

Being Liberal Abroad: An Elaboration and Defense of Rawls's Argument for Toleration¹

Margaret Jenkins

Rawls's aim in writing the *Law of Peoples* was to consider how the content of the Law of Peoples, which he defined as “a particular political conception of right and justice that applies to the principles and norms of international law and practice,”² might be developed out of political liberalism. Since Rawls first outlined a preliminary version of the *Law of Peoples* at the Oxford Amnesty lectures in 1993,³ his theorizing on international justice has faced intense criticism. As Rawls extended political liberalism to the international sphere, many felt he lost liberalism somewhere along the way. One of the central liberal aspects lost was the modeling of individual persons in the original position—an aspect of Rawls's methodology which shaped the principles of justice he developed for a “self-contained national community” in the *Theory of Justice*.⁴ Rawls's justification for using peoples rather than persons in the global original position was based on a need to tolerate what he termed “decent nonliberal peoples.” Many liberal theorists took issue with this, however, arguing that Rawls failed to explain why such peoples should be tolerated, and yet at the same time, allowed his argument for toleration to dominate his theory, leading to the compromise of important liberal values. To many,

¹ Many thanks to Tamara Metz, Alan Patten and Nancy Rosenblum for their guidance and encouragement, and to the audience at the Harvard Political Theory Colloquium where a version of this paper was presented in December 2004. I'm also grateful to the Social Sciences & Research Council of Canada for a Doctoral Fellowship. All errors that remain are my own. This draft was prepared for the Canadian Political Science Association Meeting, June 3rd, 2005; comments welcome at jenkins@fas.harvard.edu

² John Rawls, *The Law of Peoples*. (Cambridge: Harvard University Press, 1999), p. 3.

³ The lecture was subsequently published in revised book-form in 1999.

⁴ John Rawls, *Theory of Justice*. (Cambridge: Harvard University Press, 1999), p. 401.

the *Law of Peoples* came across as the misfit in Rawls's body of work, and even as contradictory of political liberal ideals.

This paper offers possible answers to puzzling aspects of Rawls's international political theory by contextualizing Rawls's *Law of Peoples* in his broader political liberal liberalism. The first contribution this paper seeks to make is therefore exegetical. I argue that Rawls's international and domestic political theories are coherent, and more similar than often thought. The *Law of Peoples* in many respects brings Rawls's political liberalism to the surface and reveals what has been there all along—the extent of the political in Rawls's liberal theory.⁵ Although I believe there are problems with the *Law of Peoples* and that some of them are significant,⁶ I suggest that critics have in some important respects got the problems wrong. In particular, the peoples vs. persons debate⁷ has been framed as having cosmopolitans on one side arguing that persons should be the ultimate unit of concern for theorizing, and Rawls and others on the “peoples” side arguing they should not. The interpretation of Rawls offered by this paper counters the view that Rawls has given domestic societies “an ethical status separate from that of their members.”⁸

Underlying Rawls's *Law of Peoples* is a theory of political change. Even if we believe, as Rawls clearly does, that the world would be a better place if it was comprised

⁵ By political, I'm referring to the freestanding nature of Rawls's theory of justice. As he explains: “A political conception of justice is what I call freestanding when it is not presented as derived from, or as part of, any comprehensive doctrine. Such a conception of justice in order to be a moral conception must contain its own intrinsic normative and moral ideal” (John Rawls, *Political Liberalism*. (New York: Columbia University Press, 1996), p. xliv.) The main point is that principles of justice at all levels must be those that individuals can accept, even as members of nonliberal political projects (as long as these projects meet criteria for decency). I discuss this in more detail in subsequent pages.

⁶ I do not go into detail about these problems in this paper. They are briefly discussed in the conclusion.

⁷ A debate concerning the original position in particular, and the fundamental unit for theorizing on international justice more generally.

⁸ Charles R. Beitz, “Rawls's Law of Peoples,” *Ethics*, 110, 4 (July 2000), p. 683.

solely of liberal democratic peoples, the question remains of how rightly to go about achieving such an ambitious task, particularly in a world where many might not believe in such a vision for a wide range of reasons. Rawls unequivocally rejects the idea of using political power to entice, direct or instill liberal reforms in areas of the world that meet certain standards of “decency”. In addition, Rawls believes there are *moral* reasons for tempering the liberal character of the vision itself (in Rawls’s words, “the realistic utopia”) to ensure the aims of the international order are acceptable from the perspective of the many different liberal and decent nonliberal political doctrines that make up our world.

As is evident from the preceding paragraph, one of the main objectives of this paper is to clarify Rawls’s justification for placing peoples in the global original position, and to explain how this decision is tied to his argument for toleration of nonliberal peoples. I point out where I believe Rawls may have been misinterpreted, and I offer a reading of the *Law of Peoples* that is firmly rooted on liberal ground. My second objective builds upon this exegetical exercise. In addition to clarifying Rawls’s rather muddled explanation for placing peoples rather than persons in his global original position, I try to go beyond Rawls to further substantiate the liberal justification for a peoples-oriented approach to international justice theory. In particular, I explain why the “peoples” approach may defend the “ethical status” of persons to a greater extent than cosmopolitan theories.

In sum, this project: (1) clarifies divisions internal to liberalism regarding how international justice theory should be developed (which greatly influence the subsequent content of the theory); and (2) sharpens liberal justification for a peoples-oriented

approach to international justice theory. While the argument presented is abstract and theoretical, the issue being discussed concerns one of the most pressing real-world questions of our time—the limits of toleration in international affairs. In the current political climate, I believe it is essential to be precise about which nonliberal and religious political projects should and should not be tolerated and why. This paper argues, along with Rawls, that if certain basic rights and freedoms are satisfied in other countries, the use of political power to influence these peoples to adopt liberal reforms may not be liberal. Much remains to be settled, including the criteria a state must satisfy in order to enjoy sovereignty, and what respecting sovereignty even means (i.e. No coercive force? No tied foreign aid? No wrist-slapping diplomacy?). Rawls did try to work through specifics by detailing the criteria for decency, and by describing the hypothetical decent nonliberal Kazanistan (though all in a few pages). With respect to sovereignty, Rawls grouped all measures together that could be used to push decent nonliberal peoples in a liberal direction, and in one clean sweep declared them all off-limits. I have concerns with this and many others moves that Rawls makes in the *Law of Peoples*; clarifying such issues, however, is beyond the scope of this paper. The key question to be tackled is this: should liberal theorizing on international justice leave any room for nonliberal states or political projects? If it should, this has dramatic implications for how international justice theory is developed as Rawls himself discovered. The ‘toleration of nonliberal doctrines’ question is precisely where cosmopolitan, comprehensive and political liberals part ways.

The paper will unfold in five stages. I begin by elaborating Rawls’s argument for toleration of nonliberal peoples, and explain why this leads Rawls to place peoples rather than persons in the global original position. I then respond to the cosmopolitan liberal

concern that Rawls gives peoples “independent ethical significance” in his theory, and I discuss the connection between Rawls’s conception of “peoples” and the basic rights and freedoms of individuals. In the third section, I explore the liberal underpinnings of Rawls’s original position of persons, and discuss the limitations of this methodology for developing international justice theory. I push this discussion further in the fourth section by exploring Rawls’s aversion to coercive political power. Rawls’s view that principles of justice for a society should be those that members can “approve and endorse” has a strong influence on the *Law of Peoples* and political liberalism more broadly. In the final section, I examine why Rawls’s vision for international justice, his “realistic utopia,” consists of a world of well-ordered (decent nonliberal and liberal) peoples rather than liberal peoples and challenge the view that Rawls’s vision is a pragmatic reconciliation to an unjust nonliberal and nondemocratic world. I conclude the paper by pointing to problems with Rawls’s argument for toleration that remain even if the interpretation of Rawls offered in this paper is accepted.

1. Peoples in the global original position

For cosmopolitan liberals,⁹ Rawls’s extension of a liberal idea of justice to the international level is perplexing. One of the most puzzling aspects concerns Rawls’s decision to place peoples rather than persons in the global original position. Rawls believes that using a global original position of persons is inappropriate because “it

⁹From now on, I will refer to this position as “cosmopolitan.” By cosmopolitan liberal, I’m referring to a position characterized by the following three elements, which have been thought to be common to all cosmopolitan positions: First, the ultimate units of concern are human beings or persons rather than nations, peoples, family lines or other social groups. “The latter may be units of concern only indirectly, in virtue of their individual members or citizens.” Second, all human beings are equal, “the status of ultimate unit of concern attaches to every living human being equally.” Third, “this special status has global force. Persons

amounts to saying that all persons are to have the equal liberal rights of citizens in a constitutional democracy.”¹⁰ Cosmopolitan (and comprehensive¹¹) liberals, however, fail to see the problem: should we not construct a global theory of justice beginning with the premise that all human beings are entitled to equal human rights? One critic went so far as to say that Rawls’s methodology was quite un-Rawlsian: anyone committed to “Rawlsian (or indeed, any other liberal) conception of domestic justice should want the delegates to any global original position to be conceived as representatives of persons rather than peoples.”¹²

A cosmopolitan approach to the Law of Peoples would “begin by first taking up the question of liberal cosmopolitan or global justice for all persons.”¹³ The method used to construct global principles of justice would be similar to that employed by Rawls in the domestic case. The global original position would be composed of persons rather than peoples, and the conception of persons would be the same as the one Rawls models for liberal democratic societies: individuals would have two moral powers (reasonable and rational), and would be considered free and equal.¹⁴ A veil of ignorance would eliminate contingencies such as religion, philosophical beliefs, socio-economic factors and natural

are the ultimate units of concern for everyone—not only for their compatriots, fellow religionists, or such like. See: Thomas Pogge, “Cosmopolitanism and sovereignty,” *Ethics*, 103 (October, 1992), p. 48.

¹⁰ Rawls, *The Law of Peoples*, p. 82.

¹¹ Political liberalism, unlike the “comprehensive liberalism of Kant or Mill...affirms political autonomy for all but leaves the weight of ethical autonomy to be decided by citizens severally in light of their comprehensive doctrines” (John Rawls, *Political Liberalism*, p. 78). Comprehensive liberals argue that liberal values such as autonomy and equality can be morally defended and therefore should be fostered more extensively throughout society, such as within cultural and religious associations.

¹² Thomas Pogge, “An egalitarian law of peoples,” *Philosophy & Public Affairs*, 24, 3 (1994), p. 211.

¹³ Rawls, *The Law of Peoples*, p.82.

¹⁴ The two moral powers are a capacity for a sense of justice and a capacity for a conception of the good. These are the basis of political equality both in comprehensive liberalism (Kant or Mill) and in Rawls’s political liberalism. “The basic idea is that in virtue of their two moral powers (a capacity for a sense of justice and a conception of the good) and the powers of reason (of judgment, thought and inference connected with these powers), persons are free. Their having these powers to the requisite minimum degree

talents. Rational persons in the global original position would then conceivably construct principles of justice similar to those selected in the domestic case—Rawls’s two principles of justice.¹⁵

Rawls argues that this method is flawed because it “simply assumes that only a liberal democratic society can be acceptable”¹⁶ “On this account, the foreign policy of a liberal people... will be to act gradually to shape all not yet liberal societies in a liberal direction, until eventually (in the ideal case) all societies are liberal.”¹⁷ Yet “without trying to work out a reasonable liberal Law of Peoples,” Rawls claims, “we cannot know that nonliberal societies cannot be acceptable.”¹⁸ One of Rawls’s first steps towards developing the Law of Peoples is therefore to try to conceive of a nonliberal society that liberal peoples might find reasonable¹⁹ to tolerate.

The reader has to judge whether a decent people... is to be tolerated and accepted as a member in good standing of the Society of Peoples. It is my

to be fully cooperating members of society makes persons equal.” John Rawls, *Political Liberalism*. (New York: Columbia University Press, 1996), p. 19.

¹⁵ The two principles of justice stated in *Political Liberalism* (and in this footnote) differ from that given in a *Theory of Justice*. As Rawls explains, the principles were revised for the Tanner Lectures on Human Values in 1982 largely to respond to objections by H. L. A. Hart. The amended principles are as follows: (a) “Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only these liberties, are to be guaranteed their fair value. (b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society.” John Rawls, *Political Liberalism*, p. 5-6.

¹⁶ John Rawls, *The Law of Peoples*, p. 82.

¹⁷ Rawls, *The Law of Peoples*, p. 82.

¹⁸ Rawls, *The Law of Peoples*, p. 83.

¹⁹ The word reasonable has special significance in Rawls’s work. In this sentence, it refers to the idea that members of a liberal peoples will not limit toleration only to those peoples who share their comprehensive liberal, or even political liberal doctrine. A reasonable person is one that is prepared to offer another terms of cooperation that the other can reasonably accept. “Note that “reasonably” occurs at both ends in this formulation: in offering fair terms we must reasonably think that citizens offered them might also reasonably accept them” (Rawls, *Political Liberalism*, p. xlv). Therefore, not only do peoples need to respect the freedom and equality of another peoples, but their own freedom and equality also needs to be respected. I will return to what this means given the interesting case of relations between nonliberal and liberal peoples later in the paper. At this point, what is important to mention is that Rawls believes that liberal peoples, when acting reasonably—that is, when willing to treat those who hold different doctrines, even nonliberal political doctrines, as free and equal—will come to the conclusion that nonliberal peoples who meet certain standards should be tolerated.

conjecture that most reasonable citizens of a liberal society will find peoples who meet these...criteria acceptable as peoples in good standing. Not all reasonable persons will, certainly, yet most will.²⁰

By toleration, Rawls means that these decent nonliberal societies would be treated as members of equal standing in the Society of Peoples and would not be coerced to adopt liberal reforms, or be subjected to economic, military or diplomatic incentives to change their ways.

To illustrate the type of tolerable nonliberal and nondemocratic society he has in mind, Rawls describes a hypothetical “decent hierarchical peoples” although he suggests that liberals would likely find other types of nonliberal societies acceptable as well.²¹ Hierarchical societies may assume many institutional forms, religious and secular, but the basic governing structure of all of them is “associationist”—individuals vote and participate in politics through various groups, and the government consults with these associations and takes their dissent seriously.²² A decent peoples’ conception of the person “does not require acceptance of the liberal idea that persons are citizens first and have equal basic rights as equal citizens.”²³ Instead, persons are viewed as responsible and cooperating members of their respective groups who recognize, understand and act in accordance with their moral duties and obligations as members of associations.²⁴

With respect to foreign policy, Rawls makes it clear that decent nonliberal peoples would not have aggressive aims towards other peoples. “Although its religious or other underlying doctrine is assumed to be comprehensive and to have influence on the structure of government and its social policy, the society respects the political and social

²⁰ Rawls, *The Law of Peoples*, 67.

²¹ For Rawls’s discussion of the criteria for decent societies, see Part II, Section 8 in *The Law of Peoples*.

²² Rawls, *The Law of Peoples*, p.72.

²³ Rawls, *The Law of Peoples*, p.66.

order of other societies.”²⁵ Decent societies would also be willing to offer fair terms of cooperation to others, and to honour these terms when assured that others will also.

Rawls outlines several domestic stipulations that would need to be satisfied by nonliberal peoples: (1) a rule of law would be in place that protects a core set²⁶ of human rights; (2) a system of law would impose *bona fide* moral duties and obligations on all persons within the people’s territory; and (3) there would be a “sincere and not unreasonable belief” on the part of judges and other officials who administer the legal system that the law is guided by a “common good idea of justice. Laws supported merely by force are grounds for rebellion and resistance.”²⁷ Dissent would be allowed by the government and would be permissible provided it stayed “within the basic framework of the common good idea of justice.”²⁸ Dissenters would operate within the philosophical doctrine of their society, basing their argument on the interpretation of its principles and texts.²⁹ In Rawls’s hypothetical society of Kazanistan, which he uses to illustrate his conception of a decent nonliberal society, dissent leads to important reforms when the judiciary agrees “that existing norms [can] not be squared with society’s common good idea of justice.”³⁰ For individuals who object to the common good idea of justice itself

²⁴ Rawls, *The Law of Peoples*, p.66.

²⁵ Rawls, *The Law of Peoples*, p.64.

²⁶ Rawls believes that the list of human rights he puts forward cannot be rejected as peculiarly liberal—conceivably, these rights could be agreed to by both decent nonliberal and liberal peoples. The core set of rights, which Rawls terms human rights (reflecting their universality) are as follows: the right to life (subsistence and security), to liberty (freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought), to personal property, and to formal equality (similar cases to be treated similarly). See: Rawls, *The Law of Peoples*, p.80, p. 65.

²⁷ Rawls, *The Law of Peoples*, p.66.

²⁸ Rawls, *The Law of Peoples*, p.72.

²⁹ A gender equality and women’s rights group in Kazanistan would conceivably have a mandate similar to the real-world Muslim Women’s League (MWL), an American organization that is “working to implement the values of Islam and thereby reclaim the status of women as free, equal and vital contributors to society.” The MWL believes that “in order for change to occur, Islam must be the driving force from which all of our ideals of freedom, justice, respect and honor are derived.” <http://www.mwlnusa.org/about.html>

³⁰ Rawls, *The Law of Peoples*, p. 78.

which serves as the foundation of their society's political life, the only option is to emigrate, which is why Rawls believes it is "essential that a hierarchical society allow and provide assistance for the right of emigration."³¹

Details on life in Kazanistan are rather sparse, but the majority of references suggest that individual members of decent nonliberal peoples endorse their societies' political life. Members of a decent peoples (not just the rulers and government officials) understand their fundamental interests through the guise of the comprehensive doctrine at the foundation of their political and social institutions. The system of law specifies a scheme of cooperation and individuals understand their role in this scheme and see it as "fitting with their common good idea of justice."³² Individual members are united by "common sympathies"³³ and through "moral learning" come to "know the difference between right and wrong as understood in their society."³⁴ It is important to emphasize that in Rawls's conception of decent nonliberal peoples, laws are not administered by command or by force. Instead, members have acquired an understanding of these laws by growing up under and participating in their societies' institutions.

³¹ Rawls recognizes the practical limitations to the right to emigrate without the protected right to immigrate. However, he points out that many rights, such as the right to marry require more than just the right if they are to be fulfilled. "It takes two to make good on these rights." The implication is that other societies have an obligation to accept immigrants who are treated unequally in their countries of origin and wish to leave because of a lack of equal opportunity, or because they don't subscribe to their society's common good idea of justice because of religious or other reasons. See: Rawls, *The Law of Peoples*, p. 74.

³² Rawls, *The Law of Peoples*, p.66.

³³ Rawls explicitly states that the Law of Peoples begins with the need for common sympathies regardless of what the source may be. This condition holds for both liberal and decent peoples.

2. The ethical significance of peoples

As discussed in the preceding section, Rawls believed that going ahead with an original position of persons to construct international principles of justice was problematic because this method simply assumes that only a liberal democratic society can be acceptable. “We cannot know that nonliberal societies cannot be acceptable”, Rawls argued, without putting this question directly on the table. One of Rawls first steps in developing the Law of Peoples is therefore to consider whether one can conceive of a tolerable nonliberal and nondemocratic society.

Should the facts of history, supported by the reasoning of political and social thought, show that hierarchical regimes are always, or nearly always, oppressive and deny human rights, the case for liberal democracy is made. The Law of Peoples assumes, however, that decent hierarchical peoples exist, or could exist, and considers why they should be tolerated and accepted by liberal peoples as peoples in good standing.³⁵

Some may assert that there is no acceptable nonliberal society—even one where all members can be imagined as secure, fulfilled, supportive of the government and so on; or, it may be argued that a person cannot be truly secure or fulfilled or supportive if he is not free and equal in a liberal sense. I presume many liberals, however, would suggest, as one of Rawls’s most outspoken critics has, that “liberalism involves a commitment to tolerance and diversity that extends beyond the family of liberal conceptions...a world order would not be genuinely liberal if it did not leave room for certain nonliberal national regimes.”³⁶ If this is accepted, the question then becomes: what sort of nonliberal societies would liberals find tolerable? Indeed, this is the first question Rawls considers by exploring criteria for decent hierarchical peoples.

³⁴ Rawls, *The Law of Peoples*, p. 66.

³⁵ Rawls, *The Law of Peoples*, p. 79.

³⁶ Thomas Pogge, “An egalitarian law of peoples,” *Philosophy & Public Affairs*, 24, 3 (1994), p. 216.

Rawls's approach however has been sharply criticized. Charles Beitz argues that Rawls's decision to model peoples rather than persons in the global original position is based on circular reasoning. The question that needs to be addressed, in Beitz's view, is whether peoples have "independent ethical significance" that would justify allowing their "fundamental corporate interests, rather than the fundamental interests of their members considered as individuals, to determine the choice of principles of international conduct."³⁷ This is a basic and fundamental issue, and quite separate from the question of "whether or to what extent international institutions and the foreign policies of liberal states should tolerate nonliberal cultures."³⁸ According to Beitz, Rawls mistakenly invokes,

... a generous pre-theoretical response to the second question as a way of answering the first. But this deprives the international original position of the capacity to lend any independent weight to the argument for toleration of non-liberal cultures. If there are reasons for toleration, as no doubt there are, it would seem better to articulate them within a theory rather than to presuppose them.³⁹

Two points that Beitz makes are important to highlight: first, that Rawls needs to defend his view that peoples have independent ethical significance; and second, that Rawls should use his theory (specifically, the "international original position") to determine whether nonliberal societies should be tolerated, rather than asserting this pre-theoretically.

Regarding Beitz's first point, I believe it is a misreading of Rawls to say that the *Law of Peoples* gives societies an ethical status independent of how they treat their members. Individuals are unfairly depicted by Beitz and others as disappearing from

³⁷ Charles R. Beitz, p.681.

³⁸ Beitz, p.681.

³⁹ Ibid., p.681.

Rawls's theoretical framework, and as being subsumed by the rights of the collective. Peoples take "precedence over the interests of individuals"⁴⁰ and have "independent ethical significance" that allows "their fundamental corporate interests, *rather than* the fundamental interests of their members considered as individuals, to determine the choice of principles of international conduct."⁴¹ As Beitz explains:

It is one thing...to hold that a global Society of Peoples would be a desirable goal of political and social change and another to hold that international political theory should begin with peoples—that is, that principles of international conduct should be founded on considerations about the legitimate interests of peoples rather than persons.⁴²

Although Rawls places peoples, not persons, in the global original position, to say Rawls's theory "*begins* with peoples" does not capture Rawls's project. In the *Law of Peoples*, the determination of decency is rooted in the rights and interests of individuals. Whether or not a society is placed in the global original position to construct international principles of justice wholly depends upon whether the basic human rights and political freedoms of the members of this society are secured.

Does Rawls believe, as is claimed, that the "principles of international conduct should be founded on considerations about the legitimate interests of peoples *rather than* persons"?⁴³ This statement implies that the interests of peoples and persons, at least to some degree, are mutually exclusive. Yet this is not the case even for decent nonliberal societies where Rawls states explicitly that "in view of the common good ideas of justice...the representatives strive both to protect the human rights and the good of the

⁴⁰ Ibid., p. 680.

⁴¹ Ibid. (my emphasis)

⁴² Ibid.

⁴³ Ibid. (my emphasis)

people they represent and to maintain their security and independence.”⁴⁴ The legitimate interests of peoples are, *by definition* in Rawls’s theory, based on the interests of their members. That said, there are many cosmopolitan questions that should be further explored. For example, is the ideal-type construction of nonliberal peoples Rawls presents sufficient for allowing persons’ interests to be heard? Are the rights and interests of individuals protected by nonliberal peoples adequate? However, it is problematic to say that Rawls believes principles of international conduct should be founded on considerations about the legitimate interests of peoples rather than persons. This interpretation of Rawls obscures the interconnected relationship between persons and peoples in his theory.

A fair and important cosmopolitan critique of Rawls concerns his refusal to begin with a liberal conception of the person, as it is certainly the case that the human rights and political freedoms that he gives as necessary conditions for decent nonliberal peoples are not as extensive as those found in liberal democratic states. As discussed above, Rawls argues against pursuing the same constructivist approach in international political theory that was used to develop domestic principles of justice because of the need to tolerate nonliberal peoples. “The Law of Peoples holds that decent nonliberal points of view exist, or could exist”⁴⁵ and the question of how far nonliberal peoples are to be tolerated is “an essential question of liberal foreign policy.”⁴⁶ However, it does not follow from this that the interests of peoples are taking precedence over the interests of persons unless one asserts that all the *individual persons* of the world share the same interests as citizens of liberal democratic states—a claim that Rawls believes is problematic.

⁴⁴ Rawls, *The Law of Peoples*. p.69.

⁴⁵ *Ibid.*, p. 79.

3. The original position as a liberal idea

Rawls would likely reject Beitz's idea that the global original position of persons could be used to lend "independent weight to the argument for toleration of non-liberal cultures."⁴⁷ The global original position of persons would, by construction, develop principles of justice unacceptable to nonliberal and nondemocratic societies.⁴⁸ The "guiding principle of liberal foreign policy" would then be to gradually "shape all not yet liberal societies in a liberal direction, until eventually (in the ideal case) all societies are liberal."⁴⁹ In the same way, we can imagine a constructivist approach based on a particular interpretation of the Koran that could justify coercive foreign policy towards liberal democratic states. Clearly, the 'toleration of nonliberal societies' question needs to be decided without using the original position of persons, which is itself "a liberal idea."⁵⁰ Although Beitz argues that such a decision would be pre-theoretical,⁵¹ this criticism seems more aptly directed towards the decision to use the global original position of persons, because to proceed in this way "simply assumes that only a liberal democratic society can be acceptable."⁵²

⁴⁶ Ibid., p.10.

⁴⁷ Charles R. Beitz, "Rawls's Law of Peoples," p. 680.

⁴⁸ I say "by construction" here because the principles of justice that result from an original position of persons (see footnote 15 of this paper) contradict the definition of nonliberal societies. One way around this would be to change the definition of a nonliberal society to be one where all persons are free and equal (and therefore would find the principles of justice acceptable) but what then distinguishes a nonliberal society from a liberal one? A nonliberal society in Rawls's theory is by definition one where persons are not free and equal judged by the principles of a liberal democratic society.

⁴⁹ Rawls, *The Law of Peoples*, p. 60.

⁵⁰ Rawls, *The Law of Peoples*, p. 70.

⁵¹ As discussed on p. 12, Beitz believes this decision is pre-theoretical because the 'toleration question' is settled before using the original position. Beitz suggests that the global original position of persons be used to lend "independent weight" to the argument for toleration of nonliberal peoples. It is the independence of the original position that I'm challenging here.

⁵² Rawls, *The Law of Peoples*, p. 82.

It is important to note that if Rawls's argument for toleration is pre-theoretical in his international political theory, his determination of tolerable comprehensive doctrines in his domestic theory of justice is susceptible to the same charge. One of the first steps in both Rawls's domestic and international theories of justice is to specify the units that construct the principles of justice and possess veto power over their content. Who needs to find the principles of justice acceptable? Who should determine what these principles are? In Rawls's theory of justice for a domestic society, the principles must be acceptable from the perspective of all reasonable comprehensive doctrines that people hold within this society, and the reasonableness of these doctrines is determined without using the original position.

Political constructivism specifies an idea of the reasonable and applies this idea to various subjects: conceptions and principles, judgments and grounds, persons and institutions... The idea of the reasonable itself is given in part... by the two aspects of persons' being reasonable: their willingness to propose and abide by fair terms of social cooperation among equals and their recognition of and willingness to accept the consequences of the burdens of judgment... We decide whether the whole conception [of reasonableness] is acceptable by seeing whether we can endorse it upon due reflection.⁵³

Similarly, in the *Law of Peoples*, the original position is not used to determine the units (decent nonliberal and liberal peoples) that construct the principles of international justice.

[The] account of decency, like that of reasonableness, is developed by setting out various criteria and explaining their meaning. The reader has to judge whether a decent people... is to be tolerated and accepted as a member in good standing of the Society of Peoples. It is my conjecture that most reasonable citizens of a liberal society will find peoples who meet these... criteria acceptable as peoples in good standing. Not all reasonable persons will, certainly, yet most will.⁵⁴

⁵³ Rawls, *Political Liberalism*, p. 94.

⁵⁴ Rawls, *The Law of Peoples*, 67.

In the paragraphs above, I tried to demonstrate that Rawls does not use the original position in either his domestic or international theory of justice to do what Beitz suggests—lend “independent weight to the argument for toleration of non-liberal cultures.”⁵⁵ Reasonableness and decency are developed without using the original position. So how do these ideas arise? The content of reasonableness is given by the norms of a liberal democratic society—being reasonable means being willing to “propose and abide by fair terms of social cooperation among equals” and recognizing and accepting “the consequences of the burdens of judgment.”⁵⁶ Burdens of judgment limit the “scope of what reasonable persons think can be justified to others” and lead to the idea of public reason.⁵⁷

Where do Rawls’s ideas of the freedom and equality of individuals come from? An important aspect of Rawls’s political liberalism is that it “takes peoples as they are.”⁵⁸ “The account of justice as fairness connects the desire to realize a political ideal of citizenship with citizens’ two moral powers and their normal capacities, as these are educated to that ideal by the public culture and its historical traditions of interpretation.”⁵⁹ In Rawls’s domestic theory of justice, the original position models a political conception of a person in a liberal democratic society. Rawls emphasizes that a metaphysical doctrine of the person is not presupposed in the idea of the original position (although he admits metaphysical doctrines are likely still involved). Instead, the domestic original position models citizens as

⁵⁵ Beitz, “Rawls’s Law of Peoples,” p.681.

⁵⁶ Rawls, *Political Liberalism*, p. 94.

⁵⁷ Rawls, *Political Liberalism*, p. 59. For more discussion of public reason, see chapter VI.

⁵⁸ Rawls, *The Law of Peoples*, p. 13.

⁵⁹ Rawls, *Political Liberalism*, p. 85-86.

...free and equal because *that is how they conceive of themselves* as citizens in a democratic society. Thus, they think of themselves as having the moral power to have a conception of the good, and to affirm or revise that conception if they so decide. They also *see themselves* as self-authenticating sources of claims, and capable of taking responsibility for their ends.⁶⁰

“Since we start within the tradition of democratic thought,” we think of “citizens as free and equal persons” and “since persons can be full participants in a fair system of cooperation, we ascribe to them the two moral powers connected with the elements in the idea of social cooperation...namely, a capacity for a sense of justice and a capacity for a conception of the good.”⁶¹

The original position is therefore a model of individuals in a particular political context that has shaped how these individuals see themselves. The reasonable is modeled by the constraints which individuals face in the original position and the conditions imposed on their agreement.⁶² Individuals are in a hypothetical state of freedom and equality with respect to each other,⁶³ and are situated behind a veil of ignorance which blocks out the social position, conception of the good, “abilities and psychological propensities, and much else, of the persons they represent.”⁶⁴ The second moral power of a person, the rational, is modeled by the parties themselves. The original position and veil of ignorance—the infrastructure in which individuals are placed—provide the moral constraints. Individuals within this infrastructure therefore “represent only the rational:

⁶⁰ (my emphasis) Rawls, *The Law of Peoples*, p.33.

⁶¹ Rawls, *Political Liberalism*, p. 19.

⁶² Rawls, *Political Liberalism*, 305.

⁶³ This state of freedom and equality is what renders necessary the willingness to propose fair terms of cooperation and to abide by them provided others do (reciprocity condition), as well as the willingness to recognize the burdens of judgment. The latter refers to the idea that a person should offer explanation and justification for her ideas, especially at times of “reasonable disagreement.” See: Rawls, *Political Liberalism*, p. 55.

⁶⁴ Rawls, *Political Liberalism*, p. 272.

the parties agree to those principles which they believe are best for those they represent as seen from these persons' conception of the good."⁶⁵

From this description, it is clear that the original position would not be an appropriate model of persons for decent peoples who ascribe to a public conception of justice based on a comprehensive doctrine—precisely what the veil of ignorance blocks out. Members of decent nonliberal peoples recognize their duties and obligations as consistent with their common good idea of justice rather than a political conception of justice. The veil of ignorance is likely not relevant⁶⁶ or appropriate for decent nonliberal peoples. The symmetry of persons in the original position is also problematic. A nonliberal society in Rawls's theory is by definition one where persons are *not* free and equal, judged by the principles of a liberal democratic society. They are not free (in a liberal sense) because members of a nonliberal peoples adhere to the doctrines of a comprehensive or philosophical political conception of justice (they themselves may believe this makes them more free, but this is besides the point). They are not equal because each individual is obligated to act in accordance with their moral duties and obligations as members of the associations within the society. High-level political positions, for example, may only be open to certain religious leaders. Rawls implies that members of nonliberal peoples do not think of themselves in the same way as citizens of liberal democratic societies.

A decent hierarchical society has never had the concept of one person, one vote, which is associated with a liberal democratic tradition of thought that is foreign to it, and perhaps would think (as Hegel did) that such an idea

⁶⁵A conception of the good, in Rawls's theory, is an idea of one's rational advantage (see footnote 59). Rawls, *Political Liberalism*, p.305.

⁶⁶ As I discuss below, Rawls believes that pluralism is a feature of liberal democratic societies; it is an outcome of the free exercise of human reason under conditions of liberty. It is not clear that decent societies are pluralistic. Although Rawls does not depict them as ethnically or religiously homogeneous, the majority of members of decent societies hold the same comprehensive doctrine.

mistakenly expresses an individualistic idea that each person, as an atomistic unit, has the basic right to participate equally in political deliberation.⁶⁷

4. Political coercion

The way that Rawls constructs the Law of Peoples reflects his strong aversion to political coercion. Rawls begins his theory with “implicitly shared ideas and principles” within a certain political tradition and public culture on how citizens view the social order.⁶⁸ Developing principles of justice from an appropriate conception of the person is necessary to ensure the resulting principles of justice make sense and can be endorsed by the citizens that are to abide by them. As Rawls explains: “the selection of principles by the parties in the original position is always to be preceded by a careful consideration of whether the psychology of learning by citizens in well-ordered liberal societies leads them to acquire a sense of justice and a disposition to act from those principles.”⁶⁹ Rawls’s concern with political coercion also explains, at least in part, why his theory begins by taking “people as they are” and “proceeds from the international political world as we see it.”⁷⁰

In the paragraphs above, I illustrated how the original position of persons was a model for a particular conception of a person rooted in the tradition of liberal democratic thought and is therefore not the correct model for developing principles of justice to which members of decent nonliberal peoples must subscribe at either the national or international level. The Law of Peoples “asks of other societies only what they can reasonably grant without submitting to a position of inferiority or domination...the Law

⁶⁷ Rawls, *The Law of Peoples*, p.73.

⁶⁸ Rawls, *Political Liberalism*, p.14-5.

⁶⁹ Rawls, *The Law of Peoples*, p. 45.

of Peoples does not require decent societies to abandon or modify their religious institutions and adopt liberal ones.”⁷¹

It is important to note that a liberal conception of a person will not correctly model all citizens of a liberal democratic society, nor will Rawls’s principles of domestic justice be acceptable for all members of a liberal peoples. Justice as fairness in the domestic case does not tolerate those who insist that principles of justice be publicly justified on religious grounds, or those who believe that political power should be used to spread comprehensive or philosophical beliefs among the general public.⁷²

The intolerance of political liberalism towards nonliberal political projects at the domestic but not the international level has been identified as a problematic inconsistency in Rawls’s application of political liberalism to the international sphere. Critics argue that opposition to liberal principles “exists at home as well as abroad”⁷³ and that Rawls fails to explain why he responds inconsistently to nonliberal objection in the two different arenas. As Kok-Chor Tan argues:

Liberal toleration in the domestic context does not require toleration of nonliberal politics; indeed it must demand otherwise. Yet Rawls has given us no principled reason why it should be any different in the global context other than the diversity of political cultures. Absent a good justification, it appears that Rawls has simply relaxed the limits of toleration in order to accommodate representatives of WHSs [well-ordered hierarchical societies] to ensure that his law of peoples can be endorsed by some nonliberal states as well.⁷⁴

⁷⁰ Rawls, *The Law of Peoples*, p. 13, p.83.

⁷¹ Rawls, *The Law of Peoples*, p. 121.

⁷² Individuals who believe that the values of a liberal democratic society, such as tolerance and respect for religious and other differences, are creating a moral vacuum in political life and are forcing them to live less authentic lives are not modeled by the original position. They can be understood as dropping out of Rawls’s constructivist exercise. This also explains why the resulting principles of justice are unacceptable to them.

⁷³ Thomas Pogge, “Moral universalism and global economic justice,” *Politics, Philosophy & Economics*, 1, 1 (2002), p.41.

⁷⁴ Kok-Chor Tan, “Liberal Toleration in Rawls’s Law of Peoples,” *Ethics*, 108, 2 (Jan. 1998), p.284.

The partial explanation for Rawls's different treatment of nonliberal political projects at the domestic and international levels is that in the domestic case, the state is liberal. Recall that the puzzle we are trying to understand is why Rawls believes that nonliberal political projects cannot be tolerated in the domestic context but can be tolerated internationally (as long as they meet certain criteria for decency). Why would the liberal democratic character of the domestic state explain away this inconsistency? First, as explored in the previous section of this paper, Rawls models persons as free and equal "in a liberal sense" in his domestic theory "because that is how they conceive of themselves" in a liberal democratic society. As far as possible, he tries not to base his theory on a metaphysical conception of the person. Second, the fact of reasonable pluralism is a feature that Rawls attributes largely to a liberal democratic state. Yet neither of these conditions necessarily holds for decent nonliberal peoples.

The aim of Rawls's domestic political theory is to develop a freestanding political conception of justice, which is, as far as possible, presented as independent of comprehensive religious, philosophical, and moral doctrines.⁷⁵ The political conception of justice is morally required by the fact of reasonable pluralism, which itself is a natural and beneficial "outcome of the free exercise of free human reason under conditions of liberty."⁷⁶ "The political culture of a democratic society is always marked by a diversity of opposing and irreconcilable religious, philosophical, and moral doctrines."⁷⁷ This reasonable plurality of conflicting doctrines is seen as the "characteristic work of practical reason over time under enduring free institutions.....no comprehensive doctrine

⁷⁵ Rawls, *Political Liberalism*, p. 144.

⁷⁶ Rawls, *Political Liberalism*, p. 144.

⁷⁷ Rawls, *Political Liberalism*, p. 3-4.

is appropriate as a political conception for a constitutional regime.”⁷⁸ The possibility of a political society united in affirming the same comprehensive doctrine is “excluded by the fact of reasonable pluralism together with the rejection of the oppressive use of the state power to overcome it.”⁷⁹

While a public and shared basis of justification that applies to comprehensive doctrines is lacking in the public culture of a democratic society, this is not necessarily the case in a decent nonliberal society. In the hypothetical state of Kazanistan, for example, the majority of the population is Muslim, and the public and shared basis of justification is rooted in Islam: among the priorities of Kazanistan “is to establish a decent and rational Muslim people respecting the religious minorities within it.”⁸⁰ “Kazanistan’s system of law does not institute the separation of church and state. Islam is the favored religion, and only Muslims can hold the upper positions of political authority.”⁸¹ Rawls explains that “we may expect non-Muslim minorities to be less wedded to certain of the priorities than Muslims, but we may reasonably conjecture...that both Muslims and non-Muslims will understand and regard these priorities as significant.”⁸² Rawls does not “hold that Kazanistan is perfectly just” but he does believe it is worthy of toleration by liberal peoples.⁸³

⁷⁸ Rawls, *Political Liberalism*, p. 135.

⁷⁹ Rawls, *Political Liberalism*, p. 146.

⁸⁰ Rawls, *The Law of Peoples*, p. 77.

⁸¹ Rawls, *The Law of Peoples*, p. 75.

⁸² Rawls, *The Law of Peoples*, p. 77.

⁸³ Some may take issue with my interpretation of a nonliberal decent society as united in affirming the same comprehensive doctrine. To be clear, I am not making the claim that this is a necessary condition to be classified as a decent nonliberal society in Rawls’s theoretical framework. Kazanistan is not a homogenous society. While there is a majority of individuals that ascribe to the common good idea of justice which, in this case, is based on Islam, there is also a religious and non-religious minority. Some may argue that Rawls’s criteria should be tightened so that decent nonliberal societies are only tolerable if they can be fully united in affirming the same comprehensive doctrine, for example, hypothetical religiously or ethnically homogenous societies. Perhaps in an effort to show that such a ‘homogeneity requirement’ might not be necessary, Rawls’s discussion of Kazanistan is largely focused on the treatment of minorities. Kazanistan

Liberal societies may differ widely in many ways: for example, some are far more egalitarian than others. Yet these differences are tolerated in the society of liberal peoples. Might not the institutions of some kinds of hierarchical societies also be similarly tolerable? I believe this to be so.⁸⁴

Kazanistan does not have a tradition of free institutions nor a political culture that is similar to one found in a liberal constitutional state.⁸⁵ This will undoubtedly result in political and social intolerance of both religious and secular minorities.⁸⁶ Yet, it is important to emphasize that in both liberal and nonliberal peoples, *intolerance is a political necessity*. While Rawls believes “a just liberal society may have far more space than other social worlds...it can never be without loss.”⁸⁷ Kazanistan will be intolerant of non-Muslim political conceptions of justice; liberal peoples will be intolerant of religious and other comprehensive political projects. Discussing the latter, Rawls admits that “no society can include within itself all forms of life.”⁸⁸

The concern of political liberalism with enabling all persons to be governed by institutions they can understand and endorse explains why liberal principles of justice are not to be imposed on decent nonliberal peoples who, by definition, hold a common good idea of justice. It also explains why a political conception of justice is a legitimate

is “marked by its enlightened treatment of the various non-Islamic religions and other minorities who have been living in its territory for generations...These minorities have been loyal subjects of society, and they are not subjected to arbitrary discrimination, or treated as inferior by Muslims in public or social relations.” Rawls, *The Law of Peoples*, pp. 76-7.

⁸⁴ Rawls, *The Law of Peoples*, p. 84.

⁸⁵ Rawls’s description of Kazanistan is brief and is mostly focused on demonstrating the possibilities for a religious/Islamic state with a non-religious and non-Islamic minority. However, I don’t believe the substantive details are crucial to the argument at this stage. The point of the exercise is not to illustrate all the conditions that have to be met for liberals to be able to tolerate a nonliberal society. Instead, it is to give the reader a sense of the possibilities that can be imagined, and to make a case that toleration is possible. The debate I’m focusing on here is whether *any* nonliberal society can be tolerated by liberals, and doesn’t concern the necessary and sufficient conditions for this toleration.

⁸⁶ The specific limits of liberal toleration in foreign policy will likely depend on the extent and consequences of this intolerance. The decency of Kazanistan seems to significantly hinge on the Islamic government’s treatment of minorities.

⁸⁷ Rawls, *Political Liberalism*, p. 197n.

⁸⁸ Rawls, *Political Liberalism*, p. 200.

foundation for a liberal democratic society marked by reasonable pluralism. Although this will be a loss for citizens who desire a religious state, the gains far outweigh the loss for two reasons: first, as Rawls explains, “Since there is no reasonable religious, philosophical, or moral doctrine affirmed by all citizens, the conception of justice affirmed in a well-ordered democratic society must be a conception limited to...’the domain of the political.’”⁸⁹ In other words, it would be unjust in a pluralist context to base the public conception of justice on any one comprehensive or religious doctrine. Second, in liberal democratic societies, “there is a tradition of democratic thought, the content of which is...familiar and intelligible” and “implicitly shared” by citizens of these societies.⁹⁰ As evident from the discussion above, neither of these conditions holds in the decent nonliberal peoples Rawls describes. Rawls’s argument against toleration of nonliberal politics in his domestic theory of justice, and for toleration in his international theory is therefore consistent; in both cases, the objective of political liberalism is the same—to minimize public conceptions of justice that are unacceptable for those governed by them.

Comprehensive liberals cannot accept the possibility of tolerating decent nonliberal societies, no matter how decent, just as they are reluctant to tolerate nonliberal groups within a democratic liberal state. Autonomy and individuality, for comprehensive liberals, are ethical values that should “apply to the whole of life, both social and individual.”⁹¹ Comprehensive liberals therefore find political liberalism problematic at both domestic and international levels. As Kok-Chor Tan explains,

⁸⁹ Rawls, *Political Liberalism*, p. 38.

⁹⁰ Rawls, *Political Liberalism*, p. 14.

⁹¹ Rawls, *Political Liberalism*, p.78. See also p. 13: A conception is “comprehensive when it includes conceptions of what is of value in human life, and ideals of personal character, as well as ideals of

The problem of toleration in “The Law of Peoples” is not so much a problem of application as an accentuation of an inherent theoretical problem. Political liberalism’s emphasis on toleration conflicts with its other liberal commitments, which in the domestic context is fortuitously (and only to a degree I stress again) alleviated.⁹²

Rawls would consider an international theory of justice premised on comprehensive liberalism as oppressive and harmful towards individuals in nonliberal societies. In the same way, a domestic society “united on . . . reasonable liberalisms of Kant or Mill, would . . . require the sanctions of state power to remain so.”⁹³ The paradox associated with this passage is important to highlight. Rawls believes that even those comprehensive doctrines that argue for freedom and autonomy of the individual (especially from the state) cannot be sustained without the exercise of state power.

A society in which every one affirms a reasonable liberal doctrine if by hypothesis it should exist, cannot long endure. With unreasonable doctrines, and with religions that emphasize the idea of institutional authority, we may think the text correct; and we may mistakenly think there are exceptions for other comprehensive views. The point of the text is: there are no exceptions.⁹⁴

The passage above seems to point to a perplexing inconsistency between Rawls’s *Political Liberalism* and the *Law of Peoples*. Recall that decent nonliberal peoples see the laws of their society as fitting with “their common good idea of justice” and do not see their duties and obligations as mere commands imposed by force.”⁹⁵ Yet the passage from *Political Liberalism* quoted above suggests that such a peoples is impossible. If Rawls believes that any (even a liberal) society united on a comprehensive doctrine

friendship and of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole.”

⁹² Kok-Chor Tan, “Liberal Toleration in Rawls’s Law of Peoples,” *Ethics*, 108, 2 (Jan. 1998), p. 295.

⁹³ Rawls, *Political Liberalism*, p. 37. This feature of political liberalism explains why for international political theory, coercive foreign policy based on liberal values is not different (although Rawls and others would no doubt personally prefer it) than coercive foreign policy based on any comprehensive philosophical, religious or moral doctrine.

⁹⁴ John Rawls, *Political Liberalism*, p.38n.

requires state power to remain this way, how can he conceive of nonliberal peoples united by a “common good idea of justice” that is not maintained by political command or force?

A closer reading of Rawls’s texts suggests two possible explanations. First, Rawls’s point in *Political Liberalism* is not that all states held together by comprehensive doctrines are oppressive, but rather that these societies will “require the sanctions of state power”⁹⁶ to remain united by a comprehensive doctrine. This suggests that any decent nonliberal society will eventually break down or become oppressive (thus warranting a relaxation of its sovereignty as it slips from having “peoples” status). The Society of Peoples, however, should only interfere with a nonliberal peoples once it starts to falter; it cannot hasten its downfall. Rawls believes that because members of nonliberal peoples have a “sense of pride and honor,” and share a belief in “a common good idea of justice,” coercing such peoples to become more liberal will “cause damage,” “contempt,” “bitterness and resentment” and will frustrate rather than encourage “reforms in a liberal direction.”⁹⁷

Rawls also suggests that if there are opportunities for dissent in nonliberal peoples, change is possible and oppression not inevitable.⁹⁸ Rawls’s discussion of the opportunities for dissent, and the respect and toleration of minorities in decent nonliberal societies make it clear that although the public conception of justice is based on a comprehensive, religious or philosophical doctrine, decent nonliberal societies adapt to be “more sensitive to the needs of its peoples and the many different groups represented

⁹⁵ John Rawls, *The Law of Peoples*, p. 66.

⁹⁶ John Rawls, *Political Liberalism*, p. 37.

⁹⁷ John Rawls, *The Law of Peoples*, p. 62.

by legal bodies in the consultation hierarchy.”⁹⁹ As Rawls mentions, “the common good conception of justice held by decent peoples may gradually change over time, prodded by the dissents of members of these peoples. All societies undergo gradual changes, and this is no less true of decent societies than of others.”¹⁰⁰ The most liberals should hope for, if criteria for decency have been met, is that a nonliberal peoples will “take steps toward becoming more liberal on its own.”¹⁰¹

In some respects, Rawls’s theory can be interpreted as offering stronger protection to individuals than a cosmopolitan theory for two reasons. First, it does not assume that all persons have a liberal conception of themselves or desire this conception. It therefore protects individuals who believe in nonliberal political projects from foreign paternalism and coercion from liberal states. Second, Rawls’s theory secures space¹⁰² for individuals to develop principles of justice to govern their own society and to base their political institutions on a common good idea of justice to which they subscribe. Legitimate political institutions in Rawls’s theory are those persons “can understand and act on, approve and endorse.”¹⁰³ It is precisely these aspects that make Rawls’s theory, however political it may be, very much a liberal theory. To put another way, Rawls’s theory takes on the question of what the defense of liberal values such as autonomy and respect of

⁹⁸ The provision within Rawls description of decent peoples for feedback, and subsequent change to the interpretation of comprehensive doctrines also explains why “common sympathies” might be possible in nonliberal states even between diverse ethnic groups and religious minorities.

⁹⁹ John Rawls, *The Law of Peoples*, p. 77.

¹⁰⁰ Rawls, *The Law of Peoples*, p. 25.

¹⁰¹ Rawls, *The Law of Peoples*, p. 62.

¹⁰² As mentioned earlier in the paper, it can be argued that Rawls’s depiction of nonliberal peoples does not secure enough space to allow individuals shape the political institutions that affect their lives—a case can be made that a liberal conception of citizenship is necessary for this self-determination to take place. But this criticism seems to point more to problems with Rawls’s criteria for decent nonliberal peoples than with a political liberal as opposed to a cosmopolitan theory of international justice. If the latter, it is unclear how any space can be protected for individuals who believe in nonliberal political projects to be governed by political institutions they can subscribe to.

¹⁰³ Rawls, *The Law of Peoples*, p.7.

individuals might mean in the international political world as it is—a world where persons (not just peoples) may not all subscribe to these liberal ideals to the same extent.

5. Rawls's realistic utopia

Critics of Rawls's theory have raised questions concerning the degree to which Rawls has compromised liberal ideals to accommodate pluralism and other aspects of the international political world as we see it. At times, they argue, Rawls's theory appears to be a case of pragmatic reconciliation to an unjust world.

Rawls's international project is beneath it all a project of *modus vivendi*, of seeking a compromise between liberal and nonliberal regimes, rather than that of achieving stability with respect to liberal justice. To accommodate [well-ordered hierarchical societies], Rawls has his liberal delegates agree on a global theory of justice which is overly generalized and less demanding than a real liberal global theory would be.¹⁰⁴

Beitz has pointed out that on occasion, Rawls appears to suggest that the decision to “regard peoples rather than individuals as ethically primary is pragmatic—compelled...by considerations of political realism.”¹⁰⁵ Yet Beitz correctly points out that

...considerations of political realism have to do with constraints imposed by the status quo on prospects for change, and thus they pertain to questions about institutional design and reform rather than to those about standards of moral appraisal. There is no inconsistency in holding both that the ultimate appeal in questions of international justice is to the interests of individual persons and that, for political (and perhaps other) reasons, we must regard a decentralized world order as here to stay and work for reforms within its basic structure.¹⁰⁶

¹⁰⁴ Kok-Chor Tan, “Liberal Toleration in Rawls's Law of Peoples,” *Ethics*, 108, 2 (Jan. 1998), p. 285.

¹⁰⁵ Charles R. Beitz, “Rawls's Law of Peoples,” *Ethics*, 110, 4 (July 2000), p. 681.

¹⁰⁶ Beitz, “Rawls's Law of Peoples,” p.681.

A response to these concerns is that the international political conception of justice¹⁰⁷ is itself a moral doctrine. Rawls believes it is morally wrong to coerce decent nonliberal peoples and their members to accept principles of justice they potentially cannot understand or reasonably endorse. Recall that decent peoples have a definite moral nature which includes a certain “proper pride and sense of honor.”¹⁰⁸ Their members have also, through moral learning, acquired a sense of right and wrong as understood in their society. Rawls suggests that to impose principles of justice on these decent nonliberal societies would be morally unacceptable. International principles of justice must therefore be political, presented without reference to religious, philosophical and moral values (including liberal values) that decent peoples cannot accept. This political conception is morally called for by the fact of reasonable international pluralism.¹⁰⁹

According to Rawls’s domestic theory of justice, political power should never be used to “cultivate the distinctive virtues and values of the liberalisms of autonomy and individuality, or indeed of any other comprehensive doctrine. For in that case it ceases to be a form of political liberalism.”¹¹⁰ Groups within domestic societies that do not treat their members as free and equal, and that are guided by comprehensive doctrines are not to be given incentives by their government to become more liberal. “Justice as fairness honors, as far as it can, the claims of those who wish to withdraw from the modern world

¹⁰⁷ It is important to emphasize that a political conception of justice does not have to be acceptable for everyone, only those peoples that meet certain standards of reasonableness and decency. If a nonliberal peoples meets the criteria of decency Rawls puts forward, these “societies would be regarded by liberal people, on reflection, as *bona fide* members of a reasonable Society of Peoples.” John Rawls, *The Law of Peoples*, p. 84.

¹⁰⁸ John Rawls, *The Law of Peoples*, p. 62.

¹⁰⁹ Rawls mentions that “the fact of reasonable pluralism is more evident within a society of well-ordered peoples than it is within one society alone.” (Rawls, *The Law of Peoples*, p. 18.) As mentioned earlier in this paper, Rawls suggests that pluralism is more a feature of liberal democratic societies where people are (and have been) free to explore and adopt various comprehensive doctrines and political beliefs. However, at the international level, decent nonliberal peoples that may have less pluralism *within* their borders increase international pluralism.

in accordance with the injunctions of their religion, provided only that they acknowledge the principles of the political conception of justice and appreciate its political ideals of person and society.”¹¹¹ Similarly,

...the Law of Peoples does not require decent societies to abandon or modify their religious institutions and adopt liberal ones. We have supposed that decent societies would affirm the same Law of Peoples that would hold among just liberal societies...It is so because it asks of other societies only what they can reasonably endorse once they are prepared to stand in a relation of fair equality with all other societies. They cannot argue that being in a relation of equality with other peoples is a western idea! In what other relation can a people and its regime reasonably expect to stand?¹¹²

Rawls’s vision therefore is to preserve “significant room for the idea of a people’s self-determination and for some kind of loose or confederative form of a Society of Peoples.”¹¹³

Rawls’s realistic utopia, however, seems rather puzzling: even if we accept that “decent societies should have the opportunity to decide their future for themselves,”¹¹⁴ why shouldn’t the realistic utopia be a Society of Liberal Peoples rather than a Society of Well-Ordered Peoples? For it seems within the bounds of the “realistic” that decent peoples could “recognize the advantages of liberal institutions.”¹¹⁵ Why, then, does Rawls not conceive this alternative as the utopian vision?

This question becomes more puzzling when we consider that Rawls is explicit about his preferences for liberal democratic over nonliberal peoples, as he states: “I am not saying that a decent hierarchical society is as reasonable and just as a liberal society. For judged by the principles of a liberal democratic society, a decent hierarchical society

¹¹⁰ John Rawls, *Political Liberalism*, p.200.

¹¹¹ Rawls, *Political Liberalism*, p. 200.

¹¹² John Rawls, *The Law of Peoples*, p. 122.

¹¹³ Rawls, *The Law of Peoples*, p.61.

clearly does not treat its members equally.”¹¹⁶ Decent peoples are not considered to be reasonable or just but rather “not fully unreasonable”¹¹⁷ and although Kazanistan is not “perfectly just,” it is “the best we can realistically—and coherently—hope for.”¹¹⁸ Yet the reason why Rawls limits the utopian vision to well-ordered peoples is not entirely explained. Why hasn’t Rawls defined his realistic utopia as a Society of Liberal Peoples, which given the fact of reasonable pluralism, cannot be achieved through coercive foreign policy or other liberal incentives?¹¹⁹ Rawls even suggests that such an option is possible:

...if a liberal constitutional democracy is, in fact, superior to other forms of society, as I believe it to be, a liberal people should have confidence in their convictions and suppose that a decent society, when offered due respect by liberal peoples, may be more likely, over time, to recognize the advantages of liberal institutions and take steps toward becoming more liberal on its own.¹²⁰

The answer, I believe, is a fundamental part of political liberalism, which “applies the principle of toleration to philosophy itself.”¹²¹ The Law of Peoples is presented as a conception of justice that can be endorsed by peoples as a basis of reasoned, informed and willing political agreement—“it expresses their shared and public political reason.”¹²² The realistic utopia must itself be a product of an international political conception of justice that is acceptable to both liberal and decent nonliberal peoples.

¹¹⁴ Rawls, *The Law of Peoples*, p.85.

¹¹⁵ Rawls, *The Law of Peoples*, p. 62.

¹¹⁶ Rawls, *The Law of Peoples*, p.82 (my emphasis).

¹¹⁷ Rawls, *The Law of Peoples*, p.74.

¹¹⁸ Rawls, *The Law of Peoples*, p. 78.

¹¹⁹ This would be more in line with Beitz’s comment above that our ultimate vision should not be constrained by practical considerations. We can have a goal based on standards of moral appraisal but for political or other reasons argue that this goal can only be achieved certain specific ways.

¹²⁰ Rawls, *The Law of Peoples*, p. 62.

¹²¹ Rawls, *Political Liberalism*, p.78.

6. Conclusion

This paper explores possible answers to some of the most puzzling aspects of Rawls's argument for toleration, and therefore comes across as an unflinching endorsement. Although I cannot discuss my critique of Rawls at length here, there are several areas that call for further elaboration.

The first potential problem is the relationship between the self-determination of a peoples and the foreign policy of this peoples. It is not outlandish to suppose, for example, that the self-respect¹²³ of a society's members depends in part on whether their leaders mention human rights during trade discussions, or whether they make their foreign aid conditional on certain liberal reforms. Second, it is not clear that treating other peoples as equals necessitates the degree of foreign policy restraint called for by Rawls. Is offering incentives to adopt liberal reforms necessarily an affront to the equality of nonliberal peoples? Finally, Rawls does not distinguish between foreign policy and transnational nongovernmental actors in his discussion of toleration of nonliberal peoples. Given the coercive power at the disposal of states, and only states, it seems important that a distinction be drawn.

Rawls's depiction of decent nonliberal peoples requires further analysis in at least three areas. First, there is a fine line between Rawls's idea of moral learning and political indoctrination; second, a question remains concerning whether a person may be oppressed even if she does not believe she is (or irrespective of whether she supports the

¹²² Rawls, *Political Liberalism*. p.78.

¹²³ In Rawls's theory, self-determination is important for the self-respect of a peoples. If a decent nonliberal peoples is subjected to politically enforced sanctions, they are being denied a "due measure of respect by liberal peoples" which can "wound the self-respect of decent nonliberal peoples as peoples." (*Law of Peoples*, p. 61). What I am suggesting here, however, is that the self-respect of peoples may also be affected negatively by restrictions on their own foreign policy. Part of self-determination likely involves being the peoples one wishes to be in the world, within certain parameters.

comprehensive doctrine of her particular society); and third, it is not clear that the opportunities available to individuals in a decent hierarchical political structure are sufficient to allow self-determination of the peoples *as a whole*, that is, of all its members, to take place. Rawls's model may allow the self-determination of a subset within a decent peoples who occupy positions of political power. In particular, the role of women, and religious and other minorities in Rawls's decent nonliberal peoples requires further substantiation.¹²⁴

The criticisms mentioned above, however, can likely be addressed through re-working and building upon Rawls's political liberal framework for international justice and do not necessarily strengthen the case for using a cosmopolitan framework. I believe there are also clear advantages with a political liberal approach to international justice. As many liberal democratic societies struggle to develop foreign policy in response to religious political projects throughout the world (some of which may come close to meeting Rawls's standards for decency) it is important to be precise about what is intolerable and why. Rawls emphasizes that peoples should not be coerced to adopt liberal reforms for their own sake, just as liberal societies should not be coerced to accept certain religiously motivated reforms simply because some may believe they lead to a more fulfilling and moral political life. As important, if not more so, however, is the need to recognize societies that should to be coerced—and urgently. Rawls's criteria for decency would disqualify most of the world from peoples status, depending on how one interprets the criteria, and leaves ample room for justifying coercive foreign policy towards states such as Burma, Sudan, and Iran, as well as many others.

¹²⁴ Given the lack of political power and representation of women and minorities in most liberal democratic states, this is clearly not just an issue for nonliberal peoples.

Underlying the *Law of Peoples* is a normative theory of political change. Rawls argues that the world needs to secure space, at least for now, given the “international political world as we see it,”¹²⁵ for individuals to pursue nonliberal political projects that they believe in, as long as these projects meet certain moral standards. Rawls’s criteria for decency may not be stringent enough, and the nonliberal peoples he describes may not be possible. But the force of Rawls’s argument still stands: the use of political power to coerce individuals and peoples¹²⁶ to adopt liberal reforms may not be liberal. One of the most important contributions of Rawls’s work lies in its concern that principles of global justice do not trespass into the lives of both peoples and individuals and leave behind principles of justice that people do not understand, or agree with—principles of justice that, however just, are not their own.

¹²⁵ Rawls, *The Law of Peoples*, p. 83.

¹²⁶ Of course, these peoples must meet certain standards of decency.