

# REPLY TO JOCELYNE COUTURE

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Kai Nielsen

I

Jocelyne Couture has given us a rich and sophisticated conceptualization of global justice. She does not run with the pack; she does not accept what, with many philosophers, able and otherwise, has become in philosophical circles common wisdom. Yet she remains deeply informed by this dominant orientation. Put otherwise, a broadly Rawlsian-Senian conception concerning justice has become the dominant paradigm, at least in Anglo-Saxon philosophical circles. Couture is deeply informed by this tradition, and is in certain ways sympathetic, yet she remains a dissenter going her own way in a systematic and creative fashion. She focuses here on John Rawls's *The Law of Peoples*, offering (1) an understanding of it opposing the often-held view that here Rawls has abandoned his egalitarianism and liberalism and has taken a conservative turn, (2) a critique of the view of many Rawlsians (including Charles Beitz, Thomas Pogge, and David Richards) that we can and should extend Rawls's principles of domestic justice (including prominently the *difference* principle) to the global arena, (3) a distinctive interpretation of *The Law of Peoples*, and (4) in a basically Rawlsian spirit, a critique of Rawls himself, arguing persuasively that we should have (as the very logic of Rawls's own position requires) a more egalitarian account than Rawls has of both the relations between *peoples* and the condition of *people* (individuals) worldwide. She is not unsaying in (4) what she says in (1). She is saying that the underlying logic of Rawls's position (including *The Law of Peoples*) requires (or at least allows) more egalitarianism than he actually claims in *The Law of Peoples*.

We should seek, Couture has it, to bring about a world of social and political equals: equal peoples free from domination by other peoples and equal

people (individuals) free from domination by ruling political elites and/or de facto ruling entrepreneurs (what I would call the ruling classes), where each person is to count for one and none for more than one and where the life of everyone matters and matters equally—a robust egalitarian ethos far from the actual world that we know and that so arouses our indignation and sometimes our despair.

Couture's *interpretations* are distinctive and unusual and her *arguments* are original and challenging. As with anyone who breaks with tradition and breaks new ground, there are problems of comprehension for the reader. It is difficult (*perhaps* impossible) to say anything radically new using the old vocabulary. Couture has made a compromise: Her account is in part in a new idiom and in part in the received idiom. Couture's work poses problems similar to those we analytic philosophers experienced when we first read Wilfrid Sellars—an analytic philosopher who, perhaps because of his philosopher father, was soaked in the history of philosophy—who seemed thoroughly opaque to many of us; but if we persisted (trying to unblock our minds) we discovered deep and innovative things in Sellars's work that pushed along the analytic tradition and philosophy more generally. Think, for example, of what he said about what he called "the myth of the given." Since then analytic philosophy hasn't been the same. A similar, more contemporary example is in the work of Robert Brandom. I heard through the grapevine that there was this genius of an analytic philosopher, Robert Brandom, a former student of Richard Rorty and deeply influenced by Sellars, going in an even more holistic direction than Sellars or Rorty and influenced (analytic philosopher that he is) by G. W. F. Hegel. I picked up his major book and avidly read a few pages, and was baffled and frustrated. As I put it to myself, "If anyone is going to write like that, I'm not going to read him." But I felt that way initially about Sellars, too, and I persisted and learned. Some of the reviews of Brandom were almost as dismissive as I was, but by no means all. And Brandom is becoming more and more seriously discussed in the literature. Moreover, many philosophers I admire think he is the next best thing after white truffles. So, in spite of his style, he is probably worth careful and repeated study.

I would say the same thing—though for a different domain of philosophy—for Couture. She, like Sellars and Brandom, writes densely, though not as densely as they. However, to write densely need not be to write obscurely. Martin Heidegger writes densely *and* obscurely; Sellars *only* writes densely. Couture writes densely but not obscurely. Careful reading and rereading of her work yields *clarity*. Study of Heidegger, by contrast, does not yield clarity; if it rewards, the rewards are more like those gained from reading or seeing Samuel Beckett performed. One should, I am claiming, study and reread Couture's insightful essay. But it is so compressed that it needs to (and should be) recast into a short book.

## II

If I were to write a commentary and critique of Couture's account I would have to go through her essay passage by passage and analyze and comment on each. That would require an essay at least as long as hers, and I have neither been allotted the space nor the mandate (which I take it is to respond to my critics). Couture says nothing of my work. But, with a more radically egalitarian twist and a Marxian orientation, I am basically in the Rawlsian-Senian mold about justice and part of the tradition that Norman Daniels, Thomas Scanlon, Samuel Freeman, and Joshua Cohen have developed. So I am one of those, she believes, profoundly mistaken defenders of *distributive* justice where it is extended globally.

I will first say that I don't see justice in distribution as having the *ubiquitous* role that Couture attributes to it for many "Left Rawlsians." It obtains neither in my account nor in Rawls's (early and late), nor in Daniels's, Scanlon's, Freeman's, Pogge's, Joshua Cohen's, or Sen's accounts. Take Rawls's account: the difference principle as a plain distributive principle never stands alone but is deployed in conjunction with the equal liberty principle and the fair equality opportunity principle, neither of which is a distributive principle of justice. And they both (on Rawls's account) are in lexical priority to the difference principle. These principles always work together in spelling out what, everything considered, should determine a just basic structure in a liberal society. Moreover, in none of these accounts can we reasonably appeal to economic equality *independently* of political equality or vice versa; in none of them can an economic base, *independent* of politics, be appealed to in order to determine economic equality or economic justice. Politics and economics, at least as far as normatively characterizing society is concerned, are inextricably entangled. (This is by now accepted by many Marxists as well.)

Rawls does claim, and rightly, that we cannot ignore considerations of efficiency in determining what a just social order would be like. But "efficiency" does not have just one use, and an account of efficiency should not be one of "mere efficiency" spelled out in narrowly economic terms.<sup>1</sup> Again both political and other social considerations as well as economic ones are used in conceptualizations of efficiency relevant to justice.

## III

"Justice as fairness" (Rawls), "justice as reciprocity" (Rawls), and "justice as impartiality" (Brian Barry) are good slogans. "Justice as distribution," "justice as utility," and "justice as entitlement" are not. The latter three cannot be plausibly construed as gesturing at the *whole* of justice, while the former three can. Moreover, from a normative point of view, we are not just interested in distribution, but in a *just* or *fair* distribution. An account could not be considered an account

of distributive justice if it were not concerned with fairness of the distribution, and not just with the efficiency of the distribution or how it benefits the distributors. Global resources as a matter of fact are distributed in a way largely determined by rich capitalist countries of the North, or, more accurately, by the bosses in these countries, and the resultant distribution is grossly unjust.<sup>2</sup> Yet it is still a distribution, but a distribution that does not even aim to be just. The bosses, except as a bit of *ideology*, are not concerned with justice. People genuinely aiming at distributive justice, by contrast, are concerned with a fair distribution. Often in thinking about justice we are thinking of how the benefits and burdens should be distributed in a society or in the world. But that, either in the domestic sphere or in the global sphere, is not the whole of justice. There are questions, as Rawls stressed, of fairness of equal opportunity. Rawls, that is, sought not just opportunity open to talents but fair equality of opportunity. Fair equality of opportunity only indirectly has to do with distribution, and there are also (and distinctly) questions of the establishment and protection of basic liberties. The right to protection from violence or to speak your mind should obtain for all; it is not a matter of how to distribute a benefit and who is to get more or less of that. The same is true of fair equality of opportunity. And, though they are determined by our conception of justice for the basic structure, we have entitlements. Within that basic structure what an individual is entitled to is not a distributive matter. If this is my house I have a right in normal circumstances to enter it freely and you do not. That is my entitlement and not yours. If I live in a capitalist society I have a right to acquire private productive property. If I live in a socialist society (except in certain strictly limited ways) I do not. These are different entitlements determined by different basic structures. But within those structures who has an entitlement is determined by the basic structure and only indirectly by questions of distribution.

So while justice as fairness may be a formula for the whole of justice, justice as distribution cannot be. But this does not at all mean that there is nothing that is reasonably called distributive justice, even global distributive justice.

## IV

So here my differences—at least at first response—with Couture are over such matters. I agree with Couture about many matters, including centrally that the best conception of justice would be a wide conception of justice—indeed a global conception—that requires an “egalitarian wealth distribution *among* peoples and also *within* peoples” (italics mine). I would go so far, as I expect she would, as to say that in the world as it is and will continue to be we cannot even have domestic justice without global justice.

I am inclined to say of her what she says of Thomas Pogge (prefacing her very acute and important criticisms of him), namely, that she agrees with the *substance* of his proposals for global justice but disagrees with his justification

of them. I am inclined to think this about the rationale for many of Couture's proposals, though I would not go quite so far as to say I disagree with her rationale as to say I am skeptical about some of it. But I agree with the substance of most of her claims. However, I will repeat what I said initially, namely, that Couture's account is a probing, original, and sophisticated one and that I may have misread her; without an adequate grasp of her account, I may have made criticisms that do not go to the heart of the matter. That often happens to critics who have to confront something that is genuinely new. (Think, for example, of A. J. Ayer on Ludwig Wittgenstein.)

In first thinking about Couture's essay I missed the important point—a point that may not be obvious on a casual reading—that her dismissal of distributive justice only holds for the global domain and not on the domestic level. For her, as for most of us, a central part of domestic justice, though not all of it, is distributive justice. This is a point of first importance for it shows (if correct and if she is on the mark concerning global justice) an important difference between global justice and domestic justice. (This, note, would go some way to explain Rawls's *The Law of Peoples*.)

Why cannot there be distributive justice at the global level? Because distributive justice, as Couture has it, "works entirely within and in virtue of a preexisting scheme of distribution" and there is no such scheme of distribution at the global level. There are no such institutions in place globally and there aren't the institutions or the background consensus globally to make the construction of a pattern of distribution rooted in a scheme of distribution possible. To have, Couture believes, such a system of distribution we would have to have antecedent interactions between peoples, and though we have a globalizing world we do not have a completely globalized world. There may be some corners of the world, for example Sierra Leone, Niger, and some of the small countries in the Pacific Ocean, that are not worth exploiting by the multinationals. They can be left to stew in their own juice as far as the attention of the richer and more powerful peoples (or more accurately their multinationals) are concerned. And even if that empirical assumption is false and there is no place on earth too remote or too small for capitalist attention and exploitation, it still could have been the case that there were some peoples who were so ignored and did not so interact with other peoples. Couture's point is that even without these conditions of interaction necessary (on her reading) for there being *distributive justice*, questions of global justice between peoples would still be intact. If these ignored peoples were in conditions of poverty, ignorance, and severe inequality while other peoples were well situated, there would be a case for redistribution. This would be the case even for well-situated peoples who had not harmed them and even could not have harmed them simply because there were no antecedent relations between them. The situation with such inequalities even in such a relationship would still be unjust. Rich peoples would have a duty of justice. (Would it be only a *positive* duty or would it be a *negative* duty as well? Or would that distinction not apply here?) In such a situation, whether

they felt moved to help peoples so impoverished only from feelings of compassion or of charitable benevolence, and whether or not they felt the call of duty at all, they would still have a duty of justice to help them. They have not wronged them but they would wrong them in not helping where they could help them. Moved or not by such feelings of compassion or benevolence, they would have duties of justice to help them and to cut down such inequalities. There would *perhaps* be no *mutual* advantage involved between peoples so situated or even mutual reciprocity, but the situation would still be unjust and they would have a duty to right it if they could.

We should not think about whether or not there are antecedent connections between peoples in our relationships with what Rawls calls burdened societies. In thinking about what justice requires in our relations to them or with any peoples—or for that matter people (individuals)—our concern should be, as Couture puts it, to alleviate “suffering and poverty wherever they exist and whether or not we bear responsibility for it.” Unlike Pogge, in thinking about either other peoples or people, our focus should not be on whether we have harmed or wronged them and thus must compensate for our injustice, but on whether they are in poverty and suffering and whether we can as peoples of richer societies do something to overcome or at least alleviate and lessen their poverty and suffering. Moreover, we have here a duty to do so. This is particularly so if we are egalitarians and believe that the life of everyone matters and matters equally.

However, all moral wrongs, even grave moral wrongs, are not injustices. And all duties are not duties of justice. Suppose society A with its distinctive peoples and society B with its distinctive peoples are both self-sufficient and moderately well-off and with no antecedent connections or new ongoing connections with each other. In society A an earthquake occurs that devastates A. B somehow hears about it and has the capacity, without any great sacrifice to itself, to help, but does nothing to help. B in that case, to put it mildly, acts badly, indeed very badly, but does B act unjustly?<sup>3</sup> Not if justice and injustice are necessarily distributive justice construed as Couture construes distributive justice. For if we think of justice *as* distributive justice and construe “distributive justice” as she does, then justice must have some antecedent connections. But B does not have such connections with A. Still, B can be said to be acting unjustly because it can be assumed, if we are even remotely egalitarians, that among peoples and people as well there is a tacit recognition of mutual reciprocity that requires us when some disaster strikes to come to the aid of the stricken society or people whether or not we have had any antecedent relations with them. (Are we just being sentimental here or do we recognize in our common fragility and vulnerability something we owe to each other?) Moreover, the very awareness that peoples and people can be expected in such circumstances to come to the aid of each other is itself something of a mutual advantage for peoples and people as well. If, as with society B, there is a failure to act according to those expectations, it is not only that something morally wrong has happened but that what was done—

in this case, not done—was unjust as well. B did not live up to an important expectation. B did not act in a mutually reciprocal manner.

It might even be argued that this mutual reciprocity and mutual advantage might be taken as grounds for saying that here we can have distributive justice without a preexisting scheme of distribution. If, in a world with an egalitarian ethos, when people stand in need of assistance and others can provide that assistance without committing financial *hara-kiri*, then justice requires that assistance rooted in these mutual expectations.<sup>4</sup> Couture defends both such redistributions and defends as well their being of an egalitarian nature, only she doesn't want to call it distributive justice. Well, it isn't given her *stipulations* concerning what is to count as "distributive justice," but why accept such strong stipulations? In neither the domestic case nor the global case is distributive justice the whole of justice. Thus we cannot correctly speak of justice *as* distributive justice. But in both cases we, if we get justice, get distributions and redistributions that are fair and fair because they at least have (pace Robert Nozick) some very general patterns. In a just world poor societies can expect assistance from rich societies, quite apart from considerations of compensation, and that (if this can be done) their basic needs will be met. Moreover, there is the implicit recognition of mutual reciprocity and the value of mutual advantage under fair conditions. This meets the conditions that Couture would have for an egalitarian world and there is no good reason for not calling it *global distributive justice*.

Of course, our world is not even remotely like that. But Couture, as is Rawls and as I am *here*, is doing *ideal* theory. We are seeking to get the (to use Wittgenstein's phrase) most perspicuous representation of what we substantively agree on. *Perhaps* that is pointless but that is a different matter.<sup>5</sup>

## NOTES

1. Allen Buchanan, "Secession, Self-Determination, and the Rule of International Law," in *The Morality of Nationalism*, ed. Jeff MacMahan and Robert McKim (Oxford: Oxford University Press, 1997).

2. Just who the bosses are is disputed. I would say it is not just the political elites or the big capitalists but the political elites and the big capitalists (an imperfectly international class) working in cooperation principally in the interests of the latter.

3. I am not sure of my intuitions here. Is it a matter of injustice or just of crass and crude indifference to the lives of others? It surely is the latter, but that does not preclude it from being the former as well. If it is not also the former, Couture's position faces some difficulties. But also keep in mind that a practical but morally concerned person could say, however unjust or just the wrongness of human moral indifference, the crucial thing is that such behavior ought not to be tolerated.

4. This presupposes a commitment to equality, something both Couture and I share. But why care about equality? It is rooted in (a) our respect for persons and (b) recognition of the arbitrariness of social roulette and genetic inheritance.

5. See here n. 3.