls states that, in or-

der to mitigate against even the possibility of intimidation, “a hierarchical society [must] *allow* and *provide assistance* for the right of emigration” (Rawls, 1999, p. 74. Italics added)¹⁵. Adhering to this minimum level of internal religious toleration demonstrates a sincere commitment to a conception of the common good, and illustrates that notions of good do not simply take into account one dominant group within society. By allowing for emigration, Rawls claims that a DHS demonstrates at least a minimal commitment to the common good and provides a means of escape for individuals persecuted on the basis of their religion or belief system, thereby “render[ing] its institutions worthy of toleration [by other societies]” (1999, p. 68)¹⁶.

Thus, Rawls advances a right to emigration for members of a decent non-liberal society; in fact, he makes it is an essential component of liberal states considering decent societies as worthy of toleration. However to affirm this right, Rawls offers no corresponding requirement that those who emigrate ought to be accepted as members of another political community¹⁷. Tan

¹⁵ Though Rawls is specifically addressing religion here, the inclusion of “freedom of thought” seems to imply that the right to emigrate, and the duty of the state to assist that process, applies to anyone being persecuted for holding a particular set of beliefs.

¹⁶ It is interesting to contrast Rawls’s discussion of the cumbersome process of leaving one’s country in *PL* (and his conclusion that it is an unacceptable alternative) with his cursory treatment within *TLoP*. In the former, he deems emigration a “grave step” forcing us to abandon our culture, our language, our value systems and embrace new ones (Rawls, 1996, p. 222). Yet in *TLoP*, while recognizing that emigration incurs some financial burden and arguing that a people “should provide assistance for emigration if feasible”, he seems to ignore the larger psychological and social burdens that forced emigration would level against potential emigrants (Rawls, 1999, p. 74).

¹⁷ This is by no means simply a critique of Rawls as other liberal thinkers support a similar position (See Kymlicka, 1995, pp. 124-130; 2000, p. 71). The extension of rights to emigration without corresponding rights to immigration is equally evident in international law with the 1948 UN Universal Declaration of Human Rights placing no binding requirements on states to grant entry, asylum or citizenship despite endorsing freedom of movement and the right to exit. (See Article 13) Though the Geneva Convention of 1951 Relating to Status of Refugees and the Protocol to

questions the point of mandating a right to emigrate “if it is not reinforced by the demand that states also be obliged to accept immigrants” (1998, pp. 292-293). While Rawls is adamant in saying that persecuted minorities should have the option of exit, under his system those who seek to utilize it may ultimately face a more harrowing existence as nomadic “stateless persons”, in search of a society that will accept them. Rawls was aware of this potential criticism and attempts to preempt it by claiming in a footnote that many rights require the actions of a voluntary second party in order to fully realize their meaning (1999, p. 74 n), Rawls states,

It may be objected that the right of emigration lacks a point without the right to be accepted somewhere as an immigrant. But 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 (1999, p. 74 n).

Rawls is correct in this sense. One’s right to marry does not entail a requirement that one is guaranteed a suitable spouse and the right may, for a variety of reasons, never be realized. Yet for Rawls, the right to emigration in this instance is a crucial requirement, perhaps the lynchpin, in creating a global order whereby liberal societies and decent, non-liberal societies can operate in terms of mutual respect, with the alternative being, “a fatalistic cynicism which conceives of the good of life solely in terms of

the Convention added in 1967 support non-refoulement and temporary resident status for refugees and asylum seekers, these rights are fairly minimal, apply only to signatories, and are often subject to non-enforcement or selective questions the point of mandating a right to emigrate “if it is not reinforced by the demand that states also be obliged to accept immigrants” (1998, pp. 292-293). While Rawls is adamant in saying that persecuted minorities enforcement by the governments which sign them (Benhabib, 2004, p. 11). The UN “International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families”, which became binding in 2003, supports basic human rights for migrant workers regardless of their immigration status, yet suffers from a host of practical drawbacks, including virtually no capacity for enforcement and a relatively small number of signatories (Soysal, 1998, pp. 199-200).

power” (Rawls, 1999, p. 78). The lack of a means by which individuals can emigrate from societies in which they face persecution, at least by Rawls’s logic, risks the dissolution of the international society of peoples, and thus it’s ambiguous and incomplete status ought to be suspect.

While Rawls sees this right of exit as essential enough to mandate decent societies provide financial assistance to those seeking exit, he remains reluctant to place any requirements on potential recipient societies to allow these persecuted minorities into their societies, and offers little or no justification for this, aside from these somewhat weak analogies. A right to exit which is not supported by measures to ensure its actually being utilized risks compromising even Rawls’s thin conception of human rights, namely that individuals have a “sufficient measure of liberty of conscience to ensure freedom of religion and thought” (1999, p. 65).

Thus, in his attempt to extend his domestic theory of justice to the international level, Rawls encounters a number of problems as he attempts to expand liberal toleration, reciprocity, and respect outwards to the society of peoples while retaining even a thin conception of human rights. Here, the focus has been limited to critiques of the underlying assumptions which drive his approach to migration, an area where it seems that Rawls’s theory gives us very little guidance. Stanley Hoffman, upon publication of the lectures from which *TLoP* was compiled, saw very few points-of-contact with international reality, stating that, “Rawls may eventually find ways to bring his theories closer to international reality, but he has a long way to go” (1995, p. 56). Yet the section that follows suggests that paucity and problematic nature of Rawls’s thoughts on global migration is not the product of his liberal political vision per se, but the inevitable result of any liberal-democratic attempt to reconcile universalistic notions of individual rights with a vision respecting and tolerating the will of existing political communities.

**THE UNIVERSALISTIC/PARTICULARISTIC TENSION
IN RAWLS'S *THE LAW OF PEOPLES***

The striking juxtaposition of universalistic and particularistic principle Rawls employs in his treatment of migration reinforces the difficulty of what he is attempting to do in *TLoP*. At the simplest level, the bifurcated nature of the theory arises out of the fact that the question of belonging within a political community has two fundamentally different kinds of answers, “a universalist answer (everybody) and a nationally particularist answer (members of the nation)” (Bosniak, 2006, p. 34).

Similarly, Christian Joppke notes,

[t]he predominant model of organizing political space in the modern world, the Western nation-state, is marked by a tension between universalistic liberalism and particularistic nationalism, the first pushing towards equal rights and liberties for all of its members, the second towards excluding from these privileges all non-members (2005, p. 43).

The inadequacy in Rawls's treatment of migration within *TLoP* lies not simply in oversights, confusion, or lack of clarity, but the fundamental tension he attempts to navigate between a liberal understanding of the fundamental equality of all individuals and a democratic understanding rooted in membership within a circumscribed political community. As Tan states, the problem in Rawls's political liberalism is an “inherent theoretical problem” we encounter in attempts to balance toleration (for the democratic community) with its liberal commitments (to the individual) (1998, p. 295). The complexity of straddling these competing principles manifests itself first in the limited treatment of migration within *TLoP*. Secondly, the universalistic-particularistic tension is evident in Rawls's shaky attempts to “balance” these competing principles, and remove the need for vibrant and pluralistic democratic negotiation of their meaning—imparting a

sense of closure with regard to membership in the political community which is in actuality much more complex and elusive.

German legal theorist Carl Schmitt would famously go so far as to say these competing principles risk the dissolution of liberal democracy altogether, torn between the fundamental contradictions in notions of sovereign self-determination and universalistic, egalitarian rights claims. Schmitt would argue that “in the domain of the political, people do not face each other as abstractions but as politically interested and politically determined persons, as citizens, governors, or governed, politically allied or opponents” and would warn against attempting to “abstract out what is political, leaving only universal human equality” (1985 [1926], p. 11). To the extent we attempt to inject the political with liberal conceptions based on the equality of all, Schmitt claims we degrade the value of the political and undermine the unity of the demos (1996 [1932], pp. 37-45).

Of course, we must tread lightly when using Schmitt to situate our thinking on the tensions within modern notions of liberal democracy, for we know that his pursuit of unity led him in fiercely illiberal and anti-democratic directions. The challenge then, becomes to use Schmitt’s insights regarding the tensions within the normative content of liberal democracy, to enlarge our understanding of the challenges of constituting the political community while maintaining and protecting a conception of basic human rights. Or as Chantal Mouffe argues, the task is to “use Schmitt against Schmitt—to use insights of his critique of liberalism in order to consolidate liberalism—while recognizing that this was not, of course, his aim” (2000, p. 58 ff). Contra Schmitt, the normative tensions between the universalistic and particularistic elements of liberal democracy need not mean that liberal democracy can never endure. Yet this tension does require our recognition while we adopt the position “that these two commitments can be used to limit one another, that they can be renegotiated, rearticulated, and resignified” (Benhabib, 2004, p.19).

If we use the lens of these competing principles to analyze Rawls's approach to immigration and negotiating membership within the political community, the bifurcated character of his vision begins to make sense, albeit while still remaining problematic as a guide for dealing with migration in contemporary world politics. The set of critiques addressed in the previous section can be united by their shared uneasiness with Rawls's attempts to navigate between these competing tensions. Rawls wants to affirm universal basic rights on the individual level, evident in his arguments regarding the right to emigrate and the duty of states to assist potentially persecuted minorities in doing so. However, he also recognizes the only entity which has effectively secured and consolidated these rights in the contemporary world is the modern state¹⁸. Hence the multiple in which he states the need to protect the community against the "threats" which migration poses to its institutions, its political culture, and its social democratic systems of redistribution. Thus, while Rawls seems to recognize the desperate situations that may produce immigration pressures (most notably persecution of minorities), he cannot adhere to a regime of migrant rights which he believes will threaten the integrity of the very entity, the modern state, which has been the only effective means of maintaining notions of individual rights.

Ironically then, Rawls has subsumed the individual under an abstract notion of the collective not due to any disregard for the individual, as cosmopolitan theorists tend to claim, but out of the firm conviction that the collective political community is the only entity capable of guaranteeing the individual his or her rights.

¹⁸ Recall that while Rawls is generally reluctant to refer to "states" or "governments", in the context of immigration issues, he specifically refers to the "government" acting as "the representative and effective agent of a people", and the qualities he assigns to peoples are rarely if ever performed by an institution other than the state (1999, pp. 38-39).

However, the danger of relying upon this conception of society in order to affirm the rights of those who reside within it, is that one remains blind or inadequately attentive to the many millions of individuals who somehow reside in spaces between these cohesive and unified political communities. In dealing with migration and citizenship issues in the contemporary world, a more flexible approach, capable of recognizing the many degrees of proximity to membership and inclusion, must be found. In the concluding pages of this piece I suggest that insights from a post-foundationalist strain of democratic theory, agonistic pluralism, may offer such flexibility and provide us with a more democratically defensible means of negotiating exclusion from the political community.

TOWARDS AN AGONISTIC APPROACH TO
CITIZENSHIP AND MIGRATION

Agonistic pluralism, or agonism, is a strain of democratic theory which both draws upon the liberal understandings of rights, toleration, and autonomy found within Rawls and others while simultaneously radicalizing these notions and critiquing existing conceptions of liberalism (Owen, 2008, p. 215). Through an agonistic lens, contentious democratic engagement become the goal of our political encounters, displacing notions of harmonious social cooperation or overlapping consensus. In short, agonistic pluralism emerges from a post-foundationalist strain of thinking in which “justice is made—and not found” (Parker & Brassett, 2005, p. 235).

However, it would be a mistake to read agonism as “celebrat[ing] a world without points of stabilization”, a notion we might find in a more avowedly postmodern conception of international politics. Instead, agonism simply recognizes the “perpetuity” and enduring nature of contestation, and the elusiveness of a consensus which does not somehow marginalize alterna-

tive points-of-view (Honig, 1993, p. 15)¹⁹. Rather than seeking to eliminate these aspects of the political, agonism attempts to engage and re-engage these moments in the most inclusive and contentious democratic settings possible, allowing a multiplicity of voices to engage in the struggle to frame our most foundational political concepts (Goi, 2005, p. 60).

The Rawlsian conception of international migration, with its strong particularistic notions of cohesive and closed communities, does not require any justification be made to those marginalized by the borders of the political community, one of the most significant forms of coercive political power in the modern world. From an agonistic perspective, the legitimacy of political systems is rooted in radical pluralism and exercise of popular sovereignty, and as such, this framework of exclusion would need to be re-considered. This ultimately means providing agonistic political spaces for those “outside the circle of who ‘counts’ [and who] cannot make claims within the existing frames of claim making” (Honig, 2001b, p. 101). While this would not rule out the exercise of power against political outsiders, it would offer the political communities an opportunity to engage those “whose contending identity gives definition to contingencies in [our] own way of being” (Connolly, 2002, p. 179).

The question remains however as to what an agonistic approach can do to resolve the inherent conflict between universalism and particularism we encounter in Rawls’s approach to migration. However, this would be to mis-frame the issue. Agonistic conceptions would not advance a “resolution” as such, but rather a commitment to democratically reworking and revising previous

¹⁹ Though there are fundamental theoretical variations and divides in recent agonistic democratic theory, I do not engage them here, focusing rather on shared points of agreement and what agonistic pluralism can offer to international theory. For helpful preliminary discussions of these divergences see Deveaux, 1999; Wenman, 2003a, 2003b; Schaap, 2006, pp. 262-272; Mouffe, 2007; Shinko, 2008, pp. 480-488.

resolutions with regard to membership within the political community. As one recent commentator succinctly put it, agonistic pluralism forces democratic actors to “relinquish all claims to finality, to happy endings” (McManus, 2008, p. 513). Precisely because of this abandonment of finality, I will suggest that agonistic democratic theory offers us three valuable critical insights in our thinking about international migration which Rawls cannot. First and foremost, an agonistic approach to citizenship engages the paradoxical and contradictory foundations of citizenship as a constitutive and productive tension, rather than as a “problem” to be transcended or expunged from our analysis altogether. Second, an agonistic approach would draw attention to the ways in depriving migrants of the right to frame discontent in their own terms is not simply a fact of the contemporary international system, but a contingent reality of the existing system which could be altered. Third and lastly, an agonistic framework recognizes that exclusion is an unavoidable element in the constitution of any political community, yet it provides us with a framework of radical pluralism by which to legitimate and continuously renegotiate the terms of that exclusion.

THE PROMISE OF AGONISM:
BEYOND UNIVERSALISM AND PARTICULARISM

In relation to citizenship and migration, an agonistic approach would dispense with the idea that we should seek an enduring, consensus-driven “balance” between our universalist and particularist commitments or the idea that the citizenship ought to be understood as the ascendancy of either the universal or the particular. Mouffe writes,

The logic of democracy does indeed imply a moment of closure which is required by the very process of constituting ‘a people’. This cannot be avoided even in a liberal-democratic model; it can only be negotiated differently. But this in turn can be done

only if this closure and the paradox it implies, are acknowledged (2000, p. 43). From an agonistic perspective, the best we can hope is to keep these competing principles open in terms of our theory, our policies, and our institutions, which in turn compels us to foster a greater sense of “contestability” in the negotiations between these paradoxical underpinnings.

Agonistic approaches to citizenship would abandon the notion that the underlying normative foundations of membership in the political community can be united under some unifying and harmonious principles, ideals or identity. The ideas of fragmentation and loss of unity are often invoked in discussing contemporary citizenship, yet agonists resist the appeal to pre-existing unity that such notions tend to imply²⁰. Connolly describes the dilemma of late modern times as one in which “intensive pressure for unity, consensus and normality manufactures new abnormalities, to which idealists of unity then respond by [...] demanding more unity” (2002, p. 172). In this sense then, the agonistic critique is directed at both universalist and particularist conceptions of the political community as they occupy two sides of the same coin.

Both seek closure, and each perspective “takes itself to be the true identity deserving hegemony” lacking adequate appreciation for the aspects of contestability and undecidability which are packed within modern liberal democratic citizenship (Connolly, 2002, p. 172). The normative tension at the heart of citizenship can never be overcome or fundamentally resolved, as an examination of Rawls’s international theory ably demonstrates. However when we blunt or dampen the democratic energies emerging out of this constitutive tension we risk the creation of what Honig calls “remainders”. That is, we fool ourselves into thinking, that “each solution is rational and justifiable, unmarked by power,

²⁰ Often referred to as the “decline-of-citizenship”, this idea has been expressed by a diverse group of scholars. See Walzer, 1983, 1992; Schuck & Smith, 1985; Jacobson, 1996; Sassen, 1996, 2002, 2007; Schuck, 1998.

violence or tragedy”, a sleight of hand which negates the living reality of those who exist outside the warm confines of political membership (Honig, 1993, p. 127).

THE PROMISE OF AGONISM—RE-CONCEPTUALIZING
CITIZENSHIP AND POLITICAL VOICE

However, this destabilization of the normative foundations of citizenship is of little consequence absent institutions by which those most deeply affected by the politics of membership have an opportunity to articulate the ways in which these issues impact them and contribute to the ongoing negotiation of our approach to migration and citizenship. Recent accounts of the “disaggregation of citizenship rights”, which focus on the “un-bundling” of the civil, political and social rights of citizenship from the formal status of citizenship, have risked over-emphasizing the ability of “outsiders” to advance claims upon the state²¹. In practice, the tendency in most recipient societies is one of volatile shifts in the rights and benefits accorded to non-citizens, precarious categories of membership, coupled with little to no opportunity to register democratic discontent with such uncertainty.

The existing framework of national citizenship in the most recipient societies does not require any real justification be made to non-citizens facing expulsion, which, as Abizadeh (2008) notes is one of the most significant forms of coercive political power in the modern world. From an agonistic perspective, the legitimacy of a political system is rooted in an expansive sense of pluralism and the exercise of popular sovereignty, and as such, the current framework of exclusion would need to be re-considered. As Bonnie Honig writes, this ultimately means providing agonistic political spaces for those “outside the circle of who ‘counts’ [and who] cannot make claims within the existing frames of claim making”

²¹ See Cohen, 1996, 1999; and Benhabib, 2002, 2003, 2004, 2005, 2006.

(2001b, p. 101). While this would not rule out the exercise of power against political outsiders, it would offer the opportunity to engage those “whose contending identity gives definition to contingencies in one’s own way of being” (Connolly, 2002, p. 179). In short, an agonistic conception would force us to fundamentally reconsider and potentially reform the boundaries of a Rawlsian framework of the political community, both in terms of claim-making and democratic participation.

It would be erroneous to claim migrants and those who exist between political communities have no-one who speaks on their behalf. The heated political debate regarding migration has no shortage of activists, sympathetic elites, and ethnic communities who lobby on behalf of these vulnerable individuals. However, an agonistic approach would draw attention to the ways in which depriving aliens of the right to frame discontent in their own terms is morally questionable. Ultimately, migrants who want to advance rights claims or protest their situation confront a pervasive discourse which increasingly perceives of them as economic drain and security threat, elements of which find their way into the more particularistic aspects of Rawls’s international theory. Migrants possess very few channels by which to respond to that discourse with a narrative of their own making.

Finding the space for such democratic engagement need not necessarily mean a complete overhaul of contemporary liberal-democratic political institutions. Following Goi (2005), agonistic spaces for non-citizen political voices could be achieved by constructing venues for contestation alongside existing political institutions, characterized by inclusion, contestability, and with some loose connections to existing decision-making structures. The trouble with Rawls’s restrictions on immigration is the way in which they rely so heavily on perceptions of threat, which recent history has shown tend to be vary widely, often with little relation to the tangible costs and dangers associated with migrant populations. The negative identities and identifications thrust upon non-citizens are by no means stable. However, the

danger is that, “in the absence of resistance to them, they could be stabilized” (Honig, 1993, p. 15). To the extent that venues for contesting such characterizations remain under-developed or nonexistent, we cannot expect the constructed identities which emerge in this debate to always be consistent with pluralistic or democratic values.

THE PROMISE OF AGONISM—TOWARDS RADICALLY
DEMOCRATIC POLITICAL BOUNDARIES

Lastly, agonism offers a more defensible position regarding exclusion from the political community. Agonism’s openness guards against the dogmatic assertions of either universalism or particularism which are ill-equipped to deal with the realities of immigration driven by complex social, economic and political forces. Agonistic conceptions explicitly reject “pluralism without boundaries” or a “politics which simply dismantles the territorial state” (Connolly, 1994, p. 31). Mouffe goes so far as to argue that conceptions of the political which claim to be rooted in the fundamental moral worth of every human being, such as cosmopolitan approaches to international justice, “far from being a sign of political maturity [are] the symptom of a void that can endanger democracy” (1993, p. 5). Agonism forces us to pay attention to the “constitutive outside” of the prevailing order, the acts of exclusion which enable the political to exist, an element which both Rawls and cosmopolitan thinkers tend to ignore in their theories. Yet while agonistic conceptions accept that exclusion must occur, especially with regard to the boundaries of the political community, this is coupled with an embrace of the “interruptions” made by migrants and non-citizens who destabilize our notions of what citizenship and membership in the political community ought to represent.


SOME CONCLUSIONS AND THE TASK AHEAD

Rawls's extension of his domestic theory to the international realm, *The Law of Peoples*, has had a significant impact of contemporary of political theory and has produced a flurry of scholarly activity. Yet, a crucial dilemma in modern international politics—the cluster of immigration, citizenship, and migration rights—is largely neglected in Rawls's work. The argument laid out here has been that a framework of agonistic democracy holds a more realistic and sustainable alternative to Rawlsian theory in negotiating conceptions of migrant rights and developing an approach to membership in the political community. This framework calls upon us to “discard the illusion of a possible reconciliation of ethics and politics” and “to come to terms with the never-ending interrogation of the political by the ethical [as]...the only way of acknowledging the democratic paradox” (Mouffe, 2000, p. 140). Only by dispensing with notions such as the possibility for societal consensus, a vision of deep political unity, and shared cultural values, and the notion that the structural forces causing immigration will simply erode, can we begin to make sense of this issue. This analysis has offered an account of the inadequate or undertheorized elements of Rawls with regard to migration as rooted in the paradoxical normative foundations of liberal democracy itself. In place of the outright denial of this originary clash of principles, or attempts at a consensual middle ground, I have laid out the rudiments of an understanding of these issues as informed by recent insights from agonistic pluralism. Such a conception offers us a means to constructively engage the particularist-universalist foundations of our political communities, confront and address deficiencies of democratic voice, and develop democratically defensible methods of exclusion and marginalization which remain open to revision and articulation.

The task ahead clearly lies in engaging in more than agonistic critique of international conceptions of justice, but articulating

a clear blueprint of the institutions and practices which would need to emerge in order for an agonistic vision to come into being within contemporary societies. Honig has suggested that such an agonistic conception of immigration politics might include, at a minimum, “[an insistence] on the inclusion of im(migrants) in democracy’s national future, while also pressing for the symbolic and institutional denationalization of democracy at the same time” (1998, p. 18). However, ultimately questions such as how to reconceptualize democratic spaces and how to reformulate our understandings of the political community in our present age, even within agonistic pluralism, remain under-theorized. As others have noted, laying out with greater specificity the societal and institutional pre-requisites necessary for agonistic politics ultimately remains the critical “next step” (Goi, 2005; Howarth, 2008; Owen, 2008).

In closing, it is important to note that such a conception ultimately resides within the realm of the “perhaps”, the word which “loudly proclaims a lack of certainty now and quietly suggests improved prospects for [...] tomorrow” (Connolly, 2002, p. 221). The alternative conception offered in closing here is less a plan of action, and more a challenge to radically rethink our conceptions of boundaries, identity, and the fixed and enduring nature of our political communities. Furthermore, the critical edge of this agonistic account calls upon us to imaginatively confront the legitimacy of our categorization of aliens as somehow outside the realm of who matters and who is worthy of democratic voice. Nevertheless, the issues addressed here remain rooted in our concrete political realities insofar as we will be increasingly confronted with such questions in the near future and they will require pragmatic, everyday solutions. The ability of such solutions to satisfy principles of inclusion and democratic legitimacy will depend on our willingness to step into the realm of the political imaginary and create, sustain, and valorize a “politics of the perhaps”. We must not neglect this challenging task if we are to

deal with the complex dynamics of international migration at the outset of the 21st century and avoid thinking, theorizing, and acting with eyes wide shut. 

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