

Reconsidering Rawls
The Duty of Assistance: An Evaluation of its Robustness and Sufficiency

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ABSTRACT

Reconsidering Rawls

The Duty of Assistance: An Evaluation of its Robustness and Sufficiency

Kathryn Nicole Oliver

In his work *The Law of Peoples*, John Rawls is commonly criticized by his cosmopolitan opponents for leaving out an international difference principle. Much concern has been voiced in regards to Rawls's rejection of a global principle of distributive justice despite his argumentation for a distributive principle in his domestic theory. Instead, the only principle that bears any resemblance to an international difference principle and relates directly to economic redistribution between peoples is what Rawls calls a duty of assistance.

In this Thesis, I will argue that many critiques of Rawls are not sufficiently charitable toward Rawls's international duty of assistance and do not fully appreciate the potential demands that this duty, if actualized, may require. I argue that once one evaluates the demands that the duty of assistance places upon members in *Rawls's Society of Peoples*, one can reasonably conclude that the duty of assistance is robust and furthermore reasonably sufficient. Given that the cut-off point of the duty of assistance demands that members in the Society of Peoples must aid a burdened people until a) the basic needs of the individuals within the burdened society are met and b) the once burdened people can be considered a reasonably well-ordered and equal standing member in the Society of Peoples that is politically autonomous, self-sufficient, and self-

determining, I will argue that the duty of assistance is a demand that is not to be underestimated and has the potential to be both robust and sufficient.

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Introduction

In his work *The Law of Peoples*, John Rawls is commonly criticized by his cosmopolitan opponents for leaving out an international difference principle. Much concern has been voiced in regards to Rawls's rejection of a global principle of distributive justice despite his argumentation for a distributive principle in his domestic theory.¹ Instead, the only principle that bears any resemblance to an international difference principle and relates directly to economic redistribution between peoples is what Rawls calls a duty of assistance.

In this Thesis, I will argue that many critiques of Rawls are not sufficiently charitable toward Rawls's international duty of assistance. I argue that once one evaluates the demands that the duty of assistance places upon members *in Rawls's Society of Peoples*, and given Rawls's larger theoretical framework, one can reasonably conclude that the duty of assistance is robust and, furthermore, reasonably sufficient. Given that the target and cut-off point of the duty of assistance demands that members in the society of peoples must aid a burdened people until a) the basic needs of the individuals within the burdened society are met and b) the once burden people can be considered a reasonably well-ordered and equal standing member in the Society of Peoples that is politically

¹ Please refer to *A Theory of Justice* (1971) §13:65-73, *Political Liberalism* (1993) 282, and *Justice as Fairness: A Restatement* (2001) §13:42-50 and §18:61-66. Here a more in depth account of Rawls's difference principle can be found. Briefly, the difference principle locates in Rawls's theory a duty of distributive justice. The difference principle stipulates that the only justifiable inequalities are those that are to be to the greatest benefit of the least-advantaged members of society .

autonomous, self-sufficient, and self-determining, I will argue that the duty of assistance is a demand that is not to be underestimated and for *Rawls's Society of Peoples*, it has the potential to be both robust and sufficient.

Much of the earlier parts of this work will focus on fully flushing out Rawls's duty of assistance and other key aspects to his political theory so as to provide a common background of understanding for the chapters that will follow. Next, my focus will turn to charges made against Rawls's by his cosmopolitan critics, in particular Kok-Chor Tan who is fairly sympathetic to Rawls's position. After such criticisms are considered I will seek to explore and defend the robustness² of the duty of assistance along with its

² By robustness, normatively speaking, I am using the term to signify the quality of being able to withstand change. Robustness as used for the purposes of this work, connotatively refers to possessing a quality of endurance whereby the subject in question will be able to adequately cope with stresses, pressures, or changes in procedure and, or circumstance in a given environment and political climate. By applying this understanding of robustness to the duty of assistance an evaluation of whether the duty will be able to remain effective, reasonable, and acceptable under different social and political arrangements, be it conditions of scarcity or abundance for example, will be called into question. My intended use of robustness, then refers to the capability to endure through variations, at times unpredictable variations in an operating environment with minimal damage, alteration or loss of functionality. Robustness when applied to the duty of assistance will help us assess whether the duty, as distinguished by Rawls, has the longevity to withstand change, both expected and unexpected. An evaluation of robustness calls us to question whether a principle, such as the duty of assistance, has the breadth to be reasonable and acceptable cross-culturally in varying political arrangements, and whether it will remain effective and adequate to account for future generations.

sufficiency³ while considering contributions made to this conversation by Samuel Freeman, who is a defender of the Rawlsian view. My third chapter will seek to provide a justification for the broad concept of basic needs used by Rawls. Additionally, my third chapter will explore the idea of Rawlsian toleration. Here I will seek to defend Rawls's controversial assumption that it is possible for a well-ordered people, under the ideal conditions that govern the Society of Peoples, to exercise political autonomy, be economically self-sustaining, and adequately account for their individual citizens' basic needs while managing to avoid being subject to manipulation by external forces.

In the end, I will conclude that when one comes to appreciate that the duty of assistance's target is to ensure that the basic needs of a people's citizens are met within the given burdened society coupled with the insistence by Rawls that political autonomy and independence must be achieved by the once burdened society in order for it to qualify as decent, one could reasonably accept the duty of assistance as a robust and

³ For the purposes of this work I will take sufficiency to signify an evaluation of possible distributions made popular by authors such as Harry Frankfurt and Roger Crisp. For one of the most influential defences of the doctrine of sufficiency refer to Frankfurt, Harry. "Equality as Moral Ideal," *Ethics* 98 (1987): 21-43. For a more recent defence, see Crisp, Roger. "Equality, Priority, and Compassion," *Ethics* 113 (2003):745-763, and "Egalitarianism and Compassion," *Ethics* 114 (2004): 119-126. Generally speaking, the doctrine of sufficiency holds that what matters is whether individuals have enough not to fall below some critical threshold of advantage. Typically an account of sufficiency endorses both: a) positive thesis – that highlights the importance of people living above a certain threshold, and b) negative thesis – that denies the importance of certain additional requirements. Frankfurt argues that "What is important from the view of morality is not that everyone should have *the same*, but that each should have *enough*" ("Equality as a Moral Ideal", 21).

reasonably sufficient demand to be executed if need be within the Society of Peoples. However, despite the possible robustness of the duty of assistance and given that it is contingent upon both a people's capacity for political autonomy and having the basic needs of its citizens met so that they are capable to take advantage of the opportunities within their given society, I recognize that there is much need for clarification as to what these contingencies entail on both my part and on Rawls's behalf if my argument is to be convincing and this will be the focus the later part of this work.

Chapter 1 – Rawls's Law of Peoples and His Duty of Assistance

To properly evaluate the sufficiency and robustness of Rawls's duty of assistance, we first need to examine its theoretical foundations. According to Rawls, a Law of Peoples,¹ is "a particular political conception of right and justice that applies to the principles and norms of international law and practise".² In Part I of *The Law of Peoples*, Rawls develops the content of a Law of Peoples by extending his methodology used in establishing the principles of domestic justice in his conception of justice as fairness³ to the international domain. In Part II, Rawls discusses the toleration and inclusion of nonliberal peoples into the Society of Peoples. In Part III, Rawls addresses cases of nonideal theory. In this final part Rawls offers a commentary on just war theory. However, and more importantly for the purposes of this project, he addresses the case of burdened societies and discusses matters of distributive justice among peoples. This chapter will expound upon Rawls's approach to ideal theory in which he extends his social contract theory to the international domain, offers a defence of the duty of assistance to aid burdened societies, and additionally rejects an international difference principle.

Before one evaluates Rawls's duty of assistance there are many theoretical aspects central to Rawls's *The Law of Peoples*, and furthermore; in his theories related to *Political Liberalism* and a *Theory of Justice* that precede the construction of such a principle that must be identified and understood. Having a firm understanding of the

¹ See Rawls, John (1999). *The Law of Peoples* (Harvard University Press, Cambridge, MA). According to Rawls, there is not a single possible Law of Peoples, but rather a family of such laws that satisfy the criteria he offers, "a Law of Peoples" and "the Law of Peoples" can be used interchangeably. See p. 4ff.

² Rawls, John. *The Law of Peoples*, 3.

³ See Rawls, John (1999), *A Theory of Justice (Revised Edition)*, (Cambridge, MA: The Belknap Press of Harvard University Press); (1993), *Political Liberalism*, (New York: Columbia University Press).

methodology that Rawls relies on in his conception of ideal theory to derive a realistic utopia is the first step that we must clarify. The second critical feature that this chapter will examine is how Rawls sets up his ideal case to apply between well-ordered liberal democracies and reasonably decent well-ordered societies. Understanding how Rawls distinguishes the features of these types of societies is essential to our evaluation of the robustness and sufficiency of his duty of assistance. The next critical area of Rawls's theory that will be discussed is his application of the 'Original Position'. Once we have acquired an understanding of the construction of the social contract theory utilized by Rawls in formulating *The Law of Peoples*, we will be equipped with the necessary tools to understand how Rawls was able to derive the duty of assistance along with his seven other principles of justice for the international case. Following this discussion, I will relay the guidelines, both the target and cut-off point, of the duty of assistance as distinguished by Rawls. Furthermore, a discussion of some of the potential implications that the duty of assistance if executed would require will be offered.

Ideal Theory and Rawls's Realistic Utopia

The first critical aspect that must be identified is that Rawls derives his eight principles of justice in the *Law of Peoples* from the ideal case.⁴ Emphasis needs to be placed upon what Rawls, conceives and defines as a 'realistic utopia'. A realistically utopian society for Rawls, “depicts an achievable social world that combines political right and justice for all liberal and decent peoples in a Society of Peoples”.⁵ The Law of Peoples is realistic in that it could and may exist. It is also utopian and highly desirable

⁴ Rawls, John. *The Law of Peoples*, 37.

⁵ Rawls, John. *The Law of Peoples*, 4. From more on what constitutes a realistic utopia also refer to 4-12, 29-30, 44-45, 124-127.

because it joins reasonableness and justice with conditions enabling citizens to realize their fundamental interests. A political conception is realistically utopian when it “extends what are ordinarily thought to be the limits of practicable political possibility and, in doing so, reconciles us to our political and social condition”.⁶

For Rawls the ideal case allows for a particular type of clarity in reasoning, where the salient features that should be embodied when defining principles of justice are best revealed. In *A Theory of Justice*, Rawls explains that ideal theory, or strict compliance theory, deals with cases in which all agents fully comply with the principles of justice that would regulate a well-ordered society. Conversely, there are two types of non-ideal theory, one that applies to cases of partial compliance and the other to instances of unfavourable and/or burdensome conditions. Non-ideal theory is concerned with “the principles that govern how we are to deal with injustice”.⁷ Rawls insists that ideal theory provides “the only basis for the systematic grasp of these more pressing problems”.⁸ Ideal theory, as he iterates in *Political Liberalism*, “is a necessary complement to non-ideal theory without which the desire for change lacks aim”.⁹

The Law of Peoples is formulated to apply to ideal conditions among well-ordered liberal societies or those that are reasonably decent and well-ordered.¹⁰ The Law of Peoples is not designed to address the vast number of issues and difficulties encountered in our contemporary world, but rather aims to establish principles of foreign policy as part of political liberalism that both liberal and decent societies could

⁶ Rawls, John. *The Law of Peoples*, 11. For a fuller explanation on what Rawls conceives as a ‘realistic utopia’ see *The Law of Peoples* part I: 11-23.

⁷ Rawls, John. *A Theory of Justice*, 8.

⁸ Rawls, John. *A Theory of Justice*, 8.

⁹ Rawls, John. *Political Liberalism*, 285.

¹⁰ Rawls, John. *The Law of Peoples*, 17.

reasonably agree to endorse.¹¹ Within Rawls's realistic utopia, the society of peoples is composed of reasonable and rational members who generally accept the governing principles of justice and fair terms of cooperation. Members generally adhere to public reasoning about justice and aim to endorse what Rawls identifies as a conception of the common good in their discourse. As Samuel Freeman asserts: "The Law of Peoples, then, is designed to apply in the first instance to hypothetical conditions, among well-ordered liberal and decent societies each of which has concern for the well-being of its own people and seeks their common good, and respects others as free and equal peoples".¹²

The Two Original Positions

Rawls utilizes a two-step thought experiment – the original position – to develop his ideal theory of justice. The first step of the original position is to determine the fair conditions from which the parties of the contractual agreement are to decide upon their political conception. The second step is to stipulate, based on these conditions, what principles of justice and fair cooperation would be adopted by the contractual parties. Additionally, Rawls has two original positions: 1) for the domestic case and 2) for the international case. The original position reveals a type of constructivist methodological approach to the derivation of the terms of justice as fairness for Rawls.¹³ It is regarded by Rawls as the appropriate initial situation for social contract.¹⁴

¹¹ Rawls, John. *The Law of Peoples*, 9-10.

¹² Freeman, Samuel. "The Law of Peoples, Social Cooperation, Human Rights, and Distributive Justice", 32.

¹³ "A constructivist conception of justice represents the principles of justice not as part of some timeless and mind-independent moral order known through theoretical reason, but rather as "the outcome of a procedure of construction" rooted in practical rather than theoretical reasoning". Rex Martin and David. A Reidy, *Rawls's Law of Peoples*, 11.

¹⁴ Rawls asserts that the original position is the appropriate instrument for specifying the fair terms of social cooperation, given his initial assumption that *reasonable pluralism* is an inherent characteristic of well-ordered liberal democracies. *Reasonable pluralism*, according to Rawls's terminology, identifies

The first use of the original position appears in Rawls's earlier work and is used to identify the principles of justice as fairness for the domestic case.¹⁵ The subject matter of the first use of the original position is the basic structure of society. It is in this instance where free and equal moral citizens are represented as the contracting parties within the society in question. Rawls insists that contractual parties participating in adopting a political conception of justice to govern their interactions within a liberal society must choose the principles of justice from behind "a thick veil of ignorance".¹⁶ Behind the veil of ignorance, contracting parties are stripped of any knowledge of their own social position and circumstance. Rawls asserts that: "among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like".¹⁷ Rawls insists that the principles of justice are chosen behind a veil of ignorance to ensure "that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances."¹⁸ By ensuring that principles are decided so as not to favour any

"the fact of profound and irreconcilable differences in citizens' reasonable comprehensive religious and philosophical conceptions of the world, and in their views of the moral and aesthetic values to be sought in human life" (*Justice as Fairness: A Restatement*, 3-4). Reasonable pluralism characterizes a society with free institutions and limits what is practically possible in terms of political philosophy. The original position orientates free and equal citizens fairly, where a point of view of fair agreement can be reached by terms of political justice. The thick veil of ignorance that the original position requires conceals traditional bargaining advantages and particular features of circumstance, thus establishing a point of view from which fair agreement between free and equal citizens can be reached. For a fuller explanation see John Rawls, *Justice as Fairness: A Restatement*, 3-4.

¹⁵ See the discussion of the original position and the veil of ignorance in *Political Liberalism*, I: §4. and *A Theory of Justice*, III.

¹⁶ The 'veil of ignorance' is considered 'thick' according to Rawls, because contracting parties have no prior knowledge of the comprehensive doctrines they uphold. For a fuller explanation please refer to Rawls, John. *Political Liberalism*, 24 n.27.

¹⁷ Rawls, John. *A Theory of Justice*, 11.

¹⁸ Rawls, John. *A Theory of Justice*, 11.

particular condition or circumstance the resulting principles of justice have been constructed from a method of fair agreement.

The original position is setup to abstract away bargaining advantages and to provide the necessary conditions for fair agreement between free and equal persons. According to Rawls: “the original position is simply a device of representation: it describes the parties, each of whom is responsible for the essential interests of free and equal citizens, as fairly situated and as reaching an agreement subject to conditions that appropriately limit what they can put forward as good reasons”.¹⁹ From this we can see that for Rawls the original position in the domestic case models two things:

First, it models what we regard – here and now – as fair conditions under which the representatives of citizens, viewed solely as free and equal persons, are to agree to the fair terms of cooperation whereby the basic structure is to be regulated. Second, it models what we regard – here and now – as acceptable restrictions on the reasons on the basis of which the parties, situated in fair conditions, may properly put forward certain principles of political justice and reject others.²⁰

The original position provides the instance of fair agreement where the principles that will underlie the basic structure of society can be justly reached.

Given the first use of the original position Rawls derives two basic principles of justice that those who were subject to its use could reasonably agree to endorse. These two principles of domestic justice are:

- a) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and

¹⁹ Rawls, John. *Political Liberalism*, 25. Especially refer to fn:28, where Rawls asserts that the original position models a basic feature of both Kant's moral constructivism and of political constructivism.

Here there is a brief discussion on the distinction between reasonable and rational as Rawls conceives it.
²⁰ Rawls, John. *Justice as Fairness*, 17.

- b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions 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 (the difference principle).²¹

According to Rawls, the first principle is designed to cover constitutional essentials (written or unwritten) and the second principle identifies the need for fair equality of opportunity and asserts that social and economic inequalities will be governed by 'the difference principle'. The first principle takes priority over the second.

Additionally, "the difference principle is subordinate to both the first principle of justice (guaranteeing the equal basic liberties) and the principle of fair equality of opportunity."²²

Rawls argues that basic rights and liberties are to take priority and that it is impermissible to trade off or exchange rights or liberties captured by the first principle for the economic advantages that the difference principle may allow for. However, the two principles of justice are designed to operate in tandem and apply as a complement to one another.

A great deal of criticism, as we will come to see in the following chapter, has arisen in response to Rawls's defence of a principle of distributive justice in his domestic theory and his resistance to endorse such a principle in the global context. I would like to narrow our focus at this point and look closer at the difference principle and what it entails, according to Rawls. The difference principle stipulates that the only inequalities that are permissible are those that seek to benefit the least advantaged. Rawls claims that the difference principle is a *principle of reciprocity* in that: "the existing inequalities are

²¹ Rawls, John. *Justice as Fairness*, 42-43.

²² Rawls, John. *Justice as Fairness*, 61. For a fuller explanation also refer to §13.1 in *Justice as Fairness*.

to fulfill the condition of benefiting others as well as ourselves”.²³ To clarify, in *A Theory of Justice* Rawls argues for a principle of distributive justice, the difference principle, that is to be applied within different societies domestically, but not among them.²⁴ Here inequalities are permitted on the condition that there is fair equality of opportunity and that each society fulfils a duty to structure its economic and legal institutions in such a way that the worst-off persons benefit most under this arrangement, in spite of inequalities, compared to alternative social arrangements. Rawls sets up the difference principle to benefit the least advantaged within a given closed society; however, each society does not have a duty to structure its system to maximize the position of the least advantaged on a global scale.²⁵

Now that the first use of the original position has been outlined it is time to turn our attention toward the second use of the original position, which occurs in the international instance. For the purposes of this work much of the focus of critique and analysis will apply to the international use of the original position. However, it is still useful to understand the domestic use of the original position so as to recognize and

²³ Rawls, John. *Justice as Fairness*, 64. This notion of reciprocity is quite essential to both Rawls's theory of domestic and global justice. It stems from Rawls's conception of what is required to attain fair terms of social cooperation. For Rawls the fair terms of cooperation specify an idea of reciprocity where: “our exercise of political power is proper only when we sincerely believe that the reasons we offer for our political action may reasonably be accepted by other citizens as a justification for those actions” (Rawls, *Political Liberalism*, xlv). Additionally Rawls asserts that: “reciprocity is a relation between citizens expressed by principles of justice that regulate a social world in which all who are engaged in cooperation and do their part as the rules and procedures require are to benefit in an appropriate way as assessed by a suitable benchmark of comparison” (Rawls, *Justice as Fairness*, 49n14.) For a fuller account of Rawls's idea of reciprocity, see *Political Liberalism*, pp.16-17 and “The Idea of Public Reason Revisited”, reprinted in *The Law of Peoples*.

²⁴ For additional information on John Rawls's difference principle, refer to *A Theory of Justice*, §13:65-73, *Political Liberalism*, 282-283, and *Justice as Fairness*, 42-43, 59-60, especially §18:61-66.

²⁵ In the domestic case where the original position is used in the works *A Theory of Justice*, *Political Liberalism*, and *Justice as Fairness*, Rawls simply assumes that we are addressing closed societies. In *The Law of Peoples*, this position is argued for.

compare the principles brought forward from the first use (domestic) to that of the second (international).

The second original position is used to extend a liberal conception to the Law of Peoples. Similar to the first use of the original position, the international original position is used as a model of representation. However, there are two main differences between the first and second use: 1) the first use of the original position concerns the basic structure of society, whereas in the second use of the original position, parties are concerned with establishing principles that govern relations *between* peoples, 2) The parties in the first use of the original position are representatives of individual citizens who are part of the liberal society in question, whereas in the second use of the original position, the parties are representatives of liberal or decent *peoples*. There are two steps to the second use of the original position: the symmetrical positioning of both liberal democratic peoples and reasonably decent hierarchical peoples. Rawls considers the Law of Peoples from each perspective. He does so for two main reasons. Beitz explains that, firstly liberal and decent peoples have different fundamental interests, which have relevance when deciding the principles of foreign policy. Given the different political cultures exhibited by both liberal and decent peoples, each type of people will typically express an interest in securing international conditions in which their culture and institutions can be sustained and flourish.²⁶ Rawls's second reason for considering the Law of Peoples from a nonliberal perspective, explains Beitz, is a reflection of the requirement of reciprocity that Rawls believes is intrinsic to liberalism itself: we wish to act on principles which are not only reasonable to us but which we believe it would be

²⁶ Beitz, Charles. "Rawls's Law of Peoples", 675.

reasonable to expect those affected by our actions to also accept.²⁷ For now we will focus on the positioning of liberal peoples before moving on to the considerations of non-liberal parties.

It is important to understand why Rawls chooses peoples as opposed to states as the appropriate contractual parties in the international case. Rawls uses the language of 'peoples' because, whereas states are rational, anxiously concerned with power, and guided by their basic interests, peoples are reasonable and additionally concerned with insuring reasonable justice for all of their citizens *as well as* for all other peoples.²⁸ More specifically, the use of the terms peoples, according to Rawls, enables us to attribute moral motives to the contracting parties in the second use of the original position, much the same as the reciprocal moral character of individual citizens in the first use of the original position.²⁹ For example, the use of the language of peoples makes possible the allegiance to the principles of the Law of Peoples and permits wars only as a means of self-defence. Rawls specifies that "the term 'peoples', then, is meant to emphasize these singular features of peoples as distinct from states as traditionally conceived, and to highlight their moral character and the reasonably just, or decent, nature of their regimes".³⁰

The fundamental interests of peoples in comparison to states is yet another important distinction Rawls makes. A state's basic interests, according to Rawls, can be typically described as the struggles for power, prestige, wealth, security, territory, and

²⁷ See Rawls, John. *The Law of Peoples*, 58 and Beitz, Charles. "Rawls's Law of Peoples", 675.

²⁸ Rawls, John. *The Law of Peoples*, 28.

²⁹ Rawls, John. *The Law of Peoples*, 17.

³⁰ Rawls, John. *The Law of Peoples*, 27.

such.³¹ Conversely, peoples participating in the Society of Peoples will regard themselves as free and equal. Rawls says, that liberal peoples are concerned with striving to protect their political independence, free culture with its civil liberties, maintain security, territory, and the well-being of its citizens. In addition to this, Rawls insists that what distinguishes peoples from states “is that just peoples are fully prepared to grant the very same proper respect and recognition to other peoples as equals”.³² This notion of equal respect compliments Rawls's notion of *reciprocity* (previously mentioned) that is deeply entrenched within his theory of both domestic and international justice. Rawls asserts that the rationality and reasonableness that peoples exhibit enables them to offer to other peoples fair terms of political and social cooperation. The fair terms offered are those that a people sincerely believe other equal peoples would reasonably agree to. Additionally, out of mutual respect and recognition of equality, peoples will seek to honour the proposed terms of agreement even if it would be advantageous for a particular people to violate those terms. It is from this that we can see Rawls's notion of reciprocity applying similarly to the Law of Peoples as it operates within a just liberal domestic constitutional regime. Thus, peoples can be distinguished from states given their moral nature, their ability to attribute equal status and respect to other peoples, and their commitment to seek ongoing cooperation for the right reasons between peoples over time.³³ It is important to understand this part of Rawls's theory as I will go on to argue that Rawls's notion of reciprocity entrenched within his ideal theory combined with his conception of what a people embodies offers a strong safeguard against the realist type worries of

³¹ Rawls, Rawls. *The Law of Peoples*, 28-29.

³² Rawls, Rawls. *The Law of Peoples*, 35.

³³ For more on this please refer to John Rawls, *The Law of Peoples*, §2:25-30, 34-35.

manipulation, corruption, and coercion that have been so often present in our contemporary international system. This will further contribute to our analysis of the sufficiency and robustness of the duty of assistance, given the objections raised by Rawls's cosmopolitan critics who argue that the duty does not demand enough given the levels of oppression and exploitation that are experienced on a global scale.

Despite differences in subject matter and parties represented, both the first and second uses of the original position share several common features. Both model the parties as (1) representing citizens/peoples fairly and equally; (2) instrumentally rational; (3) selecting from available principles of justice those that apply to the appropriate subject (either the basic structure of society, or relations between peoples); (4) making these decisions for appropriate reasons; and (5) selecting for reasons related to the fundamental interests of citizens/peoples as reasonable and rational.³⁴

The fourth feature mentioned above is secured by the condition that the parties to both uses of the original position are under a thick veil of ignorance. As mentioned earlier this means that they are ignorant of any knowledge that would cause them to be biased in their selection of principles, thereby guaranteeing that principles are not selected for self-serving purposes that could be detrimental to the well-being of others. Similar to the domestic case where the parties do not know such things as their economic status, religion, race, or gender, parties to the second use of the original position are ignorant of, for example, the size of their territory, their population, their level of economic development, and their natural resources. Just as in the domestic case Rawls insists that this “thick” veil of ignorance is necessary in the international case to insure fairness given

³⁴ Rawls, John. *The Law of Peoples*, 31.

the fact of reasonable pluralism. However, there is one fact that may not be concealed by the veil of ignorance in the international case: “they do know that reasonable favourable conditions obtain that make constitutional democracy possible – since they know they represent liberal societies”.³⁵ This fact escapes concealment because the second use of the original position is applied on two levels, first for liberal peoples and in the second instance for decent peoples.

By employing the international original position, Rawls derives eight principles of justice that can be reasonably agreed upon between free, equal, independent and well-ordered peoples. The principles of the Law of Peoples are:

- 1) Peoples are free and independent and their freedom and independence are to be respected by other peoples;
- 2) Peoples are to observe treaties and undertakings;
- 3) Peoples are equal and are parties to the agreements that bind them;
- 4) Peoples are to observe a duty of non-intervention;
- 5) Peoples have the right to self-defence but no right to instigate war for reasons other than self-defence;
- 6) Peoples are to honor human rights;
- 7) Peoples are to observe certain specified restrictions for the conduct of war;
- 8) Peoples have a duty to assist other peoples living under unfavourable conditions that prevent their having a just or decent political and social regime.³⁶

For Rawls these principles constitute the basic charter of the Law of Peoples. The final principle, Rawls’s duty of assistance, will be our main concern throughout this work.

³⁵ Rawls, John. *The Law of Peoples*, 33.

³⁶ Rawls, John. *The Law of Peoples*, 37.

However, before we can begin to discuss what the duty of assistance entails and evaluate its sufficiency and robustness, there are still a few theoretical aspects that we should come to understand. Here, I am predominantly concerned with the ideal conditions that Rawls builds into his account of the Society of Peoples and its members. Who qualifies as justified members in Rawls's Society of Peoples will have significant implications in our determination of the robustness and sufficiency of the duty of assistance, and, moreover, contributes even further to Rawls's goal of producing a theory of global justice that can be considered a realistic utopia. The next section will discuss who is to be permitted into the Society of Peoples, according to Rawls, and his justifications required for the permissibility of such membership.

The Features of Well-Ordered Liberal Democratic People

As noted above, Rawls derives his ideal conditions and principles from what can be reasonably agreed upon between well-ordered liberal and decent societies. In *The Law of Peoples*, Rawls conceives liberal democratic and decent peoples as the actors in the Society of Peoples, similarly to how citizens are the actors in domestic society.³⁷

To better understand Rawls's framework one must identify what is meant by “well-ordered” liberal and decent societies. Rawls distinguishes a well-ordered liberal society as one composed of and exhibiting three basic features: 1. The Institutional Feature - where a reasonably just constitutional democratic government serves the fundamental interests of the given society, 2. The Cultural Feature – where citizens are united by what Mill calls “common sympathies” and 3. The Moral Feature - where moral and political attachment to right and justice are derived from a common conception of

³⁷ Rawls, John. *The Law of Peoples*, 23.

right and justice.³⁸ Rawls specifies that a reasonably just, though not necessarily fully just, constitutional democratic government, is one where “the government is effectively under their political and electoral control, and that it answers to and protects their fundamental interests as specified in a written or unwritten constitution and in its interpretation”.³⁹ Rawls notes that such a regime would operate as a cooperative collective public and not as, he points out, “an autonomous agency pursuing its own bureaucratic ambitions”.⁴⁰ Moreover, Rawls asserts that such a regime would “not [be] directed by the interests of large concentrations of private economic and corporate power veiled from public knowledge and almost entirely free from accountability”.⁴¹ Although Rawls avoids offering any detailed and sustaining suggestions as to what institutions and practises might be necessary to ensure the reasonably just character of a constitutional government, he does provide a footnoted example of the importance of public financing of both elections and forums for public discussion.⁴²

For a liberal people to be united by common sympathies and a desire to be under the same democratic government, Rawls asserts, it is not necessary to have those sympathies be entirely dependent upon a common language, history, and political culture; such dependence may in fact be entirely unattainable. Rather, Rawls takes the idea of common sympathies to express a shared desire for a common conception of justice as fairness.

³⁸ Rawls, John. *The Law of Peoples*, 23-25.

³⁹ Rawls, John. *The Law of Peoples*, 24.

⁴⁰ Rawls, John. *The Law of Peoples*, 24.

⁴¹ Rawls, John. *The Law of Peoples*, 24.

⁴² See Rawls, John. *The Law of Peoples*. 23 n.19.

For Rawls, liberal peoples have a certain moral character. Similarly to citizens in a domestic society, liberal peoples are to be both reasonable and rational.⁴³ The technical term ‘reasonable’, for Rawls, is used in a more restricted sense contrary to traditional conceptions such as those constructed by Kant. Rather, Rawls associates it “first, with the willingness to propose and honor fair terms of cooperation, and second, with the willingness to recognize the burdens of judgment and to accept their consequences”.⁴⁴ He claims that persons are reasonable in one basic aspect: when among equals they are ready to propose principles and standards as fair terms of cooperation, abide by them willingly, given that others will do likewise. Reasonable persons are not motivated by the general good, but desire for its own sake a social world in which free and equal citizens can cooperate with others on terms all can accept. The term ‘rational’, as used by Rawls, is a distinct idea from reasonable. The rational “applies to a single, unified agent (either an individual or corporate person) with the powers of judgment and deliberation in seeking ends and interests peculiarly its own”.⁴⁵

Rawls claims that within the idea of fair terms of cooperation the reasonable and rational are complementary ideas. He explains that “they work in tandem to specify the idea of fair terms of cooperation, taking into account the kind of social cooperation in question, the nature of the parties and their standing with respect to one another”.⁴⁶ Rational conduct in regards to the Law of Peoples is organized and expressed through public elections and voting, and is representative of the laws and policies of their

⁴³ For a full discussion on Rawls’s use of the terms reasonable and rational see *A Theory of Justice*, 123-130, 277-278, 309-310 and *Political Liberalism*, 48-54.

⁴⁴ Rawls, John. *Political Liberalism*, 49.

⁴⁵ Rawls, John. *Political Liberalism*, 50.

⁴⁶ Rawls, John. *Political Liberalism*, 52.

government. Additionally, notes Rawls, rational conduct is constrained by their sense of what is reasonable. Reasonable peoples show proper respect for and offer fair terms of cooperation to other peoples. They are mutually disinterested and seek to establish fair terms that a people sincerely believe other equal peoples might also accept. Reasonable peoples honor these terms proposed even if it would be to their advantage to violate them.⁴⁷

We can see, that the entrenched notions so important to Rawls's system of liberal political theory – the social contract, ideas of public reason, overlapping consensus, and reasonable pluralism – are always operating in the background. Analogous to how citizens in Rawls's domestic society offer reasonable and fair terms of cooperation that can be accepted by other citizens, liberal or decent peoples, in Rawls's Society of Peoples, also offer fair and acceptable terms of cooperation to other peoples. In this instance both participating parties are mutually advantaged, and according to Rawls “a people will honour these terms when assured that other peoples will do so as well.”⁴⁸ Once again, these fair terms of agreement are established by use of the original position and are maintained by peoples' displaying what Rawls refers to as reciprocity and mutual respect. From this it becomes clear that stability and peace are maintained for the right reasons and not just as a *modus vivendi* in Rawls's account.⁴⁹

⁴⁷ Rawls, John. *The Law of Peoples*, 35.

⁴⁸ Rawls, John. *The Law of Peoples*, 25.

⁴⁹ See Rawls, John. *The Law of Peoples*, 44-45 and *Political Liberalism*, 458-459. A *modus vivendi* occurs when stability is achieved by a balance of forces. It is a Latin phrase where: a) *modus* means mode, way and b) *vivendi* is a means of living. It implies an accommodation between disputing parties where life continues in respect of the differences at hand. Typically this term signifies a political stalemate or a truce. The Cold War is perhaps an appropriate example (if we ignore the wars fought by proxy in the Balkans) of a *modus vivendi* where the arms race created a political stalemate between Russia and the USA. Here stability was achieved to a certain extent by the balance of force for fear of nuclear threat and nuclear warfare. On Rawls's account “stability for the right reasons describes a situation in which,

It is important to understand that the motivations for entering into Rawls's social contract on both the domestic and international sphere are very different from that formulated by Hobbes and other contractarians. For instance, Hobbes' parties enter into the social contract out of insecurity, fear, and a strong desire to escape the ills of the state of nature that are comparable to a state of war.⁵⁰ Here, parties to the social contract seek to obtain preservation and security by the mutual surrendering of unbridled liberty to an absolute sovereign. Conversely, for Rawls, parties submit to the original position out of a mutual understanding and mutual respect for reasonable pluralism and overlapping consensus⁵¹ that is pervasive to liberal societies who uphold free institutions, values of freedom of conscience and association, and the like.⁵²

Decent Peoples and Toleration

At a first glance it may seem somewhat unusual that Rawls chooses to include decent hierarchical well-ordered peoples as acting members given that the Law of Peoples is developed from within political liberalism and is an extension of a liberal

over the course of time, citizens acquire a sense of justice that inclines them not only to accept but to act upon the principles of justice" (*The Law of Peoples*, 45). Stability for the right reasons rests in part, explains Rawls, on an allegiance to the Law of Peoples itself.

⁵⁰ Hobbes, Thomas (1668). *Leviathan*, ed. 1994 (Hackett Publishing Company, Inc., Indianapolis, Indiana). See chapters xiv-xix:79-127.

⁵¹ For a full account of overlapping consensus see Rawls, John. *Political Liberalism* §4: 132-138. In brief, given the fact of reasonable pluralism, which conveys the idea that citizens will hold different comprehensive views – religious, philosophical, moral – these individuals will affirm the political conception of their society for different reasons. However, these differences do not, explains Rawls, prevent the political conception from being a shared view (an overlapping consensus) from which citizens can resolve questions about the constitutional essentials. He claims that "the idea of overlapping consensus is introduced to make the idea of a well-ordered society more realistic and to adjust it to the historical and social conditions of democratic societies, which included the fact of reasonable pluralism" (*Political Liberalism*, 32). The technical term overlapping consensus refers to how citizens, who uphold different comprehensive doctrines, can come to reasonably agree on the terms for fair political organization and the arrangements for creating and sustaining just institutions of their society.

⁵² Rawls, John. *The Law of Peoples*, 14-16.

conception of domestic justice to a *Society of Peoples*. However, Rawls offers the following explanation for such inclusion within the Society of Peoples: “The reason for going on to consider the point of view of decent hierarchical peoples is not to prescribe principles of justice for them, but to assure ourselves that nonliberal principles of foreign policy are also reasonable from a decent nonliberal point of view”.⁵³ Rawls maintains that the motivation to obtain this assurance is intrinsic to the liberal conception. It would be self-defeating for a liberal people to impose their conceived liberal values upon another people given the facts of reasonable pluralism, a sense of public reason, and the employment of overlapping consensus that Rawls distinguishes as the foundation of just liberal democracies. Liberalism for Rawls, as we have discussed, embodies a mutual respect for a plurality of differing, but reasonable views; on the international scale for Rawls to remain truly liberal he must come to respect and tolerate a plurality of reasonably well-ordered peoples, such as decent hierarchal peoples as we shall see.

Before we can come to understand Rawls’s reasoning for offering terms of toleration and inclusion to decent peoples, perhaps it would be useful to explore more fully the essential features of a decent people according to Rawls. The term ‘decency’, for Rawls, expresses a normative idea closely related to that of reasonableness. However, decency is a much weaker idea, in that it does not encompass the same considerations or accommodations that reasonableness accounts for. Recall that reasonable citizens in a liberal society, Rawls explains, “are characterized by their willingness to offer fair terms of social cooperation among equals and by their recognition of the burdens of

⁵³ Rawls John. *The Law of Peoples*, 58.

judgment”.⁵⁴ Decency on the other hand covers instances where individuals belong to an associationist social form, which first regards persons as members of groups – associations, corporations and estates. A society is distinctly decent in that it has a common good idea of justice that ensures human rights for all citizens; however groups are to be decently represented in the hierarchical consultation by elected bodies rather than equally situated individuals. Decency much like reasonableness, Rawls claims, is normative in that meaning is assigned by the use of the term.⁵⁵ The account of decency, similarly to that of reasonableness, is developed explains Rawls, by setting out various criteria and metrics to explain the meaning. Soon to be explained, Rawls offers two criteria that must be met if a people are to be considered decent and worthy of toleration and inclusion in the Society of Peoples.

It is important to note that Rawls describes in depth what he calls a “decent consultation hierarchy”; however, he recognizes that other types of decent peoples may exist with different basic structures of organization that do not fit the description offered. Rawls defines a decent consultation hierarchy as being organized in such a way where the basic structure of the society “must include a family of representative bodies whose role in the hierarchy is to take part in an established procedure of consultation and to look after what the people’s common good idea of justice regards as the important interests of

⁵⁴ Rawls, John. *The Law of Peoples*, 87.

⁵⁵ For a more in depth explanation of this see John Rawls, *The Law of Peoples*, 86-88. Here Rawls expresses that despite the Law of Peoples being indebted to Kant’s idea of the *foedus pacificum* and much of his thought, at no point does Rawls attempt to deduce the principles of right and justice, or decency, or the principles of rationality, from a conception of practical reason, in the same manner as Kant. Rather he admits to giving content to an idea of practical reason and its three component parts, the ideas of reasonableness, decency, and rationality. For Rawls, there is no list of necessary and sufficient conditions for each of these ideas, and differences of opinion are to be expected. He conjectures “that if the content of reasonableness, decency, and rationality is laid out properly, the resulting principles and standards of right and justice will hang together and will be affirmed by us on due reflection” (p.87).

all members of the people”.⁵⁶ Given this, Rawls expresses that these types of societies may assume many institutional forms, religious and secular. However, all of these societies are *associationist* in form: “that is, the members of these societies are viewed in public life as members of different groups, and each group is represented in the legal system by a body in a decent consultation hierarchy.”⁵⁷ These individuals in a decent consultation hierarchical arrangement are not regarded as free and equal citizens, nor separate individuals deserving equal representation (according to the maxim: one citizen one vote); however, they are to be regarded as decent, rational, and responsible members of the society who act in accordance with the people’s common good idea of justice⁵⁸. This notion of acting with respect to the common good idea of justice relays that individuals in such a society and those representing them will aim at maintaining conditions and achieving objectives that are similarly in everyone’s advantage. The common good according to Rawls expresses “certain general conditions that are in an appropriate sense equally to everyone’s advantage”.⁵⁹

Rawls establishes two main criteria that must be met so that a people may be considered a decent hierarchical people.⁶⁰ The first criterion to be met is that the people in question must express neither aggressive nor expansionist aims. A decent people must engage in peaceful diplomacy and respect the social order of other peoples, despite being guided by some sort of comprehensive doctrine (religious or otherwise). Decent peoples

⁵⁶ Rawls, John. *The Law of Peoples*, 71. For a fuller explanation see *The Law of Peoples*, §9: 71-78

⁵⁷ Rawls, John. *The Law of Peoples*, 64.

⁵⁸ For a fuller account of what a common good conception of justice capture see Rawls, John. *The Law of Peoples*, §9.1: 71-72.

⁵⁹ Rawls, John. *A Theory of Justice*, 217.

⁶⁰ Rawls, John. *The Law of Peoples*, §8.2: 64-67.

conduct themselves peacefully, cooperatively, and adhere to the ideal of reciprocal respect previously discussed.

The second criterion that Rawls distinguishes has three parts. Firstly, a decent hierarchal people's system of law, in conjunction with its common good conception of justice, secures human rights for all members of the people in question. Rawls identifies that a decent people will ensure that the right to life, to liberty, to personal property, and to formal equality as expressed by the rules of natural justice be upheld.⁶¹ Second, a decent people's system of law must be such as to impose sincere moral duties and obligations on all individuals living within the given society. Rawls notes that these duties and obligations are distinct from human rights. Additionally, these duties and obligations fit in with the society's common good idea of justice, and are not viewed as mere commands imposed by force. This is achievable, according to Rawls, because the members of a people are viewed as rational and responsible and able to play a part and have input in the social life of their society. Third, there must be a sincere and not unreasonable belief on the part of judges and other officials who administer the legal system that the law is indeed guided by a common idea of justice. In summation:

Thus, a decent people must honor the laws of peace; its system of law must be such as to respect human rights and to impose duties and obligations on all persons in its territory. Its system of law must follow a common good idea of justice that takes into account what it sees as the fundamental interests of everyone in society. And, finally, there must be a sincere and not unreasonable belief on the part of judges and other officials that the law is indeed guided by a common good idea of justice.⁶²

⁶¹ A more detailed discussion of human rights and basic needs will be provided in chapter 3 of this work. Additionally, for a fuller description of the human rights that a decent people are expected to uphold see Rawls, John. *The Law of Peoples*, p.65.

⁶² Rawls, John. *The Law of Peoples*, 67.

Now that I have provided what is hoped to be a satisfactory account of what Rawls describes as decent peoples the case must be made as to why such a people would agree to be included in the Society of Peoples and chose to adopt the eight principles previously argued for by Rawls and adopted by liberal societies. Rawls argues that given that decent hierarchal peoples are well-ordered and meet the two previously established criteria, he submits that their representatives in an appropriate original position would adopt the same eight principles that liberal peoples have come to agree to. Rawls' argument proceeds as follows:

Decent hierarchal peoples do not engage in aggressive war; therefore their representatives respect the civic order and integrity of other peoples and accept the symmetrical situation (the equality) of the original position as fair. Next, in view of the common good ideas of justice held in decent hierarchical societies, the representatives strive both to protect human rights and the good of the people they represent and to maintain their security and independence. The representatives care about the benefits of trade and also accept the idea of assistance among peoples in times of need. Hence, we can say that the representatives of hierarchical societies are decent and rational. In view of this reasoning, we can also say that the members of decent hierarchical societies would accept – as you and I would accept – the original position as fair among peoples, and would endorse the Law of Peoples adopted by their representatives as specifying fair terms of political cooperation with other peoples.⁶³

As argued for by Rawls decent hierarchal peoples are governed by a common good conception of justice, that is they seek to build and sustain the conditions and institutions that are to the advantage of each group represented by the consultation and by each member of the society. Additionally, decent societies respect human rights and basic needs for their own sake. Respect for human rights in a decent society is further fostered by the society's commitment to be ruled by law and not by force. They too, seek stability for the rights reasons and do not express expansionist aims. Given this desire, stability for

⁶³ Rawls, John. *The Law of Peoples*, 69.

the rights reasons, decent peoples can accept the terms of fair political cooperation established by the Law of Peoples as it is not particularly liberal in form.

A central and somewhat contentious notion in *The Law of Peoples* that Rawls discusses is the liberal idea of toleration. Rawls claims, “a main task in extending the Law of Peoples to nonliberal peoples is to specify how far liberal peoples are to tolerate non-liberal peoples”.⁶⁴ For Rawls toleration has two main requirements. Firstly, there is the common use of the term, where toleration requires liberal societies to refrain from exercising political sanctions – military, economic, or diplomatic – to pressure a people toward becoming liberal. Second, and perhaps more importantly, to be a tolerant liberal society participating in the Society of Peoples means to “recognize these nonliberal societies as equal participating members in good standing of the Society of Peoples, with certain rights and obligations, including the duty of civility requiring that they offer other peoples public reasons appropriate to the Society of Peoples for their actions”.⁶⁵

Again the idea of reasonable pluralism that Rawls finds essential to the maintenance of a reasonably just liberal society pushes him to assert that liberal societies are to cooperate with and assist decent peoples. Rawls argues that: “if all societies were required to be liberal, then the idea of political liberalism would fail to express due toleration for other acceptable ways (if such there are, as I assume) of ordering society”.⁶⁶ It would be self-defeating and self-contradictory for liberalism to demand otherwise given the liberal commitment of respect for reasonable and competing comprehensive views. In his domestic theory of justice Rawls argues that a liberal society is “to respect

⁶⁴ Rawls, John. *The Law of Peoples*, 59.

⁶⁵ Rawls, John. *The Law of Peoples*, 59.

⁶⁶ Rawls, John. *The Law of Peoples*, 59.

its citizens' comprehensive doctrines – religious, philosophical, and moral – provided that these doctrines are pursued in ways compatible with a reasonable political conception of justice and its public reason”.⁶⁷ Taking this further, Rawls goes on to claim that: “provided a nonliberal society's basic institutions meet certain specified conditions of political right and justice and lead its people to honor a reasonable and just law for the Society of Peoples, a liberal people is to tolerate and accept that society”.⁶⁸ Rawls identifies those societies that satisfy these conditions as *decent* peoples.

An additional consideration that Rawls proposes is that the inclusion of decent peoples will further foster the liberal values of mutual respect and will preserve room for political self-determination by a people. Rawls argues that: “if liberal peoples require all societies to be liberal and subject those that are not to politically enforced sanctions, the decent nonliberal peoples – if there are such – will be denied a due measure of respect by liberal peoples”.⁶⁹ This lack of respect, Rawls purports, has the potential to injure the self-respect of decent nonliberal peoples as peoples, and their individual citizens. Such disrespect amongst peoples could further lead to great bitterness and resentment; consequently shaming, intolerance, and the denial of respect will require strong justifications. Given that decent peoples cannot be said to deny human rights and even afford their citizens many participatory political rights, this for Rawls, provides insufficient reasons for intolerance and disrespect. It follows then that because decent peoples allow a right of dissent and are able to accomplish political reform by their own means, tolerance and inclusion of decent peoples in the Society of Peoples preserves

⁶⁷ Rawls, John. *The Law of Peoples*, 59.

⁶⁸ Rawls, John. *The Law of Peoples*, 59-60.

⁶⁹ Rawls, John *The Law of Peoples*, 61.

significant room for the idea of a people's self-determination.⁷⁰ This idea further contributes, as previously mentioned, to stability in the Society of Peoples as being established and maintained for the right reasons.

The Duty of Assistance

In Part III of the *Law of Peoples*, Rawls seeks to address the instances of non-ideal theory. To accomplish his aims of providing an account of global justice theory that will guide how liberal peoples are to interact with other types of peoples on the international stage, it is important for Rawls to consider, in addition to decent hierarchical peoples, the treatment of both “outlaw states” and “burdened peoples”. Beginning with the initial assumption that there is the possibility of some well-ordered peoples existing in the world, who fundamentally express a shared desire to live in a world in which all peoples follow and accept the (ideal of the) Law of Peoples, it is essential for Rawls to provide a plan of action that will enable well-ordered peoples to attain this common goal. Recognizing that there exists both well-ordered peoples and peoples living under, as Rawls puts it, highly non-ideal conditions, struggling “with great injustices and social evils”, Rawls’s non-ideal theory looks for “policies and courses of action that are *morally permissible* and *politically possible* as well as likely to be effective” in order to transform a world containing non-well-ordered peoples to a world in which all societies come to accept and follow the Law of Peoples.⁷¹

There are two kinds of non-ideal theory: one deals with conditions of noncompliance, and the other with unfavourable conditions. In the former conditions,

⁷⁰ For a fuller explanation of this argument see John Rawls, *The Law of Peoples*, 60-62.

⁷¹ Rawls, John. *The Law of Peoples*, 89. Emphasis added.

some regimes refuse to comply with the Law of Peoples and engage in war in the hope of advancing their rational interests. Rawls calls these regimes “outlaw states”. The latter refers to the conditions of those societies “whose historical, social, and economic circumstances make their achieving a well-ordered regime ... difficult if not impossible”.⁷² These societies are called “burdened societies”. For the purposes of this work we will put aside the consideration of outlaw states, however important, and focus solely on what Rawls has termed burdened societies in our evaluation of the sufficiency and robustness of the duty of assistance.

A burdened society, for Rawls, reflects the unfavourable conditions detrimentally impacting a given society that prevent it from becoming well-ordered. These conditions include, but may not be limited to historical, social, and economic circumstances.⁷³ Burdened societies are “not expansive or aggressive, [but rather] lack the political and cultural traditions, the human capital and know-how, and often the material and technological resources needed to be well-ordered”.⁷⁴ As we have already established, well-ordered peoples have a duty to assist burdened societies toward the goal of becoming well-ordered. Rawls specifies three guidelines for the duty of assistance: 1) The recognition that a well-ordered society need not be a wealthy society; 2) The acknowledgement that the political culture of a society is all-important and that there is no particular recipe for changing the social order and political culture of a society; and 3) The definition of both a *target* and *cutoff* of assistance; which require aid up to a point where the once burdened society is positioned in such a way so as to be able to meet the

⁷² Rawls, John. *The Law of Peoples*, 90.

⁷³ Rawls, John. *The Law of Peoples*, 90.

⁷⁴ Rawls, John. *The Law of Peoples*, 106.

basic needs of its citizens, reasonably and rationally manage their own affairs, and eventually become a member of the Society of well-ordered Peoples.⁷⁵ From here, we will move on to expand upon the implications that each guideline of the duty of assistance demands. Doing so will later help us to assess the sufficiency and robustness of this principle.

The first guideline for Rawls's duty of assistance has us consider that a well-ordered society need not be a wealthy society. Partly, it is in this instance that Rawls comes to controversially reject, much to the dismay of the cosmopolitans as we will see in chapter two, a principle of global distributive justice instead replacing the possibility of such a principle with something closer to the *just savings* principle discussed in *A Theory of Justice*.⁷⁶ He points out three significant features of just savings in domestic theory that relate to the duty of assistance for the international case: 1) The purpose of the principle is to establish (reasonably) just basic institutions and to secure a social world that makes possible a worthwhile life for all of its citizens; 2) Once just or decent basic institutions have been established then savings may stop; and 3) Great wealth is not necessary to establish just or decent institutions; the amount needed will depend on the particular society's history and its conception of justice.⁷⁷ Consequently, the wealth between peoples will not necessarily be the same. From these three aspects of the just savings principle Rawls argues that the duty of assistance expresses the same underlying idea that “in each instance, the aim is to realize and preserve just (or decent) institutions, and not

⁷⁵ Rawls, John. *The Law of Peoples*, §15: 106-112.

⁷⁶ For a fuller explanation of Rawls's conception of a just savings principle refer to Rawls, John. *A Theory of Justice*, §44:251-258.

⁷⁷ Rawls, John. *The Law of Peoples*, 106-107.

simply increase, much less maximize indefinitely, the average level of wealth, or the wealth of any society or particular class in society”.⁷⁸

As captured by guideline number two, Rawls assumes, political culture, religious and philosophical doctrines, and moral traditions that support and sustain the basic structure of political and social institutions, all contribute greatly to the unfavourable circumstances of a burdened society. Political culture for Rawls is more critical in establishing a well-ordered society in comparison to endowments of wealth or resources:

There is no society anywhere in the world – except for marginal cases – with resources so scarce that it could not, were it reasonably and rationally organized and governed, become well-ordered...The crucial element in how a country fares is its political culture – its members' political and civic virtues – and not the level of its resources.⁷⁹

From this we can see that for Rawls a society's well-orderliness relies heavily on its political culture and basic ordering of institutions and not necessarily on the level of its wealth or abundance of resources. In recognizing that the political culture of a burdened society is all-important and that there is no prescription to get a burdened society to change its social and political culture, simply dispensing aid in terms of monetary funds, will not suffice for Rawls. Although the two, political cultural progress and aid relief, need not be incompatible. Instead he emphasizes that human rights have an important role to play in working to change ineffective and poorly ordered regimes.⁸⁰

Samuel Freeman points out that “since members of the Society of Peoples have reason to care about just institutions and practises, including human rights, for their own sake, and not simply because they are themselves benefited, we can see why Rawls

⁷⁸ Rawls, John. *The Law of Peoples*, 107.

⁷⁹ Rawls, John. *The Law of Peoples*, 108, 117.

⁸⁰ Rawls, John. *The Law of Peoples*, 108-109.

argues for a duty of assistance for burdened peoples”.⁸¹ Importantly for Rawls, the human right to life includes a minimal or basic right to the means of subsistence as well as security.⁸² In addition to this subsistence for Rawls includes *minimum economic security*.⁸³ In order to uphold and justify a basic right to minimum economic security, Rawls affirms, “the sensible and rational exercise of all liberties, of whatever kind, as well as the intelligent use of property, always implies having general all-purpose economic means”.⁸⁴ Foremost, it is the primary responsibility of a government to provide the means of subsistence for its own citizens and for Rawls, “for a government to allow its people to starve when starvation is preventable reflects a lack of concern for human rights”.⁸⁵ However, when a government is incapable or refuses to provide economic means sufficient to meet its citizens subsistence needs, Rawls argues that it is the Society of Peoples’ responsibility to fulfil this duty.⁸⁶ This aspect of the duty of assistance will be taken up in more depth in chapter three where the broad concept of basic needs will be discussed to support my claims that the duty of assistance has the breadth to be a robust and sufficient demand.

The third and final guideline that Rawls distinguishes for his duty of assistance is that well-ordered peoples must recognize that the aim of the duty of assistance has a *target* and *cut-off point*. Recall that the goal of the duty of assistance is to aid burdened societies so that they can come to “manage their own affairs reasonably and rationally

⁸¹ Freeman, Samuel. *The Law of Peoples, Social Cooperation, Human Rights, and Distributive Justice*, 50. Also see Rawls Rawls, *The Law of Peoples*, 37.

⁸² John Rawls, *The Law of Peoples*, 65.

⁸³ Rawls, John. *The Law of Peoples*, 65.

⁸⁴ Rawls, John. *The Law of Peoples*, 65.

⁸⁵ Rawls, John. *The Law of Peoples*, 109.

⁸⁶ Rawls, John. *The Law of Peoples*, 37.

and eventually become members of the Society of well-ordered Peoples”.⁸⁷ The *final* aim of assistance is “freedom and equality for the formerly burdened societies”⁸⁸ and their established respect and membership within the Society of Peoples. Similar to the just savings principle, once this goal has been attained, the duty to assist that particular people is diminished, even if the society in question is still relatively poor. This guideline preserves space for the respect of a people's right to self-determination where the emphasis is not on economic equality as such, but on the equality and mutual respect between peoples under the Law of Peoples. This last feature of the duty of assistance will be considered more carefully later in this work. Pushing the boundaries of the possibility for political autonomy, political independence, and self-determination and how these relate to the welfare of a people will be evaluated. In doing so I will further seek to establish the robustness and sufficiency of the duty of assistance.

⁸⁷ Rawls, John. *The Law of Peoples*, 111.

⁸⁸ Rawls, John. *The Law of Peoples*, 111.

Chapter 2 – The Cosmopolitan Concern: International Egalitarianism

Some cosmopolitans, distinguishably Kok-Chor Tan, argue that:

“cosmopolitanism, as a normative idea, takes the individual to be the ultimate unit of moral concern and to be entitled to equal consideration regardless of nationality and citizenship”.¹ For Tan and other cosmopolitans principles of justice ought to transcend beyond our typically conceived political borders, and ought to apply equally to all *individuals* of the world as a whole. Such claims, as we shall come to evaluate, prove problematic for Rawls. This chapter will expound upon Tan's cosmopolitan position in defence of international egalitarianism. Additionally, it will present some of the cosmopolitan objections made against Rawls. It will explain a cosmopolitan conception of global justice theory that includes an international principle of distribution as argued for by Tan. This chapter will serve as the antithetical dimension to help us understand some of the charges made against Rawls, his rejection of cosmopolitanism, and his support of the duty of assistance. It will also help us better evaluate whether Rawls's opponents have been fair to his position or have perhaps overlooked crucial aspects of his work in *The Law of Peoples*.

Cosmopolitanism

According to Thomas Pogge, there are three elements shared by all cosmopolitan positions.² Firstly, he cites the common commitment to *individualism*: “the ultimate units of concern are human beings, or persons – rather than, say, family lines, tribes, ethnic,

¹ Kok-Chor Tan, *Justice Without Borders: Cosmopolitanism, Nationalism, and Patriotism* (Cambridge, MA: Cambridge University Press, 2004.), 1.

² Pogge, Thomas (2002). *World Poverty and Human Rights* (Polity Press, Maldon, MA), 169.

cultural, or religious communities, nations, or states”.³ Secondly, Pogge formulates, the cosmopolitan commitment to *universality*: “the status of ultimate unit of concern attaches to every living human being *equally* – not merely to some subset, such as men, aristocrats, Aryans, whites, or Muslims”.⁴ Thirdly, Pogge asserts that all cosmopolitans share a commitment to *generality*: “this special status has global force. Persons are ultimate units of concern for everyone – not only for their compatriots, fellow religionists, or suchlike”.⁵ As demonstrated by Pogge cosmopolitans, in general, will share commitments to equality between each and every individual person where such commitments extend beyond our traditional concepts of nationality and other concerns for special ties and group membership.

As mentioned briefly, the cosmopolitan ideal that Tan and others of a like-minded position seek to defend is the claim that “the ideal of equal respect and concern applies globally to all individuals and not just to citizens within bounded groups”.⁶ Tan qualifies the type of cosmopolitanism that he endorses with three crucial comparative distinctions: 1) the moral versus institutional 2) the strong versus weak, and 3) the moderate versus extreme.⁷

³ Pogge, Thomas. *World Poverty and Human Rights*, 169.

⁴ Pogge, Thomas. *World Poverty and Human Rights*, 169.

⁵ Pogge, Thomas. *World Poverty and Human Rights*, 169.

⁶ Kok-Chor Tan. *Justice Without Borders*, 6.

⁷ For a fuller account see Kok-Chor Tan. *Justice Without Borders*, 11-12. In his book, Tan actually cites four crucial distinctions in defining the type of cosmopolitan that he himself endorses. For the purposes of this work I have omitted the claim about cosmopolitanism as a claim about culture versus cosmopolitanism as a claim about justice. I have chosen to do so as my thesis relates to cosmopolitanism as a claim about justice, the very claim that Tan endorses. In short however, cosmopolitan views that seek to make claims about culture and identity deny that membership in a particular cultural community is constitutive of a person's social identity and a condition of her individual autonomy. Cosmopolitan views that aim to make claims about justice are concerned with the scope of justice and hold that social boundaries (ie. Nationality) do not impose principled restrictions on the scope of an adequate account of justice.

Firstly, he offers a cosmopolitan position that stands to make a *moral* claim about the scope of justice, conversely to those who commit themselves to *institutional* claims. To clarify, Tan distinguishes his moral variety of cosmopolitanism “as a set of moral commitments that (morally) justifies the kinds of institutions we may impose on individuals”.⁸ This is contrasted with, asserts Tan, cosmopolitanism “as a system of global institutions and organizations that represents a world state of some sort”.⁹ As a moral idea, conjectures Tan, cosmopolitanism does not necessarily have to result in the support of a world state, nor global citizenship. Rather, the type of cosmopolitanism that Tan seeks to endorse is “premised on an account of the equal moral status of individuals, and the kinds of reasons, consequently, that must be given to them for the global arrangement that we expect them to share”. In short, a defence of cosmopolitanism is not reducible to a defence of a world state. Despite the explicit cosmopolitan commitment to treating individuals as the ultimate units of equal moral worth irrespective of their nationality and citizenship, this commitment, argues Tan, does not necessarily entail a defence of global governance that embodies a world state.

Secondly, Tan purports that his cosmopolitan position reflects a *strong* commitment to egalitarianism. This is contrasted with what he identifies as *weak* cosmopolitanism: where the equal moral worth of individuals is still upheld, but this commitment is absolved once the baseline of what it takes for individuals to live minimally decent lives has been realized.¹⁰ To clarify, weak cosmopolitans, according to Tan, allow for a certain amount of inequality, in that their egalitarian commitments are

⁸ Kok-Chor Tan. *Justice Without Borders*, 10.

⁹ Kok-Chor Tan. *Justice Without Borders*, 10.

¹⁰ Kok-Chor Tan. *Justice Without Borders*, 11.

realized once a threshold of minimal adequacy is achieved, and anything else outside of this minimal baseline, given their position, is not of concern for their variety of cosmopolitan justice. Conversely, strong cosmopolitanism “takes the ideal of equal moral concern for persons to entail a commitment to some form of global distributive equality, and will aim to regulate inequalities between persons, even above the threshold of minimal adequacy, against some appropriate distributive principle”.¹¹ The tension between weak and strong cosmopolitans can be described as a contrast between a conception of global justice that takes the commitment to the equal moral worth of individuals to be understood as respecting the conditions that are universally necessary for individuals to lead minimally adequate lives on the one hand, and a conception of global justice that pushes beyond the requirement of minimal adequacy on the other hand, entailing some version of a global distributive principle.

The third distinction that Tan addresses is that between *extreme* and *moderate* cosmopolitanism. According to Tan, extreme cosmopolitanism “holds a reductive view of special concern and obligations”.¹² To clarify, extreme cosmopolitanism requires that any concern of moral worth must be justified by cosmopolitan principles. Tan illustrates this stating, “Extreme cosmopolitanism takes cosmopolitan morality to be the sole and unifying source of value in the sense that all other moral commitments must be justified by reference to cosmopolitan principles or goals”.¹³ Moderate cosmopolitanism, as identified by Tan, is sympathetic to certain claims of special obligations and “does not insist that cosmopolitan values are the only fundamental values by reference to which all

¹¹ Kok-Chor Tan. *Justice Without Borders*, 11.

¹² Kok-Chor Tan. *Justice Without Borders*, 11.

¹³ Kok-Chor Tan. *Justice Without Borders*, 11.

other values must be justified”.¹⁴ As one could easily assume, moderate cosmopolitanism, according to Tan, does not take a reductive view of special obligations and thus leaves room for their justification outside of cosmopolitan terms and principles. Moderate cosmopolitanism, has the advantage over the extreme view, argues Tan, as it “recognizes that treating all special obligations as being worthy only because they promote, or are derived from, cosmopolitan principles, misrepresents and devalues some of the special ties and commitments that matter to people”.¹⁵

Thus, Tan's position reflects cosmopolitanism as a moral claim about the scope of justice. He seeks to defend a strong cosmopolitanism about justice and argues that cosmopolitan justice requires that we take equality between persons as such to be of concern and must push this concern for equality beyond the satisfaction of basic subsistence. Despite this strong commitment to egalitarianism, Tan rejects extreme cosmopolitanism, and consistent with the moderate cosmopolitan view, accepts that patriotic ties and commitments have a certain normative independence and worth that are not fully reducible to cosmopolitan ideals. In short Tan's goal is to propose a *moral* conception of cosmopolitanism justice that reflects a *strong* commitment to egalitarianism, but requires *moderate* cosmopolitan justifications in terms of guiding moral principles to be adopted internationally.

Global Justice Versus Humanitarian Assistance

The substantive aim of the first part of Tan's book is to introduce the view that liberals ought also to be cosmopolitan liberals. Throughout Tan's work he stresses both “justice” and “cosmopolitan” because he wants to show: a) why we need to talk about

¹⁴ Kok-Chor Tan. *Justice Without Borders*, 11.

¹⁵ Kok-Chor Tan. *Justice Without Borders*, 12.

global justice as opposed to humanitarian assistance (and what is distinctive about the two), and b) why global justice must be cosmopolitan in its conception.¹⁶ According to Tan “some theorists argue, or at least give the impression, that we do not need principles of global distributive justice, but only principles of humanitarian assistance to tackle the problem of global poverty”.¹⁷ The most recent and notable proponent of this view, argues Tan, is John Rawls. The problem that Tan takes issue with in Rawls's *The Law of Peoples* is: “focusing on humanitarian duties as opposed to justice does not fully locate the source of global poverty, and hence falls short of offering a complete solution to it”.¹⁸

Before we can directly address the challenges that Tan proposes for Rawls, firstly it is important to distinguish the differences between duties of humanitarian assistance and duties of global justice as defined by Tan. Tan argues that,

Duties of humanitarian assistance differ from duties of justice in two interrelated ways: first, duties of humanitarian assistance are limited-term commitments with a definable goal (e.g., to raise developing societies to a level necessary for sustaining functioning well-ordered social institutions) as opposed to duties of justice that would aim to regulate inequalities between societies and hence be ongoing without a cut-off point.¹⁹

To clarify, duties of assistance are fulfilled once all societies have managed to reach the requisite level of stability and development, whereas duties of justice are continuous, and must be enacted so long as inequalities exist between societies. Secondly, “duties of humanitarian assistance do not”, asserts Tan, “consequently, directly address the global

¹⁶ Kok-Chor Tan, *Justice Without Borders*, 19.

¹⁷ Kok-Chor Tan, *Justice Without Borders*, 19.

¹⁸ Kok-Chor Tan, *Justice Without Borders*, 19.

¹⁹ Kok-Chor Tan, *Justice Without Borders*, 23.

structural context within which countries *interact*, whereas duties of justice apply directly to the background *structure*".²⁰

In other words, duties of humanitarian assistance reflect limited term commitments with definable goals. For example, duties of humanitarian assistance may require direct income transfers and/or technology transfers, to raise developing societies to a level necessary for sustaining functioning well-ordered social institutions. Additionally, duties of humanitarian assistance may require well-off societies to provide relief funds for societies imperilled by natural disasters (famine, drought) or recent warfare. On the other hand, duties of justice are more encompassing and operate at a more fundamental level than what we may call duties of humanitarian assistance. Just to reiterate, Tan claims that duties of justice call for standards by which to evaluate, and to correct if necessary, the *distributive aspects* of our global institutions. Duties of justice are ongoing, and apply so long as inequalities persist between societies.

One possible example of how duties of justice could be manifested, as cited by Tan and established more fully by Pogge, is the possibility of a permanent taxation scheme whereby transfer payments of some form are continually provided to poorer countries from richer ones until some semblance of equality is achieved.²¹ In summation, Tan seeks to show that "a theory of global justice would thus not only be concerned with the particular actions and foreign policies of individual countries, but, very importantly

²⁰ Kok-Chor Tan, *Justice Without Borders*, 23.

²¹ See Pogge, Thomas (2002). *World Poverty and Human Rights* (Polity Press, Maldon, MA) for a fuller account of his General Resource Dividend (GDR). However in this book Pogge is not concerned with equality, but rather with severe poverty eradication. For his argument in regards to global equality see his 1994 paper "An Egalitarian Law of Peoples", in *Philosophy and Public Affairs*.

and more fundamentally, it would be concerned also with the background global institutional context within which countries interact.”²²

Tan's Critique of Rawls

Much of Tan's efforts are focused on responding to Rawls. In general the difficulties that Tan has with Rawls can be broken down into three main areas of concern that overlap to a certain extent, and I have labelled them a, b, and c. Tan raises two main objections against Rawls that can fall under the heading of duties of humanitarian assistance versus duties of global justice as I see it. Under this heading Tan is sceptical of Rawls's account as it assumes, or does little to address, the difficulty of establishing a just global institutional order. Firstly, Tan criticizes Rawls for not exploring distributive aspects of the global order, and asserts that a theory of global justice that focuses solely on the fulfilment of basic human needs will fall short of correcting global scale poverty and inequality. The second difficulty that Tan identifies in Rawls's *The Law of Peoples* under this heading is the concern that Rawls is faulty of relying on explanatory nationalism to account for how well a people will fare. Thirdly, Tan takes issue with Rawls's commitment to liberal toleration on the international scale and argues that such a commitment permits for great inequalities and should not be an aspiration of ideal global justice theory. Each of Tan's concerns expressed here will be addressed more fully in the proceeding sections.

Duties of Humanity versus Duties of Justice

Tan criticizes Rawls for obscuring the difference between duties of humanity and duties of justice and accuses Rawls of wrongly creating the impression that we do not

²² Kok-Chor Tan, *Justice Without Borders*, 21.

need principles of global distributive justice, but only principles of humanitarian assistance to tackle the problem of global poverty.²³ For Tan, “ focusing on humanitarian duties as opposed to justice does not fully locate the source of global poverty, and hence falls short of offering a complete solution to it”.²⁴ As already mentioned, this issue locates two possible shortcomings in Rawls's theory of global justice. First, Tan's critique of Rawls's dependency on basic human needs and reluctance to account for inequitable distributions in the global order will be relayed. The proceeding section will address the cosmopolitan accusation that criticizes Rawls for relying on explanatory nationalism in his reasoning for how well a *people* will fare.

a) Having Basic Needs Met versus The Promotion of Equality Between Persons

In chapter three of *Justice Without Borders*, Tan argues that an account of global justice directed only at the fulfilment of individual basic needs and one that ignores the distributive aspects of the global order against certain principles of justice creates an impoverished account of global justice theory. Tan asks that, “in spite of Rawls's endorsement of basic subsistence rights in his theory, as to whether the global moral objective should be just that of meeting basic needs, or whether it should also promote equality between persons”.²⁵ Tan is willing to concede and proposes that Rawls's rights-based theories of justice found in *A Theory of Justice* provide an appropriate starting point for thinking about global justice. Yet he asserts that Rawls's *Law of Peoples* falls

²³ Kok-Chor Tan, *Justice Without Borders*, 66.

²⁴ Kok-Chor Tan, *Justice Without Borders*, ch.3 and ch.4.

²⁵ Kok-Chor Tan, *Justice Without Borders*, 49.

short in that it does not promote an international egalitarian distributive principle aimed at mitigating inequalities as such.²⁶

As demonstrated above, Tan aims to move beyond rights based approaches directed merely at subsistence, and, rather, sets his trajectory at the achievement of individual equality. Recall, that the account of cosmopolitan justice that Tan seeks to argue for focuses especially on distributive equality, an equality that extends beyond ensuring that individuals are able to meet their basic needs. Tan sets his sights at constructing a theory of global cosmopolitan justice that would, borrowing from Rawls domestic theory of justice, maximize the well-being of the worst-off individual on a global scale. So, despite Rawls's own objections to cosmopolitan ideals as previously discussed, Tan holds “that a just global distributive scheme would be one which meets his second principle of justice – equality of opportunity and the regulation of global equality by the difference principle”.²⁷

A significant challenge that Rawls faces, given Tan's critique, is that the Rawlsian account of basic rights does not go far enough for the purposes of cosmopolitan justice proposed. In order to remain committed to the importance of basic rights, but to extend such approaches to cover a theory of distributive justice, Tan argues, “that so long as there are great inequalities between people, the basic rights of the poor (or at the very least the worst-off) cannot be fully met for a variety of reasons”.²⁸ To further support this claim, Tan points to the difficulty of relative wealth and the issue of purchasing power. Tan holds that the “fulfilment of basic needs is relational in that what people may

²⁶ Kok-Chor Tan, *Justice Without Borders*, 41.

²⁷ Kok-Chor Tan, *Justice Without Borders*, 61.

²⁸ Kok-Chor Tan, *Justice Without Borders*, 53.

actually purchase with their money (to meet their needs) is dependent on its purchasing strength, which in turn depends on how much money other people have.”²⁹ Commonly held there is understanding, says Tan, that much of the world's disparities and suffering are not due to an absolute shortage of resources globally, but rather to a drastic maldistribution of these resources. Tan acknowledges that, “while poverty and equality are distinct concepts, there is a strong link between the two in that much global poverty can be attributed to pervasive inequalities in resource distribution.”³⁰ A maldistribution of resources, asserts Tan, undermines a person's ability or capacity to have his or her basic needs met. Furthermore, great inequalities place the world's poor in a position of vulnerability for exploitation, where unfair trade and labour terms may be forced upon those with less purchasing and bargaining power. These types of exploitation directly threaten one’s basic right to subsistence.³¹ From this, concludes Tan, “equality matters because it affects how people will fare at the minimum level.”³²

In chapter four of *Justice Without Borders*, Tan reiterates that, “what is lacking in Rawls's account of global justice is the commitment to *distributive* justice.”³³ He complains that there is no ongoing distributive principle that would seek to regulate inequalities beyond the duty of assistance that demands the better-off aid the burdened until they (the burdened) are “able to meet a certain threshold level of basic needs”.³⁴ Tan worries that, Rawls's theory falls short of being ideal, in that it does not seek to narrow gaps between the rich and poor and this is problematic due to the reasons mentioned

²⁹ Kok-Chor Tan, *Justice Without Borders*, 54.

³⁰ Kok-Chor Tan, *Justice Without Borders*, 53.

³¹ Kok-Chor Tan, *Justice Without Borders*, 53.

³² Kok-Chor Tan, *Justice Without Borders*, 53.

³³ Kok-Chor Tan, *Justice Without Borders*, 65.

³⁴ Kok-Chor Tan, *Justice Without Borders*, 65.

above. Tan admits that, “in a sense, the aim of this work is to show how a commitment to the basic right to subsistence (the agreed fixed point) leads to a commitment to the right to a certain level of social and economic equality (the more contentious claim).”³⁵

As we have come to understand, the challenge that Tan proposes for Rawls is that perhaps an ideal theory of global justice should demand more than just the provision of “*basic subsistence rights*” (to use Tan's words) and would rather seek to establish equality between persons. Despite the persuasiveness and admirable merits of Tan's account, my response is that Tan has not been entirely fair in his portrayal of Rawls's position. I would argue that Tan is a bit quick and hasty, in that he collapses the ideas of basic subsistence rights and Rawlsian basic needs, which I think is a flawed and unfair move. To my understanding, and as demonstrated in chapter one of this work, Rawls's idea of basic needs extends beyond rights of basic subsistence. It appears to me that Tan falsely conflates the two ideas of basic subsistence and Rawlsian basic needs when there is a distinction to be made, and an important one at that. It is notable that Rawls, in *The Law of Peoples*, does promote certain types of equality between persons...civil and political equalities, equality of opportunity...but not necessarily equality of wealth and this should not be overlooked.³⁶ Additionally, Rawls expresses that by basic needs, he means, “roughly those that must be met if citizens are to be in a position to take advantage of the rights, liberties, and opportunities of their society. These needs include economic means as well as institutional rights and freedoms”.³⁷ It appears to me that Tan

³⁵ Kok-Chor Tan, *Justice Without Borders*, 47 n 11.

³⁶ Although there is the promotion of certain measures of equality and liberty argued for in *The Law of Peoples*, the measures of equality and liberty here differ greatly from those supported in Rawls's domestic theory.

³⁷ Rawls, John. *The Law of Peoples*, 38 n 47.

has hastily dismissed this crucial distinction in Rawls's work. However, I am willing to concede that Rawls's notion of basic needs is perhaps underdeveloped, and this will be addressed in chapter three of this work. That said, it is unfair of Tan to be so critical of Rawls's commitment to basic needs, when Tan himself has not fully considered the extent of this commitment. Despite this, the issue still remains that Rawls rejects and Tan demands global distributive equality between both peoples and individuals.

b) Accusations of Explanatory Nationalism

Just as Rawls considers race, gender, talents, wealth, and other natural and social particularities “arbitrary from a moral point of view”,³⁸ so too, argue Pogge, Beitz, and Tan, that factors like a person's nationality and citizenship are morally arbitrary as well.³⁹ They argue that just “as the effects of these contingencies on a person's life chances in the domestic sphere are to be nullified by certain distributive principles of justice, so too should the effects of global contingencies be mitigated by certain global distributive principles”.⁴⁰ Thus they conclude that, “Rawls's principles of justice – including the second principle governing social and economic equality – should apply between individuals across societies and not just within the borders of a single society”.⁴¹

Tan complains that Rawls ignores the problem of global institutional order and relies too heavily on explanatory nationalism to account for how well a people will fare. Tan argues, independently from the point of explanatory nationalism that “if we accept that rich countries have only a duty of humanity to poorer countries, we are also

³⁸ Rawls, John. *A Theory of Justice*, 15.

³⁹ Beitz, Charles. “Rawls's Law of Peoples”, in *Ethics* 110 (July 2000): 669-696.

⁴⁰ Kok-Chor Tan, *Justice Without Borders*, 62.

⁴¹ Kok-Chor Tan, *Justice Without Borders*, 62.

accepting that the existing baseline resource and wealth distribution is a just one, and that the global basic institutions organized around and legitimizing the prevailing allocation of wealth and resources are acceptable”.⁴² According to Tan duties to assist take place and perhaps assume a just institutional framework while duties of justice identify what counts as a *just distribution* in the first place and speak directly to the basic structure that duties of humanity assume.

To further contribute to Tan's critique and as a means of clarification, in his work “*Do Rawls's Two Theories of Justice Fit Together?*” Pogge accuses Rawls of committing what he characterizes as potentially the “most harmful dogma ever conceived: *explanatory nationalism*”.⁴³ Pogge defines explanatory nationalism as “the idea that causes of severe poverty and of other human deprivations are domestic to the societies in which they occur”.⁴⁴ Pogge poses the question: “If the suffering of the poor abroad is due to local causes, then our only moral question is the one Rawls asks: whether and how much we ought to ‘assist’ them”.⁴⁵ For Pogge this question fails to accurately capture external global factors that contribute to the impoverished conditions of many nations. Explanatory nationalism fails to ask about whether and how rich countries, especially through the global institutional order we design and impose may contribute to and sustain their deprivations. Pogge argues, “explanatory nationalism pre-empts the need for a principle of global distributive justice, which would guide the design of the rules of the

⁴² Kok-Chor Tan, *Justice Without Borders*, 66.

⁴³ See Pogge, Thomas. (2006). “Do Rawls's Two Theories of Justice Fit Together?” , p.217 in *Rawls's Law of Peoples: A Realistic Utopia?* eds. Rex Martin & David A. Reidy. Blackwell Publishing: Malden, MA. It is here that Pogge proposes the term “explanatory nationalism”.

⁴⁴ Pogge, Thomas. “Do Rawls's Two Theories of Justice Fit Together?”, 217.

⁴⁵ Pogge, Thomas. “Do Rawls's Two Theories of Justice Fit Together?”, 217.

world economy in light of their distributive effects, by assuring us that these rules do not have significant distributive effects”.⁴⁶

For Pogge explanatory nationalists fall prey to two illusions: 1) they are overly impressed by the great diversity of national development trajectories, and 2) they see the relevant nation-specific factors as home-grown.⁴⁷ The second illusion is much more directed at Rawls and so we will focus our attention here. Pogge appears to challenge Rawls's initial assumption that stipulates that much of a peoples' success and ability to be well-ordered originates from their political culture that underlies their basic institutions. He appears sceptical of Rawls's assertion that much of the suffering in poorer societies are results of ineffective regimes, poorly ordered institutions, oppressive governments, and corrupt elites. Pogge is willing to concede that corruption and oppression are evils that contribute to the miseries of many societies, but he asks: how is a political culture of corruption or oppression initially fostered and sustained? There is a distinct possibility that the domestic factors that Rawls cites are themselves shaped and sustained by external factors, argues Pogge. From this critique we can see that a potential deficiency in Rawls's account is that he only considers local factors in determining the conditions that result in a burdened society.

In response to this concern that *The Law of Peoples* does nothing to alleviate current global injustices that arise much more from what explanatory globalism claims

⁴⁶ Pogge, Thomas. “Do Rawls's Two Theories of Justice Fit Together?”, 217. Pogge proposes a strategy of distributive justice, what he calls a General Resource Dividend (GDR) similar to that of Tan. For Pogge due to the harms that wealthy nations inflict on the global poor, wealthy nations possess a negative duty not to harm and must seek to mitigate these harms through a re-distribution of their wealth. They are obligated to re-distribute their wealth, according to Pogge because such nations have unjustly and harmfully acquired their power, resources, and capital from poorer nations through oppression, enslavement, colonialism, imperialism, corruption, manipulation, and the like. For more also see Pogge, Thomas (2002). *World Poverty and Human Rights* (Polity Press, Maldon, MA).

⁴⁷ Pogge, Thomas. “Do Rawls's Two Theories of Justice Fit Together?”, 218-219.

than from the claims expressed by explanatory nationalism that Rawls focuses on, Samuel Freeman charges that Pogge ignores the fact that *The Law of Peoples* is drawn up for the ideal case of well-ordered peoples.⁴⁸ As we have already discussed and as Freeman so persuasively points out:

The Law of Peoples includes a duty of peoples to provide for material and other conditions that enable all peoples to be politically autonomous and independent. These and other requirements should protect less-advantaged peoples from being corrupted by powerful political and economic interests abroad.⁴⁹

Due to the fact that principles that govern the Society of Peoples are decided from behind a thick veil of ignorance and that the duty of assistance's target is to bring up burdened societies to the point of at least reasonably decent well-orderliness, it follows that the current conditions of our global circumstance appear to be neutralized given Rawls's framework.

The prospect of being able to assist a burdened people, so that they may become full members in the society of peoples who can provide for the basic needs of their citizens and assert political independence on the global stage has undeniable appeal. However, whether this possibility, has the attractiveness to sway Rawls's critics who hold that corruption is inevitable so long as inequalities persist is questionable.⁵⁰ Freeman responds to those, like Pogge and Tan, who conjecture that corruption and injustice will

⁴⁸ See Freeman, Samuel. "Distributive Justice and The Law of Peoples", 251 in *Rawls's Law of Peoples: A Realistic Utopia?* eds. Rex Martin & David A. Reidy. Blackwell Publishing: Malden, MA. and "The Law of Peoples, Social Cooperation, Human Rights, and Distributive Justice", 64.

⁴⁹ Freeman, Samuel. "The Law of Peoples, Social Cooperation, Human Rights, and Distributive Justice", 64.

⁵⁰ Recall Tan's criticism. Also, refer to Pogge, "An Egalitarian Law of Peoples", 213. Pogge further argues against the inequality of wealth allowed by Rawls's account, saying that "relative poverty breed corruptibility and corruption", and that "it is entirely unrealistic to expect that such foreign sponsored corruption can be eradicated without reducing the enormous differentials in per capit GNP. (ibid., 213, 214)

persist so long as there is relative inequalities by stating that arguments of this sort “largely involve empirical conjectures about the capacity for political autonomy, and the workings of an economy, both domestically, and worldwide, under conditions of a well-ordered Society of Peoples”.⁵¹ Given that Rawls has constructed membership of the Society of Peoples for the ideal case, where members uphold values of mutual respect and reciprocity, it follows that many of these power-struggle type worries have been safeguarded against, thus making the duty of assistance appear as a potentially robust and sufficient demand.

As an additional complement to Freeman's argument I assert that once one comes to appreciate Rawls's insistence on making respect for political culture of a burdened society all important one can, with good reason, recognize that this demand is no small feat as it speaks of preserving significant space for respect of a people's self-determination making the worry of corruption and manipulation less concerting. This idea is reinforced by the construction of the Society of Peoples derived from the international original position that Rawls proposes. Part of the challenge to be discussed later in this work will be to assess whether Rawls has a convincing argument for asserting that the members in his Society of Peoples manage to attain political autonomy, independence, and self-determination given his global original position.

Distorting the Distinction of Duties of Humanity and Duties of Justice

As previously mentioned, Tan, and other cosmopolitans similarly argue that some sort of egalitarian distributive principle is necessary to attain a fully ideal sense of global

⁵¹ Freeman, Samuel. “The Law of Peoples, Social Cooperation, Human Rights, and Distributive Justice”, 65.

justice. Despite this, Tan sees two main arguments operating in Rawls's *The Law of Peoples* that lead to Rawls's rejection of global distributive justice as such. Firstly, there is the issue of redundancy, that Tan asserts leads to Rawls's rejection of a global principle of distributive justice. Secondly, there is the issue of respect of political autonomy, that Tan recognizes as a crucial reason as to why Rawls has rejected cosmopolitan global justice.

Tan conjectures that “since a duty of humanitarian assistance is already required by the *Law of Peoples* as part of non-ideal theory, global principles of distributive justice would be redundant” according to Rawls.⁵² Tan directs us to the citation in *The Law of Peoples* that stipulates that “these goals of attaining liberal or decent institutions, securing human rights, and meeting basic needs... are [sufficiently] covered by the duty of assistance,”⁵³ and thus a global distributive principle serves no additional purpose in this regard. Given this, however, Tan argues “this argument obscures an important difference between duties of *humanity* and duties of *justice*, a difference that is more than semantic.”⁵⁴ As previously discussed, Tan asserts that

If we accept that rich countries have only a duty of humanity to poorer countries, we are also accepting that the existing baseline resource and wealth distribution is a just one, and that the global basic institutions organized around and legitimizing the prevailing allocation of wealth and resources are acceptable.⁵⁵

Duties to assist take place and perhaps assume a just institutional framework argues Tan. This faulty assumption, for Tan, will result in an incomplete theory of ideal global justice and will allow for great and pervasive inequalities.

⁵² Kok-Chor Tan, *Justice Without Borders*, 66.

⁵³ Rawls, John. *The Law of Peoples*, 116.

⁵⁴ Kok-Chor Tan, *Justice Without Borders*, 66.

⁵⁵ Kok-Chor Tan, *Justice Without Borders*, 66.

Tan highlights that duties of humanity aim to *redistribute* wealth, whereas, duties of justice identify what counts as a *just distribution* in the first place. He reiterates “Justice is concerned with structural equality of some form, whereas humanitarianism is concerned primarily with the meeting of basic needs (even if structural changes are called for to this end)”.⁵⁶ However, it is notable that the duty of assistance is set up for the ideal case among respectful and equal peoples who are sufficiently politically independent and autonomous. It appears to me that possibly the framework that Tan speaks of has already been accounted for in Rawls's construction of the ideal Society of Peoples by use of his global original position.

As previously discussed, Rawls's global original position takes place behind 'a thick veil of ignorance' where a representative does not know whether a neighboring people is liberal, decent, or an outlaw regime. The size of a territory, abundance of capital and resources, or strength in relation with other peoples is also concealed. The actors, peoples, in Rawls's global original position enter the contractual agreement from a symmetrical position. They regard one another as free and equal and are prepared to grant the same proper respect and recognition to other peoples as equals. Embedded in this framework, as Rawls sets it up is that part of a people's being reasonable and rational entails that they are ready to offer other peoples fair terms of political and social cooperation. Recall that from behind the veil of ignorance members in the Society of Peoples agree to a duty of civility. This duty requires that members in the Society of Peoples offer other peoples public reasons appropriate to the Society of Peoples for their

⁵⁶ Kok-Chor Tan, *Justice Without Borders*, 68.

actions.⁵⁷ By definition, as discussed, peoples exhibit a moral nature and are willing to comply with their duties under the Law of Peoples and seek stability, then for the right reasons. They do not take advantage of other peoples, even if it would be favorable to do so. By virtue of their constructed characters, the original position among liberal peoples and decent peoples, seems set up so that the necessity of redistribution to mitigate the harms Pogge and Tan discuss appear somewhat superfluous. When we further add that one of the conditions required for toleration and membership into the Society of Peoples requires a genuine concern for the meeting of basic needs and respect for human rights, to be discussed in chapter III, again the objections made against Rawls appear less concerting.

The second argument that Tan attributes to Rawls's rejection of cosmopolitan global justice is the possibility that global distributive principles, given Rawls's account, may produce unacceptable results. To clarify, Rawls asserts that in order to uphold the principles of liberalism, that is respect for a peoples' self determination and political autonomy, it would be inappropriate to adopt an ongoing principle of distributive justice, one that would apply so long as there are inequalities between societies. An ongoing principle of global distributive justice would be especially controversial and problematic, given Rawls's commitment to self-determination when inequalities have grown out of choices in political policy, such as population control, and industrial practises versus pastoral models of advancement.⁵⁸ This is unacceptable for Rawls's, asserts Tan, because:

A global egalitarian principle would insist, in both of these cases, that resources be transferred from the wealthier societies to the poorer ones, even though both may have started with an equal amount of wealth and

⁵⁷ Rawls, John. *The Law of Peoples*, 59.

⁵⁸ Rawls, John. *The Law of Peoples*, 117-118.

resources. And this is unacceptable for it would mean penalizing some societies for their sound domestic policies in order to compensate other societies for their careless policies.⁵⁹

Tan claims, “distributive principles would insist on redistribution as long as there is inequality between peoples no matter what the cause of this inequality – that Rawls takes exception to”.⁶⁰ Tan argues that “implicit in Rawls's argument...is the distinction between inequality as a result of choice and inequality due to circumstance”.⁶¹

The choice/circumstance distinction highlighted above reflects a potential reason as to why Rawls rejects a global principle of distribution. A global principle of distribution would yield unacceptable results, as we would not be able to discriminate between societies which “through foresight and prudence have increased their wealth, and societies which through neglect and imprudence have squandered theirs”. Tan frames Rawls argument as stating: that type of distribution required by a global principle of distribution would be unacceptable as it stands to penalize some societies for their sound domestic policies in order to compensate other societies for their careless policies. Tan explains by analogy that just as a domestic distributive scheme ought not to compensate individuals for their poor choices by taking from those who have made good choices, neither ought a global scheme seek to compensate societies for their poor governance and policies by penalizing other societies for their good governance and sound policy making.⁶² The crucial and contentious premises of this argument that Tan points out are:

- 1) adoption of sound social and economic policies are largely internal and freely adopted

⁵⁹ Kok-Chor Tan, *Justice Without Borders*, 69.

⁶⁰ Kok-Chor Tan, *Justice Without Borders*, 70.

⁶¹ Kok-Chor Tan, *Justice Without Borders*, 70.

⁶² Kok-Chor Tan, *Justice Without Borders*, 70.

by a society, and 2) the well-being of a society can be reduced to domestic factors such as political culture and civic virtues.

The aim of distributive justice, according to Tan, is to counter the effects of inequalities resulting from circumstance that individuals have had to endure and not from their personal choices. Rawls's worry in contrast to this is that a global distributive principle would be insensitive to this choice/circumstance distinction. Conversely Tan argues that in principle a global egalitarian order could allow room for inequalities due to differences in national pursuits. He holds that "distributive arrangements between societies need not be insensitive to choice, then if the distributive goal is to offset the effects of these (unchosen) global factors and not the effects of (chosen) national policies on a people's well-being".⁶³ When aimed at repairing or reconciling misfortune and inequalities due to global factors, Tan asserts that such subsidies are not unfair in this instance. Rather, distributions are compensation for the effects of an unjust global arrangement suffered by a burdened and disadvantaged society. Tan regards such distributions as ensuring that each society and individual receives his or her fair share as required by a just global arrangement. In addition, Tan highlights that "what is required is that the background context in which societies pursue their diverse ends is a fair one, and this would require its regulation by some distributive ideal".⁶⁴

Tan holds that the choice/circumstance distinction falsely leads us to ask why should citizens in better-off societies be obliged to assist the worst-off when success or failure is a result of choice and policy making. The insistence on redistribution, Tan recognizes, in this instance offends against the very basic moral intuition that rational

⁶³ Kok-Chor Tan, *Justice Without Borders*, 71.

⁶⁴ Kok-Chor Tan, *Justice Without Borders*, 71.

agents are to take responsibility for their choices. However, if explanatory globalism is true, asserts Tan, then not all inequalities can be blamed on poor domestic choices. Rather some inequalities can be attributed to global factors outside of the control of most poor, burdened, and disadvantaged societies. He argues that the aim of global justice is not to compensate peoples for their bad choices, but to mitigate the unfairness in global conditions and this need not be morally offensive.⁶⁵ Additionally, even if we accept the explanatory nationalism thesis, conjectures Tan, it does not follow that a global distributive principle would violate this.

Another useful analogy to highlight the suspicious nature of rejecting global egalitarianism on the basis of the choice/circumstance distinction is relayed by Charles Beitz. Beitz explains that the domestic equivalent to the case of citizens fairing poorly due to bad policies of their own governments is not that of an individual having to bear the consequences of her own bad choices, rather the more accurate analogy resembles that of children who have to suffer for the poor choices of their parents.⁶⁶ His analogy draws attention to the problem of future generations and intergenerational justice, where citizens will have to bear the consequences of policies made perhaps before their time. It highlights the consideration that birthplace is supposed to be a morally irrelevant circumstance, yet citizens on Rawls's account appear to be either recipients of good fortune or victims of circumstance given which society - be it liberal, decent, burdened, or outlaw - they are born into.

Accidents of birth, as just stated, are to bear no moral significance on an individual's opportunities or on how well an individual is to fair in the pursuit of a

⁶⁵ Kok-Chor Tan, *Justice Without Borders*, 72.

⁶⁶ Beitz, Charles. "Social and Cosmopolitan Liberalism", 527.

reasonably decent life, as previously argued for by Rawls in his domestic theory. However, the choice/circumstance distinction when applied to the international case calls into question his previous theoretical liberal reasoning. Tan points out that citizens of disadvantaged societies in the Law of Peoples are held accountable for the unsound domestic policies of their state. This is even the case, holds Tan, when the majority had no part in the making of these policies. This argues Tan is inconsistent with Rawls's own moral individualism expressed in *A Theory of Justice*.⁶⁷ Tan asserts, "while Rawls's moral individualism sets firm limits on the extent to which collective decisions may affect individual well-being in his domestic conception of justice, there seem to be no similar limitations in his international theory".⁶⁸ The choice/circumstance distinction that Tan regards as implicit in Rawls's reasons for rejecting global egalitarianism, makes sense when applied individualistically, but collapses when applied collectively.

To further support my overall thesis and initial claim that Rawls's opponents are not entirely fair to his position, I think it is somewhat safe to conjecture that Tan may in this instance be guilty of misconstruing Rawls's position. To clarify, Tan says "just as a domestic distributive scheme ought not to compensate individuals for their poor choices by taking from those who have made good choices, neither ought a global scheme to compensate societies for their poor *governance* by penalizing other societies for their good governance".⁶⁹ I worry as to whether the use of the term *governance* is the best choice of language to capture Rawls's intention. I find the use of 'governance' quite a distortion as Rawls's motivation of non-intervention comes from his reliance on the

⁶⁷ See Rawls, John. *A Theory of Justice*, 264. Also. Tan, Kok-Chor. *Justice Without Borders*, 73.

⁶⁸ Tan, Kok-Chor. *Justice Without Borders*, 73.

⁶⁹ Kok-Chor Tan, *Justice Without Borders*, 70. I have added the emphasis on *governance* to highlight my point. The emphasis is not original to the work of Tan.

notions of mutual reciprocity and toleration. Furthermore, his liberal commitment to achieving stability for the right reasons by exhibiting respect for self-determination along with his attachment to the value of political culture used to foster political autonomy through non-intervention and toleration additionally contribute to Rawls's unwillingness to advocate for a continuous principle of global distribution. This reflects a desire to avoid the objection of parochialism as Rawls intends that *The Law of Peoples* will remain reasonable to both liberal and decent peoples.

In addition to this, Tan either intentionally or mistakenly overlooks the commitment that the duty of assistance is set up to aid burdened peoples, whom are the victims of poor governance to a certain extent. The second guideline of the duty of assistance stipulates that financial aid will not suffice to rectify basic political and social injustices. Rawls asserts that the duty of assistance, with its "emphasis on human rights may work to change ineffective regimes and the conduct of the rulers who have been callous about the well-being of their own people".⁷⁰ This insistence on human rights, conjectures Rawls, will "help to prevent famines from developing, and will exert pressure in the direction of effective governments in a well-ordered Society of Peoples".⁷¹ It appears odd to me that Tan has perhaps, deemphasized Rawls's insistence on human rights as a measure of good governance and well-orderliness.

⁷⁰ Rawls, John. *The Law of Peoples*, 109. The second guideline of the duty of assistance, recall, says that the political culture of a burdened society is all-important, more so than relative wealth or resources. Rawls conjectures that "there is no society anywhere in the world – except for marginal cases – with resources so scarce that it could not, were it reasonably and rationally organized and governed, become well-ordered".

⁷¹ Rawls, John. *The Law of Peoples*, 109.

Tan argues that there is room for both global distributive justice and national self-determination, and that these are not incompatible goals. Much of this is derived from the reasoning:

That considerations of justice aim to secure equal opportunity and fair background conditions for persons and societies in the pursuit of their ends, but it does not necessarily require that everyone and every society take full advantage of the opportunities presented to them, nor does it compensate those who fail to make successful use of the opportunities available to them. There is space, then, under a global distributive scheme for diversity in national pursuits, and for nations to take responsibility for their domestic goals. The aim of justice is to secure a fair background context within which rules individuals and their associations can make choices and take responsibility for them.⁷²

Tan emphasizes that justice requires a global arrangement in which the least advantaged are to be most benefited by such arrangements. To further convince us that distributive justice and self-determination need not be competing ideals Tan adds that “what is unjust, and what distributive justice aims to mitigate, is the background condition within which self-determination is exercised, not the outcome as such of self-determination”.⁷³ Again, it is apparent that Tan challenges Rawls's initial assumption that it is possible for a well-ordered people to exercise political autonomy, be economically self-sufficient, and not be subject to manipulation by external forces. Samuel Freeman points out that “Rawls's critics seem to question the crucial assumption of the independence of peoples under ideal conditions of a well-ordered Society of Peoples”.⁷⁴

⁷² Kok-Chor Tan. *Justice Without Borders*, 71.

⁷³ Kok-Chor Tan. *Justice Without Borders*, 72.

⁷⁴ Freeman, Samuel. “The Law of Peoples, Social Cooperation, Human Rights, and Distributive Justice”, 64.

c) *The Difficulty of Rawlsian Toleration*

In chapter four of *Justice Without Borders*, Tan claims that Rawls's rejection of cosmopolitanism reveals a fundamental shift in Rawls's political philosophy. Tan characterizes Rawls as “starting at purportedly liberal individualistic grounds...[and]... arrives at an international theory that is more aligned with those of *communitarians*...”⁷⁵ In part Rawls's reason for making this shift from individuals in the domestic case to peoples in the international sphere is that having the Law of Peoples founded on the ideal of individuals as free and equal would make the basis of that Law “too narrow”. It would be limiting in that to insist on an international theory of justice premised on the cosmopolitan ideal that individuals are the ultimate concern of moral worth is to propose a conception of justice that nonliberal societies could *reasonably* object to.⁷⁶ Recall that the international original position requires a two stage thought experiment. A single global original position, argues Tan, would have to assume that all individuals “have equal liberal rights of citizens in a constitutional democracy... that only a liberal democratic society can be acceptable”.⁷⁷ Given that Rawls is committed to extending his notion of reasonable pluralism from the domestic to the international sphere, which acknowledges a respect for varying comprehensive doctrines provided that these doctrines are pursued in ways compatible with a reasonable political conception of justice and its public reason, it would appear inconsistent to assert that only the liberal democratic ordering of society is acceptable.⁷⁸ This commitment to reasonable pluralism

⁷⁵ Kok-Chor Tan. *Justice Without Borders*, 75.

⁷⁶ Kok-Chor Tan. *Justice Without Borders*, 76. & John Rawls. *The Law of Peoples*, 30-5, 59, 82-3.

⁷⁷ Kok-Chor Tan. *Justice Without Borders*, 76. & John Rawls. *The Law of Peoples*, 59.

⁷⁸ Rawls, John. *The Law of Peoples*, 57-59.

for Rawls provides the foundation for his expression of due toleration and acceptance of non-liberal, but decent peoples into the Society of Peoples.

Tan argues that liberals should treat accommodation of decent hierarchical peoples, for example, as a *modus vivendi*, a non-ideal scenario, rather than a matter of toleration as required by ideal theory.⁷⁹ Tan claims that it is problematic that Rawls argues that liberalism has to be accepting of well-ordered though non-liberal modes of ordering society, similarly to the political liberal idea of tolerating non-liberal but reasonable comprehensive doctrines. Tan proposes that this analogy between the domestic and international spheres does not hold.⁸⁰ This is especially the case, argues Tan, when we consider the impact that certain policies will have on individuals of a certain type of society. Tan discusses the examples of the two distinct societies that Rawls gives where one society chooses to industrialize and the other remains pastoral.⁸¹ This difference in policies over time results in a difference of wealth between these two societies. Due to this disparity, Tan identifies a tension between Rawls's conception of toleration and respect for a people's self-determination contrary to an endorsement of liberal egalitarianism that would be upheld by a principle of distribution, be it the difference principle. For Tan, ideal liberal theory should be egalitarian and cosmopolitan in conception. From this he argues that "A Law of Peoples that regards hierarchical decent societies as societies in good standing in the society of peoples, and that tolerates great inequalities between states as part of its ideal theory, sets our sights too low".⁸²

⁷⁹ Kok-Chor Tan, *Justice Without Borders*, 79-82.

⁸⁰ Kok-Chor Tan, *Justice Without Borders*, 79.

⁸¹ See both Kok-Chor Tan, *Justice Without Borders*, 72-73, 77-82 and John Rawls, *The Law of Peoples*, 117-118.

⁸² Kok-Chor Tan, *Justice Without Borders*, p.82.

Despite Rawls's insistence on toleration for non-liberal but decent peoples, Tan asks: "Is it true that political liberalism would fail to express due toleration of other acceptable ways...of ordering society, if it insisted on some liberal conception of distributive justice (e.g. Rawls's own second principle) as part of an international theory?"⁸³ Tan cites Rawls's first presentation of the Law of Peoples, where Rawls writes that nonliberal societies would reject any liberal distributive principles between societies because they reject liberalism. Tan asserts that this argument is too quickly made and further argues that:

It is not clear why the rejection of liberal principles has to be an all-or-nothing affair. Just because nonliberal societies reject (as they likely would) liberal principles pertaining to the full range of liberal civil and political rights, it does not follow at all that they will also reject liberal principles pertaining to economic and social rights.⁸⁴

Additionally, Tan asserts that it would not be inconsistent for a society to reject some so-called liberal values, such as free association and expression, but at the same time endorse global principles that will distribute resources more equally *between* societies. "To put it simply," clarifies Tan, "nonliberal societies can accept, as principles governing the relations between societies, liberal principles of economic justice even as they reject liberal principles of political justice".⁸⁵

For Tan, "Rawls has to agree that it is consistent for nonliberal peoples to endorse liberal egalitarian ideals to regulate relations between societies even as they reject the same ideal for their own domestic institutions".⁸⁶ Despite this possibility; however, within Rawls's theory Tan notes that the above argument will not go far enough for

⁸³ Kok-Chor Tan. *Justice Without Borders*, 77.

⁸⁴ Kok-Chor Tan. *Justice Without Borders*, 77.

⁸⁵ Kok-Chor Tan. *Justice Without Borders*, 78.

⁸⁶ Kok-Chor Tan. *Justice Without Borders*, 78.

cosmopolitans as it only accounts for equality between societies. Recall that cosmopolitan justice, according to Tan, “requires more than distributive equality between societies, it also calls for distributive equalities within societies” and their individuals.⁸⁷ Tan's cosmopolitan goal, as said before, would be to maximize the life prospects of the globally worst-off individuals no matter where they reside.

In summation, Rawls in his work *The Law of Peoples* objects to such egalitarian demands because adopting a distributive principle would undermine liberalism's principle of toleration by requiring that all societies conform to liberal egalitarian standards. For Tan the shift from domestic individualism to international communitarianism cannot be justified within a liberal individualist framework. Tan has sought to demonstrate that the fundamental reason why Rawls asserts that the cosmopolitan ideal is unacceptable is the fact of reasonable pluralism. In Rawls's view, justice among peoples should differ from justice within a state, not ultimately because of the absence of enforceable international law, as one might suggest, but because he thinks the scope of reasonable pluralism ought to be broadened in the global context. Tan has attempted to convince us as to why relaxing this criterion of reasonableness is objectionable from the liberal point of view. He has tried to convince his readers that Rawls's commitment to toleration is objectionable, in that toleration derived from Rawls's reasonable pluralism insufficiently addresses pervasive inequalities both between societies, and between the inhabiting individuals.

⁸⁷ Kok-Chor Tan. *Justice Without Borders*, 78.

Conclusion

It has been shown that Tan argues, in contradiction to Rawls, that liberals should treat international accommodation of reasonable peoples as a *modus vivendi*, a non-ideal scenario, rather than a matter of toleration as required by ideal theory. Tan has presented the idea that the aim of an ideal theory of justice is to provide us with a standard to aspire to. Rawls's Law of Peoples falls short, for Tan, because hierarchical decent peoples are regarded as members in good standing in the society of peoples. For Tan this tolerates great inequality between states, and even more so between individuals of the globe, and as an ideal theory, sets our sights too low.

Chapter 3 – Which Needs are Basic Needs?

In his work *The Law of Peoples, Social Cooperation, Human Rights, and Distributive Justice*, Samuel Freeman highlights that the duty of assistance is keyed to the broader concept of basic needs. He argues that it is suggestive in Rawls's *The Law of Peoples* that the duty of assistance extends beyond meeting a burdened peoples' subsistence needs where subsistence needs are understood to be simply food, water, shelter, clothing.¹ However, it is not very clear what the broader concept of basic needs entails precisely. Freeman acknowledges that Rawls says too little here and that this area in *The Law of Peoples* is perhaps underdeveloped. I argue that despite this, the duty of assistance should not be undervalued as the demand of meeting basic needs has the potential to again be quite robust. Many have charged Rawls with having a truncated list of human rights and an impoverished account of global justice, but if we charitably and critically come to acknowledge that Rawls's understanding of basic rights includes subsistence and economic security it is arguable that his duty of assistance may be both robust and sufficient.

To clarify, Rawls understands basic rights to include subsistence and economic security, meaning that a people must be able to provide the minimal necessities such as food and shelter, along with economic security that according to Rawls allows citizens the ability to exercise all of their liberties and make intelligent use of property. Under Rawls's conception basic needs include the necessary essentials that typically support biological human functioning. In addition, basic needs identify certain mechanisms of

¹ Freeman, Samuel. "The Law of Peoples, Social Cooperation, Human Rights, and Distributive Justice", 51.

institutional support required by citizens that are necessary for individuals to be able to take advantage of the rights, liberties, and opportunities of their society. For Rawls these needs include economic means as well as institutional rights and freedoms.² This chapter will seek to further flush out Rawls's definition of basic needs with some supplemental considerations as to what may be required in the fulfilment of basic needs in an effort to support my overarching thesis that perhaps the duty of assistance is at the least robust, if not sufficient despite arguments made in favour of an international distributive principle.

Within the confines of this chapter, two points must be distinguished and made clear. The first point being the clarification of *basic needs* where I will attempt to fill in the blanks left by Rawls in his account. The second point that I will need to distinguish will be dependant on the clarification of the first. The second point, relying on the first, will seek to show that once we have a clear understanding of Rawls's robust conception of basic needs, it will follow that assistance securing these defined basic needs is sufficient and that we need not push much further, as suggested by Tan, in seeking to establish a type of cosmopolitan global equality between individuals given the framework of the Law of Peoples.³

Global Justice – A Matter of Equality or Sufficiency?

To begin our discussion on the clarification of basic needs as required by a suitable theory of global justice, it is important to draw a distinction between two competing principles that have thus far shaped our understanding of global justice and the

² Rawls, John. *The Law of Peoples*, 38 n 47.

³ Miller, David (2007). *National Responsibility and Global Justice* (Oxford University Press, New York, NY) Miller poses the question: "should global justice be understood as requiring some kind of equality between people everywhere, or is there a better way of understanding it? Should we think instead in terms of a global minimum level of rights and resources below which no one should be allowed to fall, and if so how should we decide where to set this threshold?" p.5

basic needs entailed from it in this work. The cosmopolitan position explored in chapter two of this work highlighted principles commonly held by egalitarians. Although it may not seem obvious at this time, chapter one of this work investigated Rawls's concerns of what the foreign policy of a reasonably just liberal people should be, and in doing so relayed a type of sufficientarian conception of global justice among peoples.

Cosmopolitanism in Brief

Recall that in its strongest formulation cosmopolitanism “takes the ideal of equal moral concern for persons to entail a commitment to some form of global distributive equality, and will aim to regulate inequalities between persons, even above the threshold of minimal adequacy, against some appropriate distributive principle”.⁴ Egalitarians hold that individuals are to be regarded as the ultimate units of equal moral worth and this concern transcends traditionally defined borders. Global egalitarians seek to promote the well-being of the world's worst off irrespective of nationality and citizenship. Principles of egalitarianism tend to assume that it is intrinsically undesirable or unfair if some individuals are worse-off compared to others through no fault of their own. Equality on this view has considerable moral value in itself. Borrowing from Rawls's domestic theory, many egalitarians argue that the only acceptable inequalities are those that are to the advantage of the worst-off.

The Doctrine of Sufficiency

Sufficientarianism, on the other hand, insists that when evaluating possible distributions, what matters is whether individuals have enough not to fall below some

⁴ Tan, Kok-Chor. *Justice Without Borders*, 11.

critical threshold of advantage.⁵ Typically, what matters regarding sufficiency is whether individuals have enough. Paula Casal identifies two main theses operating within the structure of the sufficiency position. She notes that there exist both: a) the positive thesis - that stresses the importance of people living above a certain threshold, and b) the negative thesis – that denies the relevance of certain additional requirements.⁶

In *Equality as a Moral Ideal*, Harry Frankfurt develops the positive thesis, what he simply refers to as the doctrine of sufficiency, as such: “What *is* important from the point of view of morality is not that everyone should have *the same* but that each should have *enough*.”⁷ Roger Crisp offers a more recent formulation of the positive thesis, which he labels the *compassion principle*, where “absolute priority is to be given to benefits to those below the threshold at which compassion enters”. The qualification that Crisp adds to his compassion principle is that only nontrivial benefits possess such priority: “Below the threshold, benefiting people matters more the worse off those people are, the more of those people there are, and the greater the size of the benefit in question. Above the threshold, or in cases concerning only trivial benefits below the threshold, no priority is to be given.”⁸

This moderate yet substantial requirement, to eliminate deprivations to a minimal threshold of sufficiency, is a view that has wide appeal and acceptability. Casal notes, “Except among Hobbesians and libertarians, it is increasingly difficult to find views that do not accept some version of the positive thesis”.⁹ We would be hard pressed to find a

⁵ Casal, Paula. “Why Sufficiency is Not Enough”, 297.

⁶ Casal, Paula. “Why Sufficiency is Not Enough”, 297-298.

⁷ Frankfurt, Harry. “Equality as a Moral Ideal”, 21.

⁸ Roger, Crisp. “Equality, Priority, and Compassion”, 758.

⁹ Casal, Paula. “Why Sufficiency is Not Enough”, 299.

compelling argument that denies the elimination of certain types of deprivations such as hunger, disease, lack of shelter, illiteracy, and poor access to education as minimal political requirements that should be secured within a just institutional framework. More familiar to us at this point is Rawls's view in the domestic case that a just society will guarantee a social minimum and that any reasonable conception of justice will favour "measures ensuring for all citizens adequate all-purpose means to make effective use of their freedoms".¹⁰ This sentiment reverberates on the global scale for Rawls given guideline three of his duty of assistance, which seeks to secure human rights and meet basic needs.¹¹

In addition to affirming the pressing claims of sufficiency, Casal relays that the reasoning of *what matters is whether individuals have enough* is often used to deny the importance of equality and priority. The negative thesis as argued for by Frankfurt holds, "if everyone had enough, it would be of no moral consequence whether some had more than others".¹² Casal makes the case that despite the wide acceptability and compatibility with other principles held in seeking to reduce deprivations, what makes a view sufficientarian, strictly speaking, is, "not simply the great importance it attaches to eliminating deprivation but the lack of importance it attaches to certain additional distributive requirements".¹³ An extreme formulation of the doctrine of sufficiency could reveal that, "once an individual is above the threshold, whether she has more or less is not important".¹⁴

¹⁰ Rawls, John. "The Idea of Public Reason Revisited", 582.

¹¹ See Rawls, John. *The Law of Peoples*, 108-111.

¹² Frankfurt, Harry. "Equality as a Moral Ideal", 21.

¹³ Casal, Paula. "Why Sufficiency is Not Enough", 299-300.

¹⁴ Casal, Paula. "Why Sufficiency is Not Enough", 300.

We can see the negative thesis operating to some extent in both Rawls's domestic and global theories of justice via his use of the just savings principle. Even though Rawls's domestic theory is predominately considered to be egalitarian, such considerations are at times constrained by measures of sufficiency. Casal explains that Rawls's domestic theory is a type of hybrid model. With that said, domestically the difference principle is constrained by the further requirement of just savings. In the domestic case the just savings principle places a duty on earlier generations to accumulate and conserve enough material resources for future generations. In this instance the target for just savings requires that current generations set aside enough wealth and resources so that just liberal institutions can be maintained and basic liberties can be realized and enjoyed.¹⁵ Given this, continued material accumulation is irrelevant and this principle, rather expresses a target for and an upper limit on mandatory savings. Rawls explains:

Once just institutions are firmly established and all the basic liberties effectively realized, the net accumulation asked for falls to zero. At this point a society meets its duty of justice by maintaining just institutions and preserving ... a material base sufficient to establish effective just institutions within which the basic liberties can all be realized.¹⁶

In both the domestic and international instance great wealth is not necessary. In the domestic sphere Rawls holds that “the last stage at which savings is called for is not one of great abundance,” because “what men want is meaningful work in free association with others ... within a framework of just basic institutions”.¹⁷ Recall that within the Society of Peoples the political culture of a society is all-important. Rawls conjectures

¹⁵ Rawls, John. *Theory of Justice*, 121, 251-258, 318, and *Political Liberalism*, 20, 273-274.

¹⁶ Rawls, John. *Theory of Justice*, 255-256.

¹⁷ Rawls, John. *Theory of Justice*, 257-258.

that “there is no society anywhere in the world – except for marginal cases – with resources so scarce that it could not, were it reasonably and rationally organized and governed, become well-ordered”.¹⁸ The target of assistance is to help a burdened people to be able to manage their own affairs and eventually become members in the Society of Peoples. Rawls's final aim of assistance is “freedom and equality for the formerly burdened societies”.¹⁹ Given this threshold, a well-ordered society, as described by the first guideline for Duty of Assistance, may not necessarily be a wealthy or resource rich society.²⁰ The duty of assistance and the duty of just savings express the same underlying ideas that:

(a) The purpose of a just (real) savings principle is to establish (reasonably) just basic institutions for a free constitutional democratic society (or any well-ordered society) and to secure a social world that makes possible a worthwhile life for all its citizens.

(b) Accordingly, savings may stop once just (or decent) basic institutions have been established.

(c) Great wealth is not necessary to establish just (or decent) institutions. How much is needed will depend on a society's particular history as well as its conception of justice. Thus the levels of wealth among well-ordered peoples will not, in general be the same.²¹

Analogously, just savings in the Law of Peoples and in the domestic case aim to realize and preserve just (or decent) institutions, provide basic needs, and secure liberties. The target of assistance and just savings, as one can conclude, is not to increase wealth or further distribute resources past a certain threshold to any society or particular group or

¹⁸ Rawls, John. *The Law of Peoples*, 108.

¹⁹ Rawls, John. *The Law of Peoples*, 111.

²⁰ Rawls, John. *The Law of Peoples*, 106-108.

²¹ Rawls, John. *The Law of Peoples*, 107.

individual in a society. Thus, indicating support of the negative thesis that Casal attributes to those who support the doctrine of sufficiency. However, a more in depth discussion of Rawls's sufficiency, what it demands, and whether this is enough will follow.

Rawls's Sufficiency

Casal makes the case that Rawls's conception of justice as fairness reveals a plausible hybrid model of sufficiency that additionally and appealingly balances claims of equality and priority.²² In his domestic theory, discussed in chapter one of this work, Rawls's difference principle operates in conjunction with other supplementary requirements. Much like sufficiency principles, Casal points out that, these political demands in Rawls's theory reveal satisfiable and non-comparative political objectives. One such supplement that operates for Rawls both domestically and globally is his idea of a *guaranteed social minimum*. Recall Rawls's claim that any reasonable conception of justice should offer “measures ensuring for all citizens adequate all-purpose means to make effective use of their freedoms”.²³ Let it not be forgotten that Rawls's principles of justice apply as a complement to one another, but that “the difference principle is subordinate to both the first principle of justice (guaranteeing the equal basic liberties) and the principle of fair equality of opportunity”.²⁴ By virtue of the principles of basic liberty and equality of opportunity taking lexical priority over the difference principle undesirable outcomes, such as the exchange of certain rights for the economic advantages of the difference principle are avoidable. As Casal points out “the means available to protect citizens from absolute deprivation are limited to a lesser degree since the social

²² Casal, Paula. “Why Sufficiency is Not Enough”, 323-326.

²³ Rawls, John. “Idea of Public Reason Revisited,” 582.

²⁴ Rawls, John. *Justice as Fairness*, 61.

minimum is not subordinate to the basic liberty principle in the same way”.²⁵ The social minimum helps to ensure that the basic liberties do not remain merely formal, but rather can be effectively employed by every citizen given his or her inclination.²⁶ Casal reiterates, “far from being redundant, the social minimum is therefore most useful to balance the core values in justice as fairness”.²⁷

This balancing of core values that Rawls seeks to attain at the domestic level has reverberations again on the global scale. I would argue that given Rawls's initial goal to create a theory of global justice that both liberal and decent peoples could reasonably agree to in accordance with the facts of reasonable pluralism and pursuit of mutual respect among peoples, adopting principles that leave room for considerations of equality, priority, and sufficiency reveal a potentially robust account. Recall that the Law of Peoples is concerned with justice and stability for the right reasons between liberal and decent peoples, living as members of a Society of well-ordered Peoples. Such aims do not come without well-considered compromises, thus making a pluralistic view quite alluring. However, I would argue that sufficiency seems to be the main operating principle at the global level for Rawls given how the Law of Peoples is construed. As to whether or not this is an advantage or a detriment to Rawls's position has yet to be discussed.

From here it is important to distinguish precisely the sufficientarian principles operating within the Law of Peoples. A critical evaluation of the threshold of the duty of assistance and its potential demands will be discussed. Defining the appropriate

²⁵ Casal, Paula. “Why Sufficiency is Not Enough”, 324.

²⁶ Rawls, John. *Political Liberalism*, 324-331.

²⁷ Casal, Paula. “Why Sufficiency is Not Enough”, 324.

thresholds given Rawls's framework will better reveal whether the duty of assistance demands enough contrary to principles of egalitarianism. As a vague starting point, the metric of sufficiency concerning Rawls's duty of assistance reveals a commitment to assuring that the basic needs of all citizens can be met so that they can take part in the political and social life of their given society. In *Political Liberalism*, Rawls asserts “the constitutional essential here is rather that below a certain level of material and social well-being, and of training and education, people simply cannot take part in society as citizens”.²⁸ The difficult question that must be addressed is: how do we define and assign these basic needs and what is a sufficient provision to ensure that citizens are able to enjoy their society given liberties and take part in civic life? Rawls admits that:

What determines the level of well-being and education below which this happens is not for a political conception to say. One must look to the society in question. But that does not mean that the constitutional essential is not perfectly clear: it is what is required to give due weight to the idea of society as a fair system of cooperation between free and equal citizens, and not to regard it, in practice if not in speech, as so much rhetoric.²⁹

Despite this quotation being taken from *Political Liberalism*, the ideas expressed within it hold significant weight within the Law of Peoples. However, it is important to again qualify that the idea of a society as a *fair system of cooperation* continues to hold at the international level, whether this is achieved between free and equal citizens in a liberal society or between citizens represented fairly by a consultation hierarchy in a decent society is a critical distinction that must be made. Due to this distinction however, at the international level, the idea of social cooperation operating necessarily between free and equal citizens must be saved in application to liberal peoples only and need not be a

²⁸ Rawls, John. *Political Liberalism*, 166. This quotation in *Political Liberalism*.

²⁹ Rawls, John. *Political Liberalism*, 166.

requirement for the admissibility into the Society of Peoples given Rawls's commitment to due toleration, as discussed in chapter one.

To reiterate, according to Rawls:

By basic needs I mean roughly those that must be met if citizens are to be in a position to take advantage of the rights, liberties, and opportunities of their society. These needs include economic means as well as institutional rights and freedoms.

From this it is understandable that the fulfilment of basic needs reveals some sort of an adequate social minimum. The provision of basic needs takes priority and occurs prior to the enactment of rights and liberties. Basic needs are to be met partly as a matter of human rights. At a minimum, a person's basic needs are provisions that enable him or her to effectively exercise the rights and liberties granted within his or her given society. As mentioned briefly before basic needs are not, meagrely speaking simply needs of subsistence such as shelter, clean drinking water, food, and clothing. Robustly so, 'basic needs' on Rawls's account expresses what is needed for individuals to both understand and fruitfully express their rights and liberties, and utilize the means that would allow an individual to pursue a rational life plan of his or her choosing.³⁰ However vague basic needs and the metric of sufficiently meeting them may appear at this time, one cannot overlook the potential robust demands that may be hiding behind this unclear definition. Recall that for Rawls, "the sensible and rational exercise of all liberties, of whatever kind, as well as the intelligent use of property, always implies having general all-purpose economic means".³¹

Although Rawls's basic needs required by the Law of Peoples do not express a

³⁰ Rawls, John. See *Theory of Justice*, regarding social and primary goods, §15:78-81 and §63:358-365.

³¹ Rawls, John. *The Law of Peoples*, 65 fn.1.

full liberal conception of a person, where citizens of the globe are to be regarded as free and equal, with equal basic rights and equal basic liberties, they do express “a special class of urgent rights” whose violation is “equally condemned by both reasonable liberal peoples and decent hierarchical peoples”.³² Despite appearing quite short Rawls's list of human rights required by the Law of Peoples includes:

Among the human rights are the right to life (to means of subsistence and security); to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); and to formal equality as expressed by the rules of natural justice (that is, that similar cases be treated similarly).³³

It is important to take careful note that Rawls only requires a *sufficient measure of liberty of conscience*. The Law of Peoples requires that decent peoples make room for or permit liberty of conscience, though it need not necessarily be an equal liberty. As a qualification Rawls stipulates that “liberty of conscience may not be as extensive nor as equal for all members of society: for instance, one religion may legally predominate in the state government, while other religions, though tolerated, may be denied the right to hold certain positions”.³⁴ Thus, these human rights and basic needs that allow for their realization are not peculiarly liberal, and; therefore not politically parochial.

In addition to Rawls's basic needs and minimal rights being acceptable to both decent and liberal peoples it is significant to understand that provisions of basic needs and human rights coincide with Rawls's notion of a common good idea of justice and with what he asserts is necessary for obtaining fair methods of social cooperation.

Attaching a certain level of significance to Rawls's vague notions of what he identifies as

³² Rawls, John. *The Law of Peoples*, 79.

³³ Rawls, John. *The Law of Peoples*, 65.

³⁴ Rawls, John. *The Law of Peoples*, 65 fn.2.

a *common good idea of justice*³⁵ and *social cooperation* and understanding how these two ideas shape what Rawls comes to regard as basic needs strengthens the possible robustness and sufficiency of what his basic needs may entail in the Law of Peoples. Freeman points out that “common good conceptions, by definition promote a conception of the good of each member of society”.³⁶ They are typically defined in a liberal society by a liberal conception of justice and by decent hierarchical peoples by some nonliberal moral conception. In both instances it is the use of public reason that helps define and inform such conceptions. For Rawls, it is important to realize that what he considers to be a common good idea of justice is purposely vague, given that it is supposed to be determined by each society, its political culture, moral traditions, religious and philosophical doctrines, and such.

The connections between a common good idea of justice, social cooperation, basic needs, and human rights may not be so obvious at this time. This is certainly the case given that basic international needs do not express a liberal conception of a person who is to be considered free and equal. However minimal, on Rawls's account persons will be regarded as individuals who are responsible and cooperating members of groups within a society acting in accordance with their moral duties and obligations as members of these groups. Rawls argues that any common good idea of justice would stipulate that it is necessary for individuals to be ruled by law and not by force. Fidelity to the rule of law identifies a potentially robust demand in terms of minimal basic needs. Rawls argues that to be able to enjoy the rights afforded to a person within his or her group and society

³⁵ See Rawls, John. *The Law of Peoples*, 65, §9:71-78, and *Political Liberalism*, §4:66-72. In *Political Liberalism* Rawls uses the term 'public conception of justice'; however, I assert that it is safe to assume that these terms can be used interchangeably.

³⁶ Freeman, Samuel. “Distributive Justice and *The Law of Peoples*”, 244.

a basic need to be governed by law and not a system of force and coercion is essential under the Law of Peoples. Law is to be guided by this common good idea of justice both in liberal and decent societies. Law is not to be used as some instrumental tool of politics or the ruling elite among members of the Society of Peoples. Rawls asserts that it would not be reasonable, rational, nor in accordance with the common good idea of justice to have a law assign human rights and systematically violate them. “What have come to be called human rights are recognized as necessary conditions of any system of social cooperation. When they are regularly violated, we have command by force, a slave system, and no cooperation of any kind”.³⁷ In support of this idea Freeman argues that, “these conditions virtually guarantee that apartheid, ethnic cleansing, and other egregious forms of discrimination will not be practised in well-ordered decent societies”.³⁸ Justice is to take into account the fundamental interests of everyone and consider the demands of each special class of groups in a given society. As we have come to understand for Rawls, basic needs reflect provisions that secure a social world that makes possible a worthwhile life for all its citizens.³⁹ This requires providing a just, but not necessarily equal, basic structure.

In summation, basic needs reflect having sufficient all-purpose means for individuals to make intelligent and effective use of their freedoms and to lead reasonable and worthwhile lives.⁴⁰ Basic needs push the threshold beyond what is needed so that people do not starve or perish from disease. Instead basic needs identify the provisions

³⁷ Rawls, John. *The Law of Peoples*, 68.

³⁸ Freeman, Samuel. “The Law of Peoples, Social Cooperation, Human Rights, and Distributive Justice”, 32.

³⁹ Rawls, John. *The Law of Peoples*, 107.

⁴⁰ Rawls, John. *The Law of Peoples*, 114.

required to enable citizens to enjoy their liberties. Freeman explains that the duty of assistance suggests “a duty to provide in some way for the educational needs of a burdened people, so that they can find employment and be economically self-sufficient, and can actively participate in the life of their culture”.⁴¹ However, Rawls says too little in respect to clearly defining these sorts of demands. Human rights and basic needs serve an additional purpose in Rawls's Law of Peoples, however. They express a class of urgent rights, that when said rights are violated, both reasonable liberal and decent hierarchical peoples equally condemn the violators. Rights are used to demarcate toleration in the Society of Peoples. They restrict the justifying reasons for war and its conduct and specify limits to a regime's internal political autonomy. Rawls holds that “human rights set a necessary, though not sufficient standard for the decency of domestic and political social institutions”.⁴²

Beitz explains that “the relative austerity of Rawls's list reflects the role that human rights are to play in the political life of the Society of Peoples. Respect for human rights is, so to speak, part of the price of admission to international society and defines the threshold of toleration by liberal and decent peoples.”⁴³ Basic needs and this special class of urgent rights demarcate the boundaries of acceptable pluralism within the Society of Peoples. They help to inform the foreign policies of liberal peoples and explain why a violation would warrant intervention to bring about reform. Recall that the Law of Peoples seeks to create international stability for the right reasons. When peoples fail to provide basic needs and when human rights are violated, reform and intervention are not

⁴¹ Freeman, Samuel. “The Law of Peoples, Social Cooperation, Human Rights, and Distributive Justice”, 52.

⁴² Rawls, John. *The Law of Peoples*, 80.

⁴³ Beitz, Charles. “Rawls's Law of Peoples”, 684.

merely justified by the individual good they bring about, but also by considerations of international stability. Rawls holds that outlaw states that violate human rights deeply affect the international climate of power and violence and need not be tolerated.⁴⁴

To further my argument I look to the work of David Miller. Miller assumes that only certain rights-violations are urgent enough to trigger remedial responsibilities in outsiders, such as being denied means of subsistence.⁴⁵ Other claims, such as, the equal right to participation in politics do not. Rawls's list of basic needs and human rights develops quite similarly to this.

It follows then that a compelling feature of Rawls's list of human rights is that they are neither overtly paternalist nor parochial,⁴⁶ and that all liberal and decent people can agree to them on the basis of their liberal and decent comprehensive views. Although his list of human rights may not appear as demanding or exhaustive as others require, they embody a minimal acceptability that a reasonable people could uphold, in that they do not impose a particular comprehensive conceptions of 'the good'.⁴⁷ On this standard of acceptability, then Rawls's list appears short, but is consistent with his aim of providing a

⁴⁴ Rawls, John. *The Law of Peoples*, 81.

⁴⁵ Miller identifies remedial responsibilities as: "the responsibility we may have to come to the aid of those who are deprived or suffering in some way". Miller, David. *National Responsibility and Global Justice*, 63.

⁴⁶ According to Allen Buchanan: "To say that a theory of human rights is parochial is to say that it is based on a partial, or narrow, or unduly circumscribed perspective- that it leaves out something of relevance". See Buchanan, Allen. "Taking the Human out of Human Rights", 159.

⁴⁷ For Rawls, political conceptions of justice are the only appropriate means of justification for public reason. Political conceptions speak to a limited range of subjects, such as the political realm of public principles of justice for the regulation of the basic structure of society. They address individuals only as citizens, not as whole moral persons. The validity of political conceptions has a limited value, in that they only claim reasonableness. Conversely, comprehensive conceptions speak to a wide range of subjects, such as what is the good life? Typically they include philosophical or religious doctrines. The validity of comprehensive conceptions have an absolute truth value. Most comprehensive doctrines exhibit two features: 1. They rely on at the very least a minimal conception of human good, and 2. They ordinarily rest on the idea that there are morally fundamental characteristics that all humans share.

Law of Peoples to which all well-ordered peoples could agree. Thus, it could be said that in addition to providing a target for aid, and despite valuing human rights for their own sake, the minimum standard of meeting basic needs also identifies conditions that peoples must meet if they are to enjoy standards of sovereignty and self-determination. The identification of basic needs, thus upholds Rawls's liberal values of reasonable pluralism, toleration, and mutual respect. Additionally, assigning basic needs so that they can be accepted cross-culturally and that their meaning can be sustained over time further adds to my argument that the duty of assistance is a robust and sufficient demand within Rawls's Society of Peoples.

Even though cosmopolitans, such as Tan, argue that it is inconsistent for Rawls to make such minimal demands and not push for a principle of global distribution, similar to the difference principle, in order to achieve equality for individuals; I argue that to remain consistent with his commitments to pluralism, respect of self-governance, and self-determination, Rawls is justified to define basic needs as such. Although at a first glance it appears that Rawls's has given very little justification for what his critics claim to be a truncated list of human rights, when we look toward the larger theoretical commitments threaded throughout Rawls's work it is possible to string together a tighter web of justification in regards to basic needs.

At this point in my Thesis, I am prepared to admit that this justification may leave us wanting. I recognize that two points must be distinguished and made clearer. The first point being the clarification of *basic needs* and second, the entailment of this distinction: being that a duty of assistance that secures basic needs is robust, and reasonably sufficient, and that we need not push much further, as suggested by Tan.

The Role of Basic Needs and International Political Human Rights

To further contribute to the clarification of basic needs and the meaning of human rights on Rawls's account a discussion of the role that both basic needs and human rights play is necessary to ground our understanding. Normatively speaking, general meaning is enriched when a functional role of association can be assigned to the subject in question. Here, if we can better identify the role Rawls intends for the assignment of basic needs and his provisions of human rights under the Law of Peoples, on some relational level, the meaning Rawls assigns to such conceptions should appear much clearer. I hold that basic needs and human rights on Rawls's account express three main roles in the Law of Peoples; 1) measures for toleration, 2) assignment of a duty to aid, and 3) provision of what is necessary for social cooperation (already discussed). The first two of these roles will be discussed in more detail below.

Distinguishing Which Needs are Basic Needs

To help better distinguish what is to be considered a basic need in justifying a list of human rights, the humanitarian approach discussed by David Miller should provide us with some much needed considerations lacking in the Law of Peoples. Miller explains that “according to the needs approach, we prove that something is a human right by showing that having that right fulfils the needs of the right-holder”.⁴⁸ Basic needs when used to justify human rights must express a person's 'intrinsic' needs, identifying those items (food and shelter) or conditions (various freedoms) necessary for a person to avoid harm and to lead a minimally decent life. Such claims as to what counts as a basic need when used to justify human rights are to be acceptable universally, and in Rawls's case

⁴⁸ Miller, David. *National Responsibility and Global Justice*, 179.

must appear reasonable to liberal and decent peoples.

With that said, in determining basic needs by the avoidance of harm and the promotion of meeting the threshold of a minimally decent life it is important to determine what is to count as harm and set the minimum for decency. Quite easily we can identify harms derived from not having our physical or biological needs met. Typically, a person suffers harm when he or she is deprived adequate amounts of food, clean water, shelter, clothing, bears uncontrollable pain, contracts preventable and curable diseases that go untreated, and who's life is lost to a premature death. However, in addition to our biological needs, it is recognizable, and much a part of Rawls's Law of Peoples to give due weight and consideration to human beings as biological and social creatures.

Additional harms that humans may suffer may arise when individuals are denied the conditions of social existence. Miller explains “a person is harmed when she is unable to live a minimally decent life in the society to which she belongs”.⁴⁹ As highlighted by Rawls's Law of Peoples an individual's identity, social existence and self worth is largely tied to the groups they belong to, the culture and history they share, and common traditions and language(s). Rawls stipulates that political culture is all-important. Given this, the idea of a minimally decent life illuminates needs that address individuals both as biological and social entities. Where an individual's well-being is concerned then, fostering a sense of belonging within a community, having a sense of community support, and attaining community acceptance, identifies a basic need that would enable an individual to be able to use the liberties and freedoms granted within a lived community. With the recognition that persons tend to view their lives through the lens of a

⁴⁹ Miller, David. *National Responsibility and Global Justice*, 181.

community, having an account of basic needs and human rights that adequately addresses issues of exclusion, persecution, and public shaming, in addition to relief for harms such as malnutrition, provides a list that is cross-culturally acceptable, robust and most likely reasonably sufficient.

If we are to define basic needs by reference to what is necessary to lead a decent human life and to enable citizens to make effective use of their rights and liberties of their society, then it is imperative to determine what is actually necessary to achieve such thresholds in different cultural contexts. Miller appeals to the commonly shared activities that humans engage in cross-culturally to ground claims of what a minimally decent life would require. He refers to these common activities as *core* human activities.⁵⁰ Such core activities shared cross-culturally include examples of work, play, leisure, learning, child-rearing/engaging in family relations, an appreciation for and engagement in the arts (from storytelling/folklore, to music, carving/sculpture, dance). On this account of what constitutes a minimally decent life, one's life expectations will include engaging in each of the core activities so chosen. Miller explains given the conditions of one's society, an individual should be able to work and play without having to bear unreasonable costs or forgo some other core activity.⁵¹ Basic needs, by reference to minimal decency express the baseline conditions that everyone should reach irrespective of attaining higher forms of flourishing or privilege. Those living just at this threshold would lead a fairly standard life, and Miller conjectures that such a life would be quite dull. However having just enough, nonetheless, is invaluable in that those just at the baseline would no longer suffer from degradation, social exclusion, worthlessness, and any innumerable insecurities

⁵⁰ Miller, David. *National Responsibility and Global Justice*, 184.

⁵¹ Miller, David. *National Responsibility and Global Justice*, 184.

compared to those who fall below. This attachment to minimal decency, having enough to enjoy one's rights and liberties, and engage in the social and cultural life of one's society is a robust conception of basic needs that offers a sufficient grounding for human rights contrary to what the cosmopolitans may demand. There are other groundings for Rawls's list of human rights however, that must be explored to fully capture the potential demands of his duty of assistance.

Basic Needs and Human Rights as Measures for Toleration

In the case of the Law of Peoples, Rawls utilizes human rights and basic needs to demarcate the tolerable from intolerable, or in Rawls's words the outlaw from the decent, the burdened from the well-ordered. Human rights set a necessary, though not sufficient condition of political legitimacy, where human rights identify conditions that peoples are to meet if they are to enjoy standard rights of sovereignty and self-determination within the Society of Peoples. When human rights are assigned the role of determining intervention and what is intolerable, they express what Rawls identifies as “a special class of urgent rights” whose violation is “equally condemned by both reasonable liberal peoples and decent hierarchical peoples”.⁵² David Miller explains that on the standard of intervention a list of human rights is to be short and express *essential rights*. Essential rights should reflect minimal considerations such as the right to life and physical security.⁵³

As discussed briefly above, for Rawls an account of the justification of human rights should therefore explain why a violation would warrant intervention to bring about

⁵² Rawls, John. *The Law of Peoples*, 79.

⁵³ Miller, David. *National Responsibility and Global Justice*, 166.

reform. In his article “Are Human Rights Mainly Implemented by Intervention?” James Nickel explains that Rawls's list of human rights privileges roles related to intervention. Nickel argues that assigning such a role to human rights in the Law of Peoples is arbitrary and undefended. Nickel explains that Rawls mentions only three (out of many) possible political roles of human rights⁵⁴:

1. Standards for international criticism and diplomatic action by governments and organizations
2. Standards for recommending economic sanctions by international organizations and for imposing them by governments
3. Standards for military intervention by international organizations or governments

Rawls's narrow focus on the boundaries of international toleration and permissible intervention, Nickel argues, is limiting when human rights get tied to justifying foreign policy and to the permissible use of coercion and force in international relations.⁵⁵ Nickel holds that there is more to human rights law than dealing with just gross violations. With no intention of undermining the importance of dealing with egregious and severe violations such as genocide and slavery, Nickel asserts that there is more to be considered beyond such gross violations. Nickel claims that Rawls's view suggests that this is all there is to human rights law.⁵⁶ He asserts that it is a flawed move “to follow Rawls in treating human rights as if their main political role is to specify when it is permissible for countries to use intervention to deal with grave violations”.⁵⁷ On this view, Rawls takes one important role that human rights serves and makes it central without considering other definitions of the role of political human rights. Nickel explains:

⁵⁴ For additional roles that human rights play see Nickel, James. “Are Human Rights Mainly Implemented by Intervention?”, 270.

⁵⁵ See Nickel, James. “Are Human Rights Mainly Implemented by Intervention?”, 263.

⁵⁶ See Nickel, James. “Are Human Rights Mainly Implemented by Intervention?”, 269.

⁵⁷ See Nickel, James. “Are Human Rights Mainly Implemented by Intervention?”, 270.

As human rights function today within international organizations, it is just untrue to say that they are mainly about intervention. A better description of their main role is that they encourage and pressure governments to treat their citizens humanely with respect for their lives, liberties, and equal citizenship. They use social pressure and acculturation to promote acceptance and compliance with human rights norms.⁵⁸

Furthermore, Nickel distinguishes that the 'outlaw' versus 'decent' method of contrast in weighting toleration creates a false dichotomy in Rawls's theory that does not fully capture the multi-functional role that human rights should play internationally. Instead, Nickel suggests that transforming Rawls's aligned dichotomies between outlaw and decent peoples worthy of toleration, he proposes an aligned trichotomy where *delinquent* peoples are also included in considerations of foreign policy.⁵⁹ A delinquent people, on Nickel's account, expresses many of the characteristics of a decent well-ordered people, but falls short in some aspects of being reasonably decent; however, such violations are not severe enough to warrant military intervention. To clarify, a delinquent people perhaps respects many of the *essential or urgent human rights* required by Rawls's Law of Peoples, but may non-egregiously violate or suppress others. For instance, a newly industrializing country may adopt very sound labour practises for its workers, the workers may be backed by a very strong union who may have a large share in the means of production, yet such a state may not hold very strong environmental policies in terms of resource protection and emission standards respecting the rights of future generations.

Rather, Nickel offers, and I would argue helpfully so, that perhaps including multi-levels of acceptability and toleration to the Law of Peoples would better express the realistic utopia that Rawls has intended to construct. I hold that convincingly, Nickel

⁵⁸ See Nickel, James. "Are Human Rights Mainly Implemented by Intervention?", 271.

⁵⁹ Nickel, James. "Are Human Rights Mainly Implemented by Intervention?", 268.

makes the case that international acceptability and criticism may not necessarily be mutually exclusive. The accusation that Rawls presents us with a false dilemma, between decent and outlaw peoples, draws our attention to a potential deficit in Rawls's theory of human rights. As there may be instances worthy of consideration where a people may be able to respect and admire another people in most areas, but in other matters may think certain behaviour is offensive; however not completely unacceptable so as to require military action.⁶⁰ In these instances military intervention may be ill measured and inappropriate; however, international criticism may still be required by concerns of justice and mutual concern for public good and well-being.

Perhaps Rawls's distinction between what is tolerable and permissible is too cut and dry as there may just be a double edge sword swinging between gradients of acceptability and fierce criticisms. In questioning whether the role Rawls assigns to human rights is too narrow and the threshold for toleration too strict, when we relax these standards, it is reasonable to accept that expressions of criticism and disagreement are not always incompatible with tolerance. There is a notable tension between respect for due toleration and intervention in Rawls's theory that leaves out many weighty considerations and useful means of criticism and resolution beyond penetrating another's borders through military might, coercion, political sanctions, and the like. Nickel points to the use of political "jawboning" as an effective means to express international criticism and condemnation.⁶¹ Jawboning as a dialectical tool, according to Nickel, is a useful means of expression where governments or politically motivated lobby groups, and non-governmental organizations (NGOs), can criticize, shame, and attempt to persuade

⁶⁰ Nickel, James. "Are Human Rights Mainly Implemented by Intervention?", 273.

⁶¹ Nickel, James. "Are Human Rights Mainly Implemented by Intervention?", 271.

delinquent peoples to move to conditions of acceptability through non-coercive measures. Most likely, outlaw peoples will not be motivated or open to such criticisms; however in recognizing that there may exist peoples that are not quite decent, not quite burdened, and not quite an outlaw state, tools of international dialogue, such as jawboning, would make useful additions to Rawls's account of the duty of assistance when seeking to evaluate its potential robustness. If we can come to recognize that assistance should take on many measures beyond dispensing of aid or military intervention, and may include discussions as to what is acceptable and condoned by the Law of Peoples in order to motivate a people toward becoming decent, if not liberal, than the practise of jawboning seems valid. Given that it appears unclear in Rawls's Law of Peoples as to whether a society that publicly criticizes another is being intolerant and disrespectful of the bounds of sovereignty, I hold that we can make space for such means of international discussion. In addition to this I conjecture that Rawls's adherence to respect for public reason, his use of overlapping consensus, and value of public discourse that contribute to reasonable pluralism, leads me to assert that jawboning would be an acceptable and worthwhile tool used to reaffirm what is to count as satisfying the measures of public reason and further contribute to the meaning of what is considered the public good.

Here we are concerned about the relation between public criticism and intolerance. Rawls does make the case that from behind the veil of ignorance, both liberal and decent peoples, in negotiating the terms of the society of peoples, have strong reasons to insist upon the right of their governments and politicians to freedom of expression about the domestic and international policies of other peoples. Recall, peoples are to be equally considered mutually free and equal members in the society of peoples, who may

require other peoples to justify their reasons of action, and in return must provide their own reason of pursuing such aims. To ensure that the fundamental interests of liberal or decent peoples are preserved and their basic political institutions sustained it seems reasonable that from the original position peoples would insist on the right of their politicians and governments to express their views about the folly or wrongfulness of the practises of other countries in the areas of foreign relations, human rights, economic policy, international law, trade, and the environment that threaten their own institutions, culture, and practises. Tolerance does not require liberal peoples, and their governments, to refrain from public criticism of other peoples in these varied areas. This is especially the case when from behind the veil of ignorance a people cannot possibly know whether their neighbour will be a fellow liberal, decent, delinquent, burdened, or outlaw regime. Instability at a shared border where there is a potential for a large influx of refugees seeking asylum that may strain a stable people's resources, for example, speaks to making space for the treatment of human rights violations in a variety of ways from the extreme end of military intervention toward gentler means of jawboning discussed. If Rawls is committed to pursuing stability for the right reasons, a multi-levelled approach to dealing with human rights violations in his Society of Peoples may better serve his ambitions.

In addition to jawboning, the use of official political protest may be another adequate means of expressing distaste or displeasure with a people, while not going as far as being intolerant to their sovereignty. Nickel explains “the purpose of a protest is to give notice of nonacquiescence in a practice so as to prevent or make more difficult the development of a customary norm”.⁶² Official protests play a significant role in the

⁶² Nickel, James. “Are Human Rights Mainly Implemented by Intervention?”, 273.

evolution of customary international law, holds Nickel, as in the absence of an international objection or protest an acceptance or a customary liberty right in regards to that practise may be understood. The right to protest secures a valid and valuable form of expression both domestically and internationally and a deprivation of such expression jeopardizes the validity and protection of international legal rights.⁶³ It is not unreasonable to view criticism as constructive in the international case. Disagreement does not necessarily entail a sentiment of intolerance. Rawls's attachment to reasonable pluralism is built on the assumption that there will be disagreements, and some of which are to be decided behind the veil of ignorance. Yet, I hold that beyond the veil of ignorance, how we shall come to recognize the threshold for what is acceptable and tolerable should be informed by such modes of communication, jawboning and peaceful political protest that is.

Again I highlight that Rawls's list of human rights are drawn up for the ideal case, in the Society of Peoples. They are the measures used to grant membership and toleration into the Society of Peoples. When Rawls's role of human rights is combined with the stipulation that basic needs are to be met, as an a priori requirement to them, that would afford one the capabilities to effectively utilize the liberties and freedoms of his or her society – it appears that Rawls's focus on toleration does not make his list as meagre as Nickel claims. Rather, I assert that although other human rights roles may not be argued for explicitly or as fully as the measure of toleration in Rawls's formulation of human rights that are to be governed by the Law of Peoples, I argue that additional roles may be implied and acceptable within the Society of Peoples. As suggested by Nickel, when we

⁶³ Nickel, James. "Are Human Rights Mainly Implemented by Intervention?", 273.

look toward what toleration requires, perhaps we can find space to expand Rawls's list of human rights worthy of international consideration to a more robust list. From here I will continue to consider another role that human rights play on Rawls's account in our evaluation of the robustness and sufficiency of his duty of assistance. I will briefly look toward Rawls's use of human rights in his assignment of a duty to aid, as we have already explored and will continue to explore the use of human rights in their contribution toward social cooperation.

Human Rights as Signifying a Duty to Aid

In addition to serving the role of demarcating what is tolerable, basic needs and basic human rights on Rawls's account aim to identify a list of rights that can specify a global minimum that individuals worldwide are entitled to as a matter of justice. This special class of urgent rights can impose obligations on peoples both domestically, serving as a constraint on their sovereignty, and internationally where duties are required of well-off peoples to aid those who are burdened by unfortunate circumstances. Rawls's duty of assistance highlights that when basic needs are not met, the human rights that they support trigger the enactment of a duty to aid in the Society of Peoples. Unlike many views of moral minimalism, Rawls's minimalism fulfils claims of both negative obligations and positive obligations in the consideration of the role of human rights. Most minimal conceptions typically cover negative injunctions prohibiting murder, bodily interference, rape, torture, oppression, and tyranny; however, Rawls's list extends to cases in which the protection of human rights requires positive action on the part of other peoples.

Rawls's Omissions: Can We Be Justified to Require More?

It is notable that Rawls purposefully omits several rights identified by the 1948 Universal Declaration of Human Rights (UDHR). Among the omitted are significantly freedom of expression and association, and the rights of democratic political participation. For Rawls these are distinctly liberal rights and presuppose specific institutions. However, I am willing to argue that although not explicitly stated within Rawls's short list of urgent human rights, there is room for sufficient inclusion of these additional rights under the Law of Peoples. Using Rawls's own reasoning for the inclusion of a sufficient measure of liberty of conscience that ensures freedom of religion and thought, I assert that we too could reasonably include measures of freedom of expression and association as well as certain means for political participation while still managing to avoid Rawls's worry of parochialism.

It appears somewhat arbitrary for Rawls to omit completely the right to freedom of expression and association. He does include some necessary, although relatively undefined, measures for political representation and participation among decent hierarchical peoples. We will set this matter aside for the time being and focus on why it may be possible and necessary to include some minimal threshold for freedom of expression and association analogous to a sufficient measure of freedom of conscience. As discussed above, Rawls, as a basic need requires that basic institutions be structured so as to reflect a common good conception of justice. In addition to this citizens are to be governed by the rule of law that best reflects this common good conception of justice within the given society. This common good idea of justice is publicly accepted and provides the acceptable and fair means for social cooperation. Given that we accept such

demands for basic needs I would further argue that the inclusion of some sufficient measure of liberty of expression and association would follow from the identification of said need. For if decent well-ordered hierarchical peoples are required by the Law of Peoples to grant recognition and toleration toward other minority groups, Rawls uses the example of predominate versus minority religious groups, thus, “permitting liberty of conscience, though not an equal liberty”⁶⁴ could it possibly be permissible to also grant liberty of expression and association, though not an equal liberty? In my opinion this is not only possible on Rawls's account, but may actually be necessary thus further supporting my overall argument that Rawls's basic needs and human rights are more robust than they initially appear.

Much of my reasoning for supporting such a claim stems from Rawls's publicity condition spelled out in *Political Liberalism*.⁶⁵ When we attach the appropriate significance to Rawls's notion of public reason and how this is to guide a well-ordered society's common understanding of justice and right and that citizens hold a basic right to have their institutions and laws shaped by such reasoning, it follows that at least some minimal amount of freedom of expression and association would be both acceptable and required.⁶⁶ In order to honour human rights, Rawls asserts that decent hierarchical peoples' basic structures must give a substantial role to its members in political

⁶⁴ Rawls, John. *The Law of Peoples*, 62 fn 2.

⁶⁵ Rawls, John. *Political Liberalism*, §4: 66-72.

⁶⁶ On some prima facie level, I acknowledge that a minimal amount or sufficient amount or constrained amount, if you will, of freedom of expression and association seems like a contradiction in terms. However, I think that this need not be the case. Historically speaking in terms of the development of human rights and liberties it is not uncommon to restrict or constrain some rights and liberties when they conflict so as to make room for the realization of other more pressing types of liberties. We can see such reasoning in operation with Rawls's difference principle in his domestic theory where some level of the attainment of economic wealth may be restricted to make more space for the freedom of opportunity. At other times we may see the limitation put on freedom of speech, when instances of hate speech further contribute to ignorance, oppression, and the silencing of a plurality of reasonable voices.

decisions.⁶⁷ This relays a basic need to have the political means and forum to have one or one's group concerns expressed. So although the right to hold higher political or judicial offices, in a decent hierarchical society such as Rawls's Kazanistan may be restricted, "other religions and associations are encouraged to have a flourishing cultural life of their own and to take part in the civic culture of the wider society".⁶⁸ This signifies some minimal requirement to make room for a plurality of voices and opinions, which at times may be voices of dissent. If we can accept that there ought be toleration for other religious and minority groups, and that they are to be afforded a substantial role in political decision making and civic culture, then it shall be the case that they are to be permitted some sufficient level of reasonable liberty of expression and association. Expression in this instance need not be completely unbridled, so as to disrupt fair social cooperation and undermine the prevailing political and social values inherent in the given society. For example a people such as Kazanistan may permit a free press, but at the same time hold that images portraying the Prophet Muhammad are impermissible to print as this type of expression would greatly offend and challenge deeply rooted values within the given society.

To further determine what types of expression and association that may be permissible, if not necessary it is important to determine the types of expression that I have in mind. Mostly I would like to make space for types of expression that would allow for or create the appropriate channels of social progress within a given society. If a people's laws and basic structure of public institutions are to be guided by public reason and a common conception of justice, it seems necessary that individuals and the groups

⁶⁷ Rawls, John. *The Law of Peoples*, 64 & §9.3: 75-78.

⁶⁸ Rawls, John. *The Law of Peoples*, 76.

they represent be afforded the appropriate means of public discussion to actualize their substantive role in political decision-making. Such channels could include and need not be limited to policy making based on deliberative democratic decision making⁶⁹, holding forums for public debate, and allowing for peaceful demonstrations and protests. The types of reasonable expression that may be permissible should reflect avenues required to maintain a just society and a healthy civic life. Furthermore, such expressions and associations are to act as a reference point or a compass for what is embodied by a people's common conception of justice.

Further, I conjecture that permitting certain sufficient types of expression and association better contributes to social cooperation and social progress, rather than causing mere disruption. Making room for social movements and social progress derived from public debate, peaceful protest, awareness campaigns, and discursive decision-making would perhaps ensure smoother transitions of change. Violent revolts and riots stemming from outright oppression would be less likely if citizens and non-governmental organizations were given the ability to vocalize their views through the channels of dissent mentioned. I think it is fair to argue that providing space for peaceful protest, non-violent resistance, and quiet revolutions rather than a violent coup d'état coincides and supports Rawls's idea of stability for the right reasons among peoples and within an individual society.

In addition to this, recall that the final hope of the Law of Peoples is that it will provide adequate means and motivation for decent peoples to move toward becoming liberal should they so decide on their own. If a people are to make an autonomous

⁶⁹ Briefly, deliberative democracy reveals a process where legitimate lawmaking arises through public deliberation by the people.

decision to become liberal in addition to having the political will to do so they must have the proper instrumental and institutional practises and procedures in place as well. Having the ability to express such a political desire, to move toward becoming liberal one could say is an instrumental need in this instance. If we want to earnestly accept that it is the desire of the Law of Peoples to provide the necessary means that would enable a society to progress to becoming a liberal people, it would follow that they must have some minimal liberty of expression, association, and ability to participate politically to do so. Hence, my argumentation for the inclusion of such rights, however, minimal to the Law of Peoples.

Much criticism has been voiced regarding Rawls's truncated list of human rights. Concerns that he does not adequately account for future generations, the plight of women, and the world's worst off have been raised. Egalitarians complain that factors such as birthplace, whether one is born into an industrial or resource rich society with sound population policies versus being born into a society with little population control that relies on traditional agrarian practises, has not been mitigated in the Society of Peoples. However, I assert that with the inclusion of a sufficient amount of freedom of expression, association, and political participation, combined with avenues of education and advancement provided by the duty of assistance, both the political will and ability to make change and strive for social progress within one's society seems very possible.

A Women's Place in Rawls's Society of Peoples

Given the pervasiveness of patriarchy displayed in our current global context, it is perhaps very hard to conceive of a realistic utopia that does not push for individual equality, but merely equality between peoples, as an account that can deal adequately

with the plight of women. However, to be considered a good standing member in the Society of Peoples a society must uphold equal justice for its women. This is a requirement on Rawls's account in determining whether a people is to be considered decent and well-ordered.⁷⁰ However, how equal justice of women is realized and understood by a given society is what may set it apart, stipulates Rawls. For example, Rawls demonstrates that a society may hold equal justice for women, yet because of its prevailing religious and social values, freely held by its women, it may not reduce the rate of population.⁷¹ Granted that Rawls's list of human rights includes a sufficient amount of liberty of conscience to ensure freedom of religion and thought,⁷² he assumes that the basic elements of equal justice for women are in place. From this he concludes, "that the rate of population growth of a given society is voluntary, meaning that women are not coerced by their religion or their place in the social structure".⁷³ I assert that such an assumption and conclusion are quite controversial and that Rawls does not give sufficient reason to be so confident in providing the basic elements of equal justice for women within the Society of Peoples.

Rawls's Law of Peoples does not support formal Equality; however, there is a stipulation that similar cases be treated similarly,⁷⁴ but this is simply a meagre measure of consistency in accordance with natural law. That said, there are requirements in regards to minimal representation that are to be upheld in order for a people to qualify as decent.

⁷⁰ Rawls, John. *The Law of Peoples*, 117.

⁷¹ Rawls, John. *The Law of Peoples*, 118.

⁷² Rawls, John. *The Law of Peoples*, 65.

⁷³ Rawls, John. *The Law of Peoples*, 118fn52. However, Rawls's position assumes quite a lot about the power and pervasiveness of indoctrination. It also appears to overlook the difficulty of traditional social pressures that individuals face within their given societies. As Martha Nussbaum has argued, "traditions of modesty and purity have often relegated women to such substandard lives". Nussbaum, Martha. *Women and Human Development*, 42.

⁷⁴ Rawls, John. *The Law of Peoples*, 65.

However minimal, when representation of women or a minority group is administered by a consultation hierarchy Rawls holds that:

One step to ensure that their claims are appropriately taken into account may be to arrange that a majority of the members of the bodies representing the (previously) oppressed be chosen from among those whose rights have been violated. As we have seen, one condition of a decent hierarchical society is that its legal system and social order do not violate human rights. The procedure of consultation must be arranged to stop all such violations.⁷⁵

It follows then, within the Law of Peoples, any group representing women's fundamental interests must include a majority of women.⁷⁶ Given that all well-ordered societies affirm human rights, it follows that any conditions of the consultation procedure that are necessary to prevent violations of the human rights of women are to be adopted. Again, this is not a peculiarly liberal idea but one that is also common to all decent peoples. It appears that there is some room for the emancipation of women within the Society of Peoples if indeed a woman's position of equality is cross-culturally acceptable. The case can be made then, that a duty of assistance which aims at securing the status of women is sufficiently sensitive without being subject to the charge of improperly undermining a society's religion and culture. The principle here is similar to one that is always followed in regards to the claims of religion. Rawls explains that:

A religion cannot claim as a justification that its intolerance of other religions is necessary for it to maintain itself. In the same way a religion cannot claim as a justification for its subjection of women that it is necessary for its survival. Basic human rights are involved, and these belong to the common institutions and practises of all liberal and decent societies.⁷⁷

To further support the idea that there is perhaps adequate space to secure the rights of

⁷⁵ Rawls, John. *The Law of Peoples*, 75.

⁷⁶ Rawls, John. *The Law of Peoples*, §8.3.

⁷⁷ Rawls, John. *The Law of Peoples*, 111.

women, and most likely other minorities, it is important to bring fourth an idea expressed in *Political Liberalism*, that stipulates that any reasonable political conception must impose restrictions on other permissible comprehensive views.⁷⁸ It is not unreasonable, given Rawls's use of overlapping consensus and sense of what public reason entails, to encourage some ways of life, discourage others, and exclude some all together. "The encouraging or discouraging of comprehensive doctrines comes about for at least two reasons: their associated ways of life may be indirect conflict with the principles of justice; or else they may be admissible but fail to gain adherents under the political and social conditions of a just constitutional regime".⁷⁹ Thus, it would follow that one society could not claim decency if half of the population, its female population, was subject to oppression and degradation. Taking women's rights seriously is a threshold for decency and inclusion into the society of peoples, but what is of contention is how such rights are to be realized and their equalities enacted.

Within the Society of Peoples Rawls holds that the most effective and acceptable way to institute family planning and stabilize population rates is to establish the elements of equal justice for women.⁸⁰ When evaluating how well a people will fare or in the estimation of how best to aid a burdened people Rawls acknowledges that a decisive factor, in addition to having well-ordered institutions, appears to be the status of women. As previously discussed, taking human rights seriously is the price for admission into the Society of Peoples, and in addition to valuing these rights for their own sake, Rawls estimates that respect for human rights could also relieve population pressures given the

⁷⁸ Rawls, John. *Political Liberalism*, V: §6.

⁷⁹ Rawls, John. *Political Liberalism*, 196.

⁸⁰ Rawls, John. *The Law of Peoples*, 109-110.

educational role that human rights serve as “certain kinds of advice may be helpful, and burdened societies would do well to pay particular attention to the fundamental interests of women”.⁸¹ I assert, however, that Rawls, in addition to including a sufficient measure of liberty of conscience (as accounted for on his list), restricted measures of freedom of expression and association (as supported in my previous section), must also take seriously the right to bodily security and non-interference. At a first glance such a right to preserve one's bodily integrity seems quite obvious, but the entailments from the recognition of such a right holds great importance for women in particular, but additionally for those finding themselves in positions of vulnerability.

Incorporating sufficient space to account for a woman's embodiment in a list of human rights to be adopted internationally, I argue is necessary to best ensure her security and enable her to stand at an equal position to her male compatriots. When the particularities of a woman's embodiment are sufficiently accounted for she is increasingly capable of better realizing her society endowed liberties and freedoms. Generally speaking, humans are captive to varying levels embodiment. From birth we are dependent on our primary caretakers, when we are subject to debilitating illness again such dependencies may appear in one's life time, as we enter into the later years in life the realization of our own bodily vulnerability and dependency on the care of others may become apparent, sometimes in conflict with the ability of our minds. Given this general human dependency, our disposition to be social creatures, a basic need to give and receive care should perhaps be added to Rawls's account. Genuine respect for the basic need of bodily non-interference, leading to the right to self-preservation that at times may

⁸¹ Rawls, John. *The Law of Peoples*, 110.

only be realized through the support of others should be accounted for. The recognition of our natural dependencies, both emotional and biological, through our human embodiment presents us with a need to guarantee that such dependencies will not be exploited. Explicit rights that will account for vulnerability so as to prevent victimization must be included on Rawls's list if we are to consider it robust and sufficient.

Typically such recognition of our embodiment and dependency needs are reflected in human rights doctrines and on Rawls's list by stipulations of personal security. This vague notion, however provides individuals with the rights to claim assistance to prevent premature death, for instance with the right to age with dignity. More specifically, bodily non-interference, self-preservation, a right to chose life's pursuits or formulate a reasonable life plan, for a woman, necessarily entails, I believe, having reproductive choice and control over her body and its reproductive cycles at her discretion. This would result in a necessary commitment on governments and other agencies to provide adequate education and advocacy in relation to women's specific health and social issues such as sexual health, family planning, birth control, breast cancer prevention, rape and abuse prevention, women's empowerment, relationship counselling, and so on for both men and women. Taking seriously the claim to personal security and bodily non-interference also places certain demands on a people to ensure that women, and all individual citizens for that matter, can partake in civic life, education, meaningful work, participate politically without the fear or the threat of violence and discrimination.

When we begin to confront issues of women's embodiment, control over and choice in regards to one's reproduction has great impact on the life choices and the ability

to pursue one's life plan as a women. Despite the noble effort on Rawls's part to attempt to account for the division of labour in the household and in childrearing,⁸² his Law of Peoples leave too much space for the work of women to continue to go uncompensated for. It does not remain clear that the ability to support one's self financially through dignified work if able and to hold some personal property would be equally held for women. Given that far too much of the world's economy is made on the backs of women from the unfair division of labour at home in childrearing and household duties, and that all too often women are used as human cargo and commodities trafficked in the sex trade, an ideal model of human rights must clearly state such protections. The meagre stipulation that a sufficient amount of liberty of conscience to ensure freedom of religion and thought does not demand enough in regards to the women of Rawls's Society of Peoples. Freedom of conscience, I argue expresses the need to adequate education as thoughts and choices do not appear free if uninformed, indoctrinated, or made in ignorance. A decent society then, should seek to set up institutions of education that preserve the values of the given culture, while making room for social progress and dissent as previously discussed, but in addition to this having a curriculum catered to the advancement of women and the protection of their status as equals should also follow.

Within the confines of this last section I have sought to argue that Rawls gives us a solid, potentially robust, yet not quite sufficient account of basic needs and human rights in support of his duty of assistance. It has been my intention to show that with a few additional requirements, such as a sufficient right to freedom of expression, association, and political participation, Rawls's model of human rights may not appear as

⁸² See Rawls, John. "Public Reason Revisited", on the Family As Part of the Basic Structure, 159-163.

meagre. A stronger assertion of the position of women within the Society of Peoples additionally adds to the robustness of Rawls's account and may stifle some of the harsh criticisms presented by his cosmopolitan critics. For if we make space for the avenues of a quiet revolution through peaceful protest and expressions of dissent through demonstration, and additionally account for our own vulnerabilities through embodiment, especially with a focus on the plight of women, the adequate and much needed channels for change and progress will be in place. After all, it is Rawls's hope, that the Society of Peoples - be it the realistic utopia it aspires to be - will provide others with the political will and inspiration to move toward becoming a liberal democratic people equally respected in the Society of Peoples and who's citizens are free and equal individuals. I assert that this aspiration is not possible in the absence of these additional considerations.

Tolerating the Intolerable?

Despite my efforts to fully flush out the meaning of basic needs, Rawls's cosmopolitan critics will continue to push for their conception of liberal equality. Those, like Tan, will hold that Rawls has wrongfully over-committed himself to the liberal value of toleration while undervaluing the liberal commitment to individual liberty in his Law of Peoples. Let us not lose sight of the view that liberal cosmopolitans hold broadly: "that a just global arrangement is one in which the basic liberties and democratic rights of all individuals are protected".⁸³ It follows, from this view, that the cosmopolitans argue that nonliberal *decent* societies fail to merit liberal toleration, given their failure to exhibit individual equality between all members of their society. The cosmopolitans hold that so long as there are inequalities so too will there be exploitation and oppression.

⁸³ Tan, Kok-Chor. "The Problem of Decent Peoples", 76.

It appears that perhaps we have reached a potential liberal impasse, where the liberal challenge of a realistic utopia lies somewhere between the commitment to individual liberty and toleration.

Tan explains that a central issue in the Law of Peoples is “how to balance the protection of individual liberty with the toleration of diversity”.⁸⁴ Tan expresses that Rawls's limit of toleration is wrongly placed. The cosmopolitan limit of international toleration will be defined not merely by respect for basic human rights but also for liberal rights. Alternatively, as Tan explains, “the category of universally basic human rights must be expanded to include other common important liberal rights – such as the rights to political participation, equal political representation, equal liberty of conscience, and so on – that Rawls's own understanding of human rights leaves out”.⁸⁵ The problem of tolerating decent peoples and not upholding universal liberal rights, Tan identifies “is that it lets down dissenting individual members in these nonliberal societies”.⁸⁶ At a glance Rawls seems overly preoccupied with worries of parochialism and liberal paternalism. Contrary to this, his cosmopolitan critics are concerned more so, they claim, about individuals whose liberties and liberal freedoms are denied by their own state.

The cosmopolitans claim that Rawls's preoccupation with avoiding parochialism provides an insufficient model of international justice in that his Law of Peoples offers inadequate support of individuals within decent societies whose liberal rights and freedoms are being denied. Rawls's account of toleration and accommodation of decent peoples does not offer a satisfactory response to his cosmopolitan critics in that “it fails to

⁸⁴ Tan, Kok-Chor. “The Problem of Decent Peoples”, 76.

⁸⁵ Tan, Kok-Chor. “The Problem of Decent Peoples”, 84-85.

⁸⁶ Tan, Kok-Chor. “The Problem of Decent Peoples”, 85.

offer sufficient protection to individuals in decent societies whose aspirations to become free and equal persons are being thwarted by their state”.⁸⁷ Their chief complaint to backup such claims is that the role that Rawls assigns to individual dissent among decent peoples is insufficient. They admit that Rawls recognizes the presence of individual dissent in decent societies, “but the problem is that Rawls allows the exercise of dissent to be limited by the hierarchical arrangement of the society in accordance with its common good conception of justice”.⁸⁸ Recall that while individuals qua citizens are free and equal in a liberal society, individuals are not so regarded in a decent hierarchical society. Individuals are seen first as members of associations and corporations and these associations and corporations represent their political rights and interests.

This is problematic, accuses Tan as “it is not ruled out, for example, that in a decent society, a women enjoys no direct political representation; her interests (if effectively possible) may be represented by, say, the male head of her household rather than directly by herself”.⁸⁹ Tan has us imagine a decent society in which women who wish to question their subordinate political position in society may do so, but only through their corporate representatives (e.g., male head of households, or religious leaders or tribal leaders) as determined by the decent hierarchical (nonegalitarian) social structure of said people.⁹⁰ Given this, Tan argues that to say that the exercise of dissent is adequately permitted in this case appears paradoxical. For it follows that the structure of expressing dissent is constrained by the hierarchical values of the society that are themselves the very sources of contention. This paradox presents a potential deficiency in

⁸⁷ Tan, Kok-Chor. “The Problem of Decent Peoples”, 84-85.

⁸⁸ Tan, Kok-Chor. “The Problem of Decent Peoples”, 85.

⁸⁹ Tan, Kok-Chor. “The Problem of Decent Peoples”, 79.

⁹⁰ Tan, Kok-Chor. “The Problem of Decent Peoples”, 85.

Rawls's Law of Peoples, for to assume away dissent aimed precisely at the hierarchical basic structure of so-called decent societies is to assume away the relevance or usefulness of the subject of justice.⁹¹

From this it follows that the problem of decent peoples, then, presents the question of how to accommodate and permit individual dissent in nonliberal societies. To counter this worry raised by Tan I have already argued for the additional rights of a sufficient measure of freedom of expression, association and political participation. Recall that as political culture is a virtue that is all important for Rawls in determining how well a people will fare, I assert that to best contribute to the building of 'common sympathies' and a truly shared conception of justice informed by public reason avenues for individual and group dissent through peaceful protest, contentious objection, public discourse and debate must occur within even decent hierarchical societies. We cannot allow Rawls's critics to deemphasize or deflate Rawls's final aim that all peoples within the Society of Peoples will one day become well ordered, and most likely liberal and be regarded as equal members in the Society of Peoples. This final aim makes necessary the case for social progress, which is only possible through permitting dissent, the allowance of deliberative forms to discuss how to best settle our reasonable disagreements, and by making space for social criticism to be voiced by individuals, state representatives, and other non-governmental organizations to accurately inform and contribute to public reason.

In addition to this I have argued that women cannot be held as political hostages, subject to the will of their husbands, religious leaders, or state figures; however, well

⁹¹ Tan, Kok-Chor. "The Problem of Decent Peoples", 85.

intended or well natured these beneficent heads of households or benevolent political figures may be. A just Society of Peoples must seek to empower women, ensure their security, and guarantee their representation. Women, regardless of their citizenship, must be afforded, I have argued, what is necessary to live independently if so chosen given her capabilities, decide her own life path, and to be able to assert her political rights and freedoms within her community. Additionally, she must also be equipped with the capabilities to support herself, family and other dependents if need be or if chosen and without fear of persecution. Women, and more inclusively speaking spouses and or life partners, need to have the support and the ability to freely leave abusive and hostile domestic circumstances. Those who are faced with such difficult circumstances must have the security and support of their community and family, so as not to fear becoming a victim of violence, living a life of shame, destitution, discrimination, and marginalization for both her, her children, and her other dependents. If a husband or partner dies prematurely, being widowed should not result in a life sentencing for the woman, her children and the other dependents she supports. By denying women proper political recognition - depriving women of a voice in political decision making, withholding the rights to own and inherit property, the preventing of her from having the opportunity to earn her own keep, refusing her of an education, and stripping her of the means to live independently, and inadequately taking seriously her bodily safety – such deprivations are obviously not to the advantage of any woman, nor to the advantage any society. I have argued that it would be fully unreasonable and outside of ideal theory to have half of the population of given society oppressed in such a way, with little room to have their voices heard or the power to exhibit their dissenting will. It would hardly be advantageous and

quite ill measured to have half the population (the female population) oppressively dependent and reliant on a small portion of the workforce (as gender equality means having 100 percent of your human resources available), and furthermore to have half the population unable to effectively express their political will and insignificantly contribute to the social and political culture of their society and its progress. So to say that a decent people would be permitted to subjugate its women to the role that Tan assigns them would disqualify such a people as decent on my account and I would hold on Rawls's account too. Again, decent peoples must ensure that basic needs and human rights are secured in such a way so that citizens are able to take advantage of such liberties, live a reasonably chosen life path, and actively participate and contribute to the civic life of the society in question.

Perhaps I can entertain the possibility that Rawls's preoccupation with parochialism and his fidelity to liberal toleration is somewhat misplaced in his Law of Peoples. Yet, if I am to entertain such ideas, it is not only fair to wonder whether the cosmopolitan fixation with equality and liberal freedoms among free and equal peoples in Rawls's Society of Peoples may also be ill measured, however admirable. Tan urges that a Law of Peoples that claims to be an extension of a liberal conception of justice has to remain steadfast in its commitment to liberalism, and this means embracing the strong cosmopolitan view that individual well-being is ultimate.⁹² Contrary to this recall that, Rawls holds that the Law of Peoples founded on the cosmopolitan ideal that individuals are to be considered free and equal would make the Law "too narrow" and that nonliberal

⁹² Tan, Kok-Chor. "The Problem of Decent Peoples", 88.

peoples would object to viewing individuals as the ultimate concern.⁹³ With that said, it seems that from both the Rawlsian stand point and the cosmopolitan position what is of great concern when constructing an ideal theory of global justice is to consider the worlds worst off and least advantaged. Ultimately minimizing marginalization and ensuring that no one is left behind or on the fringe is what is of crucial importance. Whether Rawls's account of global sufficiency given his Law of Peoples further secured by his duty of assistance takes us far enough provided his framework or should we ask for more among his Society of Peoples in light of the cosmopolitan critique must be addressed.

Recall that at Rawls's threshold of sufficiency individuals are able at the minimum to make and pursue a reasonable life plan given their individual capabilities and ability to make affective the rights and liberties of their society. Life at Rawls's threshold may be considered neither a flourishing nor a privileged life, but it is one that anyone can come to reasonably expect and be secure and dignified in living. Those who just meet the threshold can be comfortable and confident in their social position. They are free from being preoccupied with fears and insecurities of living in oppression, isolation, destitution, and malnutrition. On Rawls's account individuals represented by a decent people have enough to enjoy their society's rights and liberties as basic needs have been met. These individuals, as I have argued, additionally have the rights and means to test the boundaries of their liberties, to question the social order in which they find themselves, and can participate in social movements that would better help to exhibit and contribute to the common conception of justice shared within their society. Given that Rawls's Law of Peoples is set up to provide stability for the right reasons, it follows that

⁹³ Rawls, John. *The Law of Peoples*, 59, 82-3, 30-5.

the duty of assistance can be considered a sufficient measure of justice, if this above is what it entails. For it is not the case that the duty of assistance, which provides burdened peoples with enough to become well ordered and their individuals with enough to meet their basic needs is targeted at aiding a people simply to prevent a turbulent and tumultuous revolt. Rather, the duty of assistance's target is aimed to provide just enough for a people and its individuals so that they can determine their own path of social progress, begin their own quiet and peaceful revolution toward becoming well ordered, if not fully liberal. The duty enables social progress, feeds the political will of a burdened people that has been stifled by unfortunate circumstances, thus making it a robust and sufficient measure of justice within Rawls's Law of Peoples.

The cosmopolitans appear much too pessimistic about the priority Rawls places on peoples to be self-determining. For, both between individual citizens and among peoples they conjecture that equality must be achieved in terms of rights, liberties, opportunities, and resources or else manipulation and oppression shall persist. I challenge rather, that should it not be the case that we can hold some sufficient equalities as necessary and invaluable, such as being considered an equal member of Rawls's society of peoples with the right to self determination constrained by the fulfilment of basic needs and essential human rights. Additionally, as far as individual citizens are concerned one could argue that there are certain inalienable equalities, such as gender equality, and those liberties that enable a person to lead a reasonable life of their choosing, participate in the civic culture of his or her society, such as equal opportunity of education, a sufficient freedom of conscience, a requisite level of freedom of expression, and a true sense of personal bodily security, as previously argued for. However, holding this belief

does not entail or require a full principle of global economic redistribution as Tan and the other cosmopolitans purport. Rather, the duty of assistance as a principle of justice covers the priority of such measures of equality to an appropriate threshold that does not require additional distributions beyond such. Arguably, further distributions beyond these essential equalities could create on the one hand inefficiencies – in redistributing goods, resources, benefits that hold little priority or importance, as what is the significance in redistributing wealth between millionaires and billionaires – and on the other hand, could result in a perverse race to the bottom as identified by the levelling down objection.⁹⁴ Equality cannot always be a decisive consideration, however valuable it may be in and of itself. In instances of scarcity that requires the enactment of the duty of assistance where we are concerned with ensuring that the citizens of a burdened people have enough, egalitarian principles initially seem inappropriate, as there are weighty instrumental reasons that must take priority to get everyone above a certain threshold of sustainability and well-being.

This consideration, however worthwhile, still does little in regards to undermining the core egalitarian conviction that holds that even if sufficiency is achievable and attained equality still matters in the distribution of either noncritical benefits or the opportunity to enjoy critical benefits. At this crucial impasse, now that we have come to understand what Rawls's basic needs entail I assert that it is fair to say that he has sufficiently built in a robust threshold that enables citizens to enjoy the critical benefits that the cosmopolitans speak of. Recall that entrenched in Rawls's definition of a realistic utopia is the understanding that such a society of peoples could and may exist, but more

⁹⁴ For a more in depth discussion of the levelling down objection see Casal, Paula. "Why Sufficiency Is Not Enough", 308-310.

importantly it is also utopian in that such circumstances are highly desirable because it joins reasonableness and justice with conditions enabling citizens to realize their fundamental interests.

Even though there is a target and a cut-off for the duty of assistance, and it operates much closer to the principle of just savings, rather than the difference principle, I have argued that it is perhaps unfair to hold that Rawls has abandoned his previous liberal commitments argued for in his earlier works. I have attempted to demonstrate that at a quick glance it may appear that Rawls has been inconsistent in his theorizing as his cosmopolitan critics have charged. Yet when we begin to dig below the surface of Rawls's account and resurrect his deeply entrenched terms, I have sought to show that it is possible to charitably construct the Law of Peoples in such a way that it reads as a robust and sufficient account of global justice within its given framework. When we look to the themes of political culture and civic life being all important to Rawls in addressing how well a people will fare, his commitment to ensuring that citizens, and certainly the least advantaged, are justly and adequately accounted for persists in *The Law of Peoples* and admirably so. Despite Rawls's retraction from arguing for full liberal egalitarian rights and distributions it is notable that he seeks to protect the least advantaged in such a way that adequately addresses issues of exclusion, persecution, isolation, and oppression ensuring that no one is to be left destitute and hungry on the fringe of civil society. It is at this threshold that Rawls has secured the crucial benefits that afford citizens the ability to enjoy their rights and liberties and take part in the civic life and culture of their society. From such a position as we have seen, citizens and groups can actively contribute through debate, deliberation, and other public forms to the overall sense of public good

and justice. Rawls has put in place the necessary mechanisms within his Law of Peoples that make room for social progress, nation building if you will, of a given society that is self determined and informed by the public sense of reason and shared conception of justice. In my pursuit of reconstructing and reconsidering Rawls, I have intended to demonstrate that although it may superficially appear that he has abandoned his strong liberal commitment to equality, he has more so remained steadfast to his liberal tradition of balancing diverse and competing values of toleration, equality, self-determination, autonomy, and liberty. Much of Rawls's reasoning begins with his acknowledgement of the pains of reasonable pluralism and the need to make space for overlapping consensus and his fidelity to these considerations is continued in his Law of Peoples.

Conclusion

Pre-emptively, I intend that my addition of some minimal and sufficient conditions of liberty of expression, association, and political participation would combat some of the worries expressed by the cosmopolitan egalitarians as relayed in chapter two. Much of their concern, and I would agree, correctly so relates to the plight of future generations, the position of women, and the world's worst off. Their concern expresses that despite Rawls's insistence on securing basic needs and urgent human rights there remains too much room for inequality and that exploitation and oppression will persist on Rawls's account. It has been my intention to show that this need not be the case, that once we consider that basic needs express both provisions to prevent death from hunger and disease in addition to the means to make meaningful use of rights and liberties of the inhabited society, it is possible to view basic needs as robust and sufficient. When we add the demands of basic needs to the significance placed on taking human rights seriously

the duty of assistance continues to look much more like a duty of justice and not a meagre stipulation of foreign aid. The duty of assistance is perhaps a demand that is narrow in focus, in that it has a defined target and cut-off, but it is wide and deep in scope as it seeks to secure what is necessary for individuals to lead what they individually define as dignified lives of their choosing. Additionally the duty nourishes the political will of a once burdened people and makes room for their social progress toward becoming well ordered in a self-determinate way.

It is important to recall then, that the Law of Peoples is designed for the ideal case of well-ordered societies joined into a well-ordered Society of Peoples. As we have explored, the Law of Peoples imposes a duty on peoples to meet the basic substantial and economic conditions that enable all peoples to be politically autonomous and independent. When we attach this duty to the commitment to honour human rights for their own sake, these and other requirements mentioned should protect less-advantaged peoples from being corrupted by powerful political and economic interests abroad. In conclusion, I have sought to demonstrate that it is important to recognize and appreciate Rawls's initial intentions for constructing *The Law of Peoples* as such. Additionally, it is crucial to acknowledge Rawls's framework that constrains his intent. For, the end of the Law of Peoples is equal political autonomy, or "the equal freedom and equality of a people as members of the Society of well-ordered Peoples".⁹⁵ Perhaps it is the 'ideal' language used of a 'realistic utopia' that intuitively pushes us to demand more from Rawls. I admit that we can also feel dissatisfied with his account in that it does not do enough to meet the immediacy of the issue of poverty eradication and global injustice as

⁹⁵ Rawls, John. *The Law of Peoples*, 118.

we so experience today. Despite these concerns, I have sought to show that when we allow ourselves to be situated within Rawls's ideal society of peoples, we can reasonably accept the duty of assistance as a robust and reasonably sufficient demand.

References

- Beitz, Charles (1999). "Social and Cosmopolitan Liberalism", *International Affairs*, 75/3: 515-529.
(2000). "Rawls's Law of Peoples," in *Ethics*, 110/04:669-96.
- Casal, Paula. "Why Sufficiency is Not Enough", in *Ethics*, 117/07: 296-326.
- Crisp, Roger. "Equality, Priority, and Compassion," in *Ethics*, 113/03: 745-763.
"Egalitarianism and Compassion," in *Ethics*, 114/04: 119-126.
- Frankfurt, Harry. "Equality as a Moral Ideal," in *Ethics*, 98/87: 21-43.
- Freeman, Samuel (2006). "The Law of Peoples, Social Cooperation, Human Rights, and Distributive Justice," in *Social Philosophy and Policy*, 23/01: 29-68.
(2006). "Distributive Justice and *The Law of Peoples*" in Martin and Reidy (eds.), *Rawls's Law of Peoples: A Realistic Utopia?* (Blackwell Publishing, Malden, MA) 243-260.
- Hobbes, Thomas (1668). *Leviathan*, ed. 1994 (Hackett Publishing Company, Inc., Indianapolis, Indiana).
- Locke, John. *Second Treatise on Civil Government*, C.B. Macpherson, ed., Hackett, Indianapolis, 1980.
- Miller, David (2006). "Collective Responsibility and International Inequality in *The Law of Peoples*" in Martin and Reidy (eds.), *Rawls's Law of Peoples: A Realistic Utopia?* (Blackwell Publishing, Malden, MA) 191-205.
(2007). *National Responsibility and Global Justice* (Oxford University Press, New York, NY).
- Nussbaum, Martha (2000). *Women and Human Development* (Cambridge University Press, Cambridge, UK).
- Pogge, Thomas (1994). "An Egalitarian Law of Peoples" in *Philosophy and Public Affairs*, 23/3: 194-276.
- (2002). *World Poverty and Human Rights* (Polity Press, Maldon, MA).
(2006). "Do Rawls's Two Theories of Justice Fit Together?" in Martin and Reidy (eds.), *Rawls's Law of Peoples: A Realistic Utopia?* (Blackwell Publishing, Malden, MA) 206-225.
- Rawls, John (1971). *A Theory of Justice*, revised ed.1999 (Harvard University Press, Cambridge, MA).
(1993). *Political Liberalism* (New York: Columbia University Press).
(1999). *The Law of Peoples* (Harvard University Press, Cambridge, MA).
(1999). "The Idea of Public Reason Revisited" in *The Law of Peoples* (Harvard

University Press, Cambridge, MA).

(2001). *Justice as Fairness* (Harvard University Press, Cambridge, MA).

Sen, Amartya (1999). *Development as Freedom* (Anchor Books, New York, NY).

Tan, Kok-Chor (2000). *Toleration, Diversity, and Global Justice* (The Pennsylvania State University Press, University Park, PA).

(2004). *Justice Without Borders: Cosmopolitanism, Nationalism, and Patriotism* (Cambridge University Press, Cambridge, UK).

(2006) "The Problem of Decent Peoples" in Martin and Reidy (eds.), *Rawls's Law of Peoples: A Realistic Utopia?* (Blackwell Publishing, Malden, MA) 76-94.