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The TRIPS Agreement and John Rawls's Theory of International Justice

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Abstract

The topic of this article is how the theory of international justice developed by political philosopher John Rawls in the mid-1990s can be applied to analyzing TRIPS, the Agreement on Trade-Related Aspects of Intellectual Property Rights, and its drafting process. The purpose here is to construct a point of view for the critique of TRIPS. Rawls's theory of international justice was primarily developed in his *The Law of Peoples* but also bore imprints from the previous works, including *A Theory of Justice* and *Political Liberalism*. The author of this article has intended to apply several concepts proposed by Rawls in these works, including the second stage of the original position, the veil of ignorance, *modus vivendi*, and overlapping consensus. Many issues relating to TRIPS' drafting process are in effect the questions that *Political Liberalism* has intended to answer; these issues include the fundamental disagreement over the function of an international intellectual property regime and the disproportionate burdens placed on the developing countries. This article concludes by suggesting that a process for reaching an overlapping consensus over the goal of international intellectual

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property should be developed, probably, within the institutional structure of the WTO.

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