

Reasonable for the Right Reasons

Elliott J. Soifer

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ABSTRACT

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Elliott Soifer

In order for the *Law of Peoples* to be stable for the right reasons, Rawls must provide an unassailable explanation as to why decent hierarchical societies would adopt fair terms of cooperation and follow them willingly when what is reasonable for these societies and what is reasonable for liberal societies are arguably quite different. The reasonableness of hierarchical societies, where the internal design affords greater liberties and privileges for some over others, calls into question the moral commitments held by their representatives in the original position. In order for Rawls to validate the assumption of a commitment to equality for the representatives of hierarchical peoples, Rawls would have to assume that these representatives have a deep commitment to equality that supersedes all positions of privilege. The commitment to equality of these representatives in the original position is not a valid assumption and for this reason, the law of peoples is not stable for the right reasons and is in fact a *modus vivendi*.

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Introduction

Rawls wrote the *Law of Peoples* in an attempt to identify the principles of justice that can regulate political relations among decent peoples. Two ideas motivated him to write the book. The first is that “the great evils of human history –unjust war and oppression, religious persecution and the denial of liberty of conscience, starvation and poverty, not to mention genocide and mass murder –follow from political injustice, with its cruelties and callousness.” The other is that “once the gravest forms of political injustice are eliminated by following just (or at least decent) basic institutions, these great evils will eventually disappear”.¹ His work outlines a political conception of how a just and stable international order, similar to but more general than the domestic version fashioned in *Political Liberalism*, can be developed out of acceptable liberal ideas. In essence, it is a globalized version of Rawls’s domestic conception which set out to identify to structure a stable society around fair principles of cooperation. The intention was to complete the political theory of a liberal democratic culture by supplying the principles and foundation to shape its foreign policy.² The broader implications are that these principles are to serve as the foundation of how “reasonable citizens and peoples might live together peaceably in a just world;” an *ideal* conception.³

This ideal conception is what Rawls refers to as a *realistic utopia* which he explains “extends what are ordinarily thought to be the limits of practicable political

¹ Rawls, *The Law of Peoples* (1999), p. 7.

² Rawls, *The Law of Peoples* (1999), p.10.

³ Rawls, *The Law of Peoples* (1999), p. vi.

possibility and, in so doing, reconciles us to our political and social condition”.⁴ A realistic utopia is “a vision is of a perpetually peaceful cooperative international order, where liberal and decent peoples stand ready to pacify aggressive states, to secure core human rights, and to help struggling countries so long as they need assistance”.⁵ He realizes that the actualization of such a world order will be difficult to achieve but explains that the

...idea of a realistic utopia reconciles us to our social world by showing us that a reasonably just constitutional democracy existing as a member of a reasonably just Society of Peoples is possible. It establishes that such a world can exist somewhere and at some time, but not that it must be, or will be. Still, one might feel that the possibility of such a liberal and decent political and social order is quite irrelevant, so long as this possibility is also not realized. While realization is, of course, not unimportant, I believe that the very possibility of such a social order can itself reconcile us to the social world. The possibility is not a mere logical possibility, but one that connects with the deep tendencies and inclinations of the social world. For so long as we believe for good reasons that a self-sustaining and reasonably just political and social world both at home and abroad is possible, we can reasonably hope that we or others will someday, somewhere, achieve it; and we can then do something toward this achievement.⁶

Although Rawls believes that liberal democracy is the vehicle that will enable us to realize our full potential, he also understands that this realization will have to happen gradually. He explains that the forceful democratization of non-liberal countries is no more appropriate than the imposition of one comprehensive conception of the good forces upon a liberal democratic society. Consequently, the best we can hope for now is an international cooperative that liberal and non-liberal peoples alike can endorse. His

⁴ Rawls, *The Law of Peoples* (1999), p. 11.

⁵ “John Rawls” Stanford on line Encyclopedia of Philosophy. <http://plato.stanford.edu/entries/rawls/>

⁶ Rawls, *The Law of Peoples* (1999), p. 127-8.

attempt to outline such an international order that is something other than a *modus vivendi*, and whether he was successful in this, is a source of much debate.

There are many concepts and ideas in the *Law of Peoples* that are thick with meaning but not comprehensively treated. Rawls draws on many of the concepts he had fleshed out in earlier writings. So I will first attempt to outline a brief overview of the main facets of the law of peoples and compare and contrast the similar ideas, concepts and assumptions in the domestic conception of the original position as it is found in *A Theory of Justice* and *Political Liberalism*. I will then scrutinize some of the critical assumptions in greater detail, focusing particularly on the ideas surrounding the reasonableness and the assumption of equality of decent hierarchical peoples in the original position. I intend to examine the truthfulness of Rawls's critical assumption of a deep commitment to equality on the part of these hierarchical societies and the support it provides to a stable law of peoples.

The Domestic Original Position

John Rawls's book entitled *The Law of Peoples* describes a set of principles of justice called the law of peoples, fashioned to act as the foundation for international relations among a society of peoples. This society is made up of constitutional liberal democracies and non-liberal but decent governments. The foundation of the law of peoples is conceived first as a liberal foreign policy and then is broadened to include other "tolerable" forms of government. It is not intended to prescribe principles of justice for any society other than a constitutional liberal democracy, but it is intended to illustrate that the ideas and principles that act as the foundation of a liberal foreign policy

are also “reasonable from a decent non-liberal point of view.”⁷ Rawls’s develops the idea of justice for the law of peoples in a similar way to his previous conception of domestic conception of justice that he develops in *A Theory of Justice* and later modifies in *Political Liberalism*, namely, the social contract.

Rawls conceives of the original position in *A Theory of Justice* as a process to identify the principles of fair cooperation as well as the benefits and burdens of society that would be selected in an unbiased setting. The original position is a thought experiment that is conceived to help explain why a certain set of principles of justice would be selected and once selected, why parties subject to the principles could conceivably contract to abide by them. The test of their acceptance is based on our considered judgments, or the moral evaluations that seem to us to be especially sound and are intuitively regarded as basic facts with which any theory of justice must comply.⁸ It seeks to answer the fundamental question of what is the most appropriate form of justice in a democratic society that best captures the fair terms of social cooperation among citizens regarded as free and equal.⁹

In other words, it is a hypothetical situation in which representatives of the society are invited to select the principles of justice that will form the basis of their political relationships and the foundation of the basic structure of society that will preserve and protect these principles. The parties to this situation are interested only in determining the terms of cooperation regarding the primary social goods such as rights and liberties, and

⁷ Rawls, *The Law of Peoples* (1999), p. 9-10.

⁸ Rawls, *A Theory of Justice* (2003), p. 17-18; Rawls, *Political Liberalism* (1993) p. 8.

⁹ Rawls, *Political Liberalism* (1993), p. 3.

economic and social opportunities and power.¹⁰ The choices of these agents are subject to a “veil of ignorance” which shields them from morally irrelevant circumstances that would otherwise influence their decisions. All agents are assumed to be rational and reasonable actors pursuing their self-interests. Such circumstances would include characteristics like age, gender, religion, affluence, natural endowments, etc. Rawls reasons that once this knowledge of individual circumstance is removed from the process:

...the persons in the original position [will] try to acknowledge principles which advance their system of ends as far as possible. They do this by attempting to win for themselves the highest index of primary social goods, since this enables them to promote their conception of the good most effectively whatever it turns out to be. The parties do not seek to confer benefits or to impose injuries on one another; they are not moved by affection or rancor. Nor do they try to gain relative to each other; they are not envious or vain.¹¹

In other words, the agents act rationally, looking out for their best interests, but reasonably; acknowledging the legitimate interests of others, their equals.

The veil of ignorance plays a crucial role in this conception. By limiting the information the particular agent has about the type of people they are and represent, it constrains each party so the choice they make is made on equal footing with no one having any power or authority over others.¹² The agents are asked to consider a variety of principles of justice. The ultimate goal of the original position is to illustrate that under and objective circumstances, the agents will prefer the following principles of justice:

¹⁰ Rawls, *A Theory of Justice* (2003), p. 123.

¹¹ Rawls, *A Theory of Justice* (2003), p. 125.

¹² Rawls, *A Theory of Justice* (2003), p. 121.

1. Each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others (the Liberty Principles);
2. Social and economic inequalities are to be arranged so that they are both
 - a. Reasonably expected to be to everyone's advantage, (the equality principles), and
 - b. Attached to positions and offices open to all (the difference principle).¹³

Consequently from these principles we can build the basic structure of society, the institutions that will embody and preserve and protect them.

Rawls distinguishes between the reasonable and the rational. A person is rational when they pursue whatever is to their advantage. A person is reasonable when they believe the rules of cooperation should be fair, and they are willing to moderate the rational pursuit of their own interests out of respect for the equally legitimate aims of others.¹⁴ Reasonable people accept what Rawls calls the burdens of judgment, meaning that other reasonable people will uphold other conceptions of the good, although they may be conflicting to their own. Many of the people we disagree with in terms of comprehensive doctrines are reasonable, fair-minded, sincere, intelligent, well intentioned. They also have good reasons for believing as they do, even though we might not find these reasons compelling. This is not a situation that is temporary; it is a permanent feature of a liberal society. Furthermore, reasonable people will want to want to live in a society, under fair terms of cooperation, with other reasonable people like themselves.¹⁵

In order to operate effectively under such conditions, people have to be tolerant of one another's differences. In other words, tolerant in the sense that people should be free

¹³ Rawls, *A Theory of Justice* (2003), p. 53.

¹⁴ Rawls, *Justice as Fairness* (2001) p. 6-7.

¹⁵ Freeman, *John Rawls – An Overview* p. 32.

to pursue their individual conceptions of the good as long as that pursuit does not interfere with the duties and obligations or other requirements of justice.¹⁶ Reasonable peoples are more than tolerant of one another, they want to be able to coexist harmoniously under public policies they can mutually endorse despite their differences; and they want to be able to justify these public policies with reasons that other people can also recognize as reasonable and can willingly accept as well.¹⁷ But this difference of opinion could lead to conflict and, subsequently, to instability.

The Importance of Stability

The stability of the society, its ability to endure over time and re-establish itself after temporary disturbances, is paramount and a characteristic essential to a viable principle of justice.¹⁸ There are circumstances where the stability may be temporarily affected, like in cases of national emergency, but the ability of society to regain the composure it once enjoyed after the temporary disturbance had passed is an important part of its stability. If the set of basic structures (political, economic and social institutions) of a well ordered society that embodies a given set of principles of justice was fundamentally unstable, the principles would need to be revised or abandoned.¹⁹ Unstable societies would not be able to preserve these rights, liberties and opportunities. Consequently, it would necessitate the revision of the set of principles.

Rawls spends considerable time outlining the needs and requirements of stability in his domestic conception of justice. The problem of stability arises in part due to the

¹⁶ Nagel, *Rawls and Liberalism* p. 73.

¹⁷ Freeman, *John Rawls – An Overview* p. 33.

¹⁸ Rawls, *A Theory of Justice* (2003), p. 398-401.

¹⁹ Rawls, *A Theory of Justice* (2003), p. 400-401.

fact of reasonable pluralism. Rawls tells us in *Political Liberalism* that the problem of political liberalism is answering the question of how it is possible “that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical, and moral doctrines.”²⁰

As a practical solution, stability could be maintained through the use of force. An official comprehensive doctrine could be imposed, or society could be organized around a single conception of the good, eliminating the instability that may arise from the fact of reasonable pluralism. However, this kind of stability is for the wrong reasons. Citizens have no reason to accept those principles except through fear of non-conformity. Stability must exist for the right reasons.

Stability for the right reasons at the domestic level involves conformity to and acceptance of the principles of justice wholeheartedly.²¹ At the domestic level, the right kind of stability involves a level of moral justification for the basic structure of society. A basic feature of a liberal democracy is the fact that a plurality of conflicting reasonable comprehensive doctrines, or conceptions of the good life -religious, philosophical and moral -is the normal result of its culture of basic rights and freedoms. This is reasonable pluralism. In a well ordered society, a person’s sense of justice is constantly reinforced.

Reasonable pluralism is a concept that stems from the fact that a plurality of conflicting reasonable comprehensive doctrine, or conception of the good life –religious, philosophical, and moral –is the normal result and a permanent feature of a liberal democratic culture.²² These conflicting reasonable doctrines are irreconcilable because everyone is subject to the same burdens of judgment and each of us can come to a

²⁰ Rawls, *Political Liberalism* (1993), p.xviii.

²¹ Rawls, *Political Liberalism* (1993), p. xvi-xx.

²² Rawls, *Political Liberalism* (1993), p. 36.

different, yet equally reasonable conclusion based on our interpretation of the same information and experience. For example, liberalism exists as a comprehensive doctrine, just as can libertarianism, anarchism, socialism, communism, communitarianism etc. They are all incompatible as comprehensive doctrines but can coexist peacefully in a politically liberal democratic society as long as they are tolerant of one another, meaning they do not violate the public political rights of others and accept liberal principles as the compulsory rules in the political sphere.²³ This pluralism is reasonable if it is compatible with the fundamental basis for a democratic society. In other words, it is in accordance with the belief that we are all free and equal citizens participating in a society under the fair rules of cooperation.²⁴

The agreement in the original position is based on the collective acceptability of a conception of justice among the participants. Rawls writes: “Now the reason for invoking the concept of a contract in the original position lies in its correspondence with the features of a well-ordered society. These features require, for example, that everyone accepts, and knows that the others accept, the same principles of justice.”²⁵ Thus there is a requirement that the principles of justice agreed to in the original position must remain stable under the conditions of a well-ordered society. The importance of this is paramount for it provides a way of testing the harmony of the conception of justice with the psychological and social basis of our moral sentiments.²⁶

Stability here is not simply a balance of power. It is the unfettered, rational and conscious choice of principles that will endure within a well-ordered society. The

²³ Rawls, *The Domain of the Political and Overlapping Consensus* (1989) p. 237.

²⁴ Rawls, *Political Liberalism* (1993), p. xviii.

²⁵ Rawls, *The Law of Peoples* (1999), p. 250.

²⁶ Freeman, *John Rawls – An Overview* p. 21.

stability of North Korea is not an example of the stability in question because not only is the result divorced from unfettered conscious choice, but North Korea is not a well-ordered society -its citizens do not have a corresponding sense of justice and a desire to help maintain it. As mentioned above, the stability of a society is greater when people are more willing to observe its prescriptions. The stability that Rawls refers to in *A Theory of Justice* is one resulting from our moral sensibilities and sense of justice.²⁷

Rawls recognizes that the foundation of a conception of justice requires grounding in moral psychology and the human good. Stability for Rawls is based on both publicity conditions and a citizen's sense of self-respect. He introduces these two pillars of stability to delineate the difference between justice as fairness and the competing position of utilitarianism. The demands of public knowledge of the principles of justice, namely that a well-ordered society would appeal to these principles for determining which laws are just and what the corresponding nature of the basic structure of society should be in the distribution of benefits and burdens -help the worst off in society to accept their situation. By contrast, under the utilitarian principle of the greatest aggregate good, Rawls explains that it is beyond human nature for the least advantaged in society to accept that their interests are being sacrificed for the greater aggregate utility. Thus under this condition of publicity, justice as fairness is more stable.²⁸

Additionally, the requirement of publicity contributes to the increased sense of self-respect of a citizen under Rawls's conception of justice as compared to the utilitarian conception.²⁹ It does so by offering transparency of the justification of the laws that

²⁷ Rawls, *A Theory of Justice* (2003), p. 398.

²⁸ Rawls, *Justice as Fairness* (2001), p. 74.

²⁹ Rawls, *A Theory of Justice* (2003), p. 156.

govern, and as a result, treat citizens as responsible agents.³⁰ Citizens then have knowledge of the rules that govern their social and economic relations and can plan their lives accordingly. The rules of the game are constant; whereas conceivably the rules may shift under utilitarianism if it is beneficial in the aggregate. The result of responsibility arising from public knowledge and transparency of the principles that govern society is increased self-respect.

Self respect is also of principal importance in Rawls's conception of human moral motivation, that is, the sense of justice and the motivation to act upon it. It is one of the most essential primary goods because it gives the citizen a sense of their own value and confidence to act. Consequently, the parties to the original position will choose the principles of justice to ensure their self-respect.

Justice as fairness engenders self-respect because it ensures the status of the participants as equals by publicly ensuring that the social and economic inequalities are to be arranged so that they are to the greatest benefit of the least advantaged and offer fair and equal opportunity.³¹ Rawls claims that under his conception of justice, there are no second class citizens. Its principles ensure the independence of all citizens and free them from the economic dependency of those more advantaged.³² Thus, on a fundamental level, citizens interact as equals. Therefore, Rawls supports the choice of his principles of justice with citizens' moral motivation of being treated equally and nurturing a sense of self-respect which in turn generates a stable society.³³

³⁰ Freeman, *John Rawls – An Overview* p. 23.

³¹ Rawls, *A Theory of Justice* (2003), p. 478.

³² Freeman, *John Rawls – An Overview* p. 23.

³³ Cohen, *Democratic Equality* p. 734.

The benefits of a just society are evident; what is less evident is how such a society is possible (read stable) given social and economic constraints and human nature. Rawls's approach is twofold. He first explains how citizens develop a sense of justice, and how this sense contributes to stability. A *sense of justice* is the capacity for someone to be committed to the principles of justice and to willingly choose to act in accordance with those principles.³⁴ He argues that we are inclined naturally to develop sincere affection toward our community and the people in it, as well as the basic structure of society that allows these things, and ourselves, to thrive.³⁵ According to Rawls, there are three principles of reciprocity that explain this affection. In essence, they are principles that explain that the sense of justice is a reflection of our natural sentiments and is a natural part of being human.³⁶ The key assumption is that citizens are more willing to maintain just institutions that benefit them and their loved ones and will incorporate this desire into their conception of the good.³⁷

Rawls then outlines how this willingness to be just for the sake of justice fits into the idea of human flourishing. If it does not, and to have a sense of justice actually undermines our conception of the good life, then inevitably it will lead to instability. Rawls borrows from Aristotle in his explanation of the good. The good is defined as the deliberate and rational desires of someone assuming that the person has critically reflected on all of the various possibilities open to him or her.³⁸

Thus the good of someone is delineated in terms of the type of life a person would choose if he or she were of sound judgment and sober thought. It can be understood as

³⁴ Rawls, *A Theory of Justice* (2003), p. 415.

³⁵ Freeman, *John Rawls – An Overview* p. 24.

³⁶ Rawls, *A Theory of Justice* (2003), p. 429-430.

³⁷ Freeman, *Congruence and the Good of Justice* p. 307.

³⁸ Rawls, *A Theory of Justice* (2003), p. 366.

appealing to at least four types of goods that are of value to every human being: the realization of a person's capacities or abilities, autonomy, community and self respect. In other words, people are not simply slaves to passion and sensation, but derive a deeper more profoundly satisfying enjoyment the closer they come to the realization of their full potential.³⁹ This claim is known as the Congruence Argument.

Rawls concludes that justice as fairness is congruent with human flourishing, that is that there is congruence between citizens's understanding of justice and what they value. Of the four "intermediate goods" Rawls argues each is shown to be compatible with justice as it is derived from the original position. Regarding autonomy, a well-ordered society affirms a person's autonomy and supports their considered judgments. Regarding community, a well ordered society is found to be itself a form of social union, in fact it is

"a social union of social unions," marked by the shared purpose or "common aim of cooperating together to realize their own and another's nature in ways allowed by the principles of justice."⁴⁰ Regarding the unity of the self, it is manifest in the consistency of his rational life's plan with his or her sense of right and justice.⁴¹ It follows that the more reasonable principles of justice derived from the original position are also those that would derive from the rational deliberation of the individual. They would be congruent. Thus, in a well ordered society, a sense of justice is also a good for the individual who has it. Furthermore, the congruence between justice and goodness supports the claim that individual citizens will wholeheartedly accept the principles of justice as fairness.

³⁹ Rawls, *A Theory of Justice* (2003), p. 364.

⁴⁰ Rawls, *A Theory of Justice* (2003), p. 456.

⁴¹ Rawls, *A Theory of Justice* (2003), p. 491.

The Importance of Morality and Equality

Rawls employs a Kantian constructivist approach. By definition, as a constructivist, Rawls does not believe that moral facts and truths exist independently and *a priori* to moral reasoning. However, he does not go so far as to deny that moral statements have a kind of truth within the realm of moral theory; he simply believes that it is not possible to intuit or discover their truth independently. As a Kantian constructivist, he begins from a conception of free and equal moral persons who are reasonable and rational. Borrowing some of the ideas of Kant's categorical imperative, Rawls begins with the original position. These participants all reach the same rational and reasonable conclusion, in this case the principles of justice, and in this way, Rawls's conception of justice is a result of a construction or agreement that originated with a conception of the person.⁴² This approach supports the claims of moral autonomy, without which the efficacy of the original position would be severely compromised. For it is the assumptions of rationality and reasonableness of the parties and the practical reason they employ, that render the objective status of the principles of justice that are the result of the deliberations in the original position.⁴³

It is this assumption of moral autonomy, and as a result of our ability to employ practical reason, that provides the foundation for several of Rawls's important concepts. The concept of autonomy as self-realization: "Properly understood, then, the desire to act justly derives in part from the desire to express most fully what we are or can be, namely

⁴² Freeman, *John Rawls – An Overview* p. 27.

⁴³ Rawls, *The Law of Peoples* (1999), p. 511. Also see Nielsen *Liberal Reasonability as a Critical Tool* (1998), p. 743.

free and equal rational beings with a liberty to choose”⁴⁴; and the relation of acting justly to self realization: “...acting justly is something we want to do as free and equal rational beings...the desire to act justly and the desire to express our nature as free moral persons turn out to specify what is practically speaking the same desire.”⁴⁵

However, moral autonomy serves only as a starting point for Rawls’ conception of justice. Justice has a more functional role in that it provides a means of justifying the basic structure of society in light of competing and conflicting comprehensive doctrines. The principles of justice are an impartial starting point for the resolution of conflicting comprehensive doctrines.⁴⁶ They are part of the few common points that all citizens of a liberal society, despite their different beliefs, can agree on.

Nevertheless, there may be irreconcilable differences in the justification and nature of the truth of the principles of justice in a well ordered society. Samuel Freeman provides the following example. Suppose a devout Catholic recognizes the principles of justice as fairness but sees them as natural laws. Accordingly, he or she would believe these principles to be divine decrees and self evident truths, capable of discovery with the aid of God. This belief contradicts Rawls’s contention that the principles of justice are the result of practical reason –Kantian Constructivism.

Furthermore, by rejecting that the principles of justice are the result of practical reason, the devout Catholic also rejects the notion of moral autonomy that supports the congruence argument –that justice is rationally good for all members of society. This good originates in the sense of justice and the concomitant desire to fulfill our nature as free and equal persons. The devout Catholic does so by denying that the desire for justice

⁴⁴ Rawls, *A Theory of Justice* (2003), p.225.

⁴⁵ Rawls, *A Theory of Justice* (2003), p.501.

⁴⁶ Rawls, *The Law of Peoples* (1999), p. 329.

is a result of our desire for self realization, and claims instead that it springs from a desire to do God's will. Furthermore, the idea of moral autonomy as expressed by Rawls has the blasphemous origin in the conceit of human reason.⁴⁷

Thus this seemingly innocuous difference in the justification and nature of the truth of the principles of justice takes on a more disturbing role. Freeman's example points to the possibility of such citizens that may sanction the basic structure of society, but will not consent to the political justification. As a result, the public conception of justice would lie at odds with the private conception of justice as it exists in comprehensive doctrines and stability is no longer assured. It may even undermine these same citizens support of the basic structure of society by underscoring the disparity between the free thinking lay and there more constrained religious brethren. This conflict is part of the criticism that enticed Rawls into claiming he should develop a more practicable solution in *Political Liberalism*.

In *Political Liberalism*, Rawls dispenses with the claim that moral autonomy is one of the ultimate rational goods in a well ordered society and with it the congruence argument. Nevertheless he still holds that justice as fairness can provide a common basis for justification. He does so by making certain adjustments to address criticism like the one above and allows for the "correct" moral judgments from an objective point of view. The reason he does so is evidently because it is possible to conceive of conflicting reasonable comprehensive views that may lead to an identical conception of justice.⁴⁸

Additionally, Rawls finds it necessary to adjust his conception of the person as a free, equal, reasonable and rational being. Just as the conception of justice is refined to a

⁴⁷ Freeman, *John Rawls – An Overview* p. 29.

⁴⁸ Rawls, *The Law of Peoples* (1999), p. 356.

political doctrine from a comprehensive doctrine, so is the conception of the person. Morality is no longer founded on the conceptions of moral agency and practical reason. It is filtered to a political conception divorced from any particular comprehensive doctrine but is firmly committed to the principles of democracy.⁴⁹

This filtering is the result of the problem of stability. If we can't easily agree on a comprehensive doctrine even in the most ideal of conditions, then not only is the stability of justice as fairness compromised, but it seems increasingly unlikely that any general agreement can be reached in a well-ordered liberal society. As Freeman points out:

Liberalism on the basis of Rawls's account involves an ideal of mutual respect and reciprocity among free and equal citizens and their toleration of one another's diverse reasonable religious, philosophical, and moral views. If free and equal citizens cannot agree on a conception of justice to regulate their relations and serve as a basis for public argument, criticism and agreement, then inevitably coercive force will have to be applied to reasonable persons for reasons which they cannot reasonably accept. This, in an important regard, would be a denial of their freedom.⁵⁰

Thus Rawls's original idea seems unrealistically utopian. Thus the intent of *Political Liberalism* was to address the concern that it was not possible to conceive of a just and stable society among reasonable people with conflicting comprehensive doctrines. In order to do so, Rawls develops three ideas: a political conception of justice filtered from the conflicting comprehensive doctrines, an overlapping consensus on the conception of justice, and the idea of public reason. These three ideas provide the foundation of a well ordered society that is stable for the right reasons.

The stability of justice can be assured only if the principles of justice derived within the political conception can be shown to be an element in an overlapping

⁴⁹ Freeman, *John Rawls – An Overview* p. 31.

⁵⁰ Freeman, *John Rawls – An Overview* p. 33.

consensus of reasonable comprehensive views. By preventing the parties to know the comprehensive doctrines of one another, shading them by the veil of ignorance, Rawls's intent is to identify the political conception that can be viewed as a "system of fair cooperation among free and equal citizens" who accept the publicly recognized principles of justice that support that system.⁵¹ In other words, his goal is to identify a conception of justice, at the public level, despite the fact that the society is made up of a diversity of fundamental conceptions of the good, all of them completely reasonable. This also remained Rawls's fundamental goal for the *Law of Peoples*.

The International Conception of the Original Position

Similarly, the law of peoples is conceived through two international original positions. Rawls first creates an ideal theory of international relations among liberal democratic societies and then broadens the resulting theory to include non-liberal decent peoples in what he calls a "non-ideal theory". The principles that result from this two step process are to form the foundation of international relations among decent peoples.⁵²

In the first instance, only agents from liberal democratic societies working out of a liberal conception of justice are represented.⁵³ These agents are rational in that they intend to choose the best principles that ensure the availability of the primary goods to satisfy the basic needs of their constituents. Primary goods are "things which a rational

⁵¹ Rawls, *Political Liberalism* (1993), p. 24-5.

⁵² Rawls, *The Law of Peoples* (1999), p. vi.

⁵³ These agents have the following five characteristics: 1) they represent their societies fairly, 2) they are rational, 3) they are selecting among available principles of justice, 4) they make their selections for appropriate reasons, and 5) they are selecting for reasons related to the fundamental interest of citizens as reasonable and rational. *Law of Peoples*, p. 30-1.

man wants whatever else he wants”⁵⁴; and they include rights, liberties, and opportunities, income and wealth, and the social basis of self respect. Furthermore, rational men and women prefer more primary goods than less.⁵⁵

A veil of ignorance similar to the one in the domestic situation is in place to constrain whatever biases may exist and prevent the agents from making inappropriate decisions, so that they may uninhibitedly represent the constituents as free and equal persons. The resulting agreement is predictable given that all agents at this stage are from liberal democratic societies, although some critics have charged that peoples from liberal democratic backgrounds would have actually agreed to principles more closely mirrored to liberal ideals.⁵⁶

In the second instance, agents from non-liberal but decent societies are represented. Both types of representatives within this conception are similar in that they share the characteristics of respecting the self-governance and independence of other peoples and they do not have an aggressive foreign policy. Rawls concludes that the results of both processes are alike. Rawls believes that absent the size and strength of natural endowments and economic development of their societies, both original positions at the international level would result in the following eight principles:

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe a duty of non-intervention.
5. Peoples have the right of self-defence but no right to instigate war for reasons other than self-defence.
6. Peoples are to honour human rights.

⁵⁴ Rawls, *A Theory of Justice* (2003), p. 79. Rawls, *The Law of Peoples* (1999), p. 13.

⁵⁵ Rawls, *A Theory of Justice* (2003), p. 114.

⁵⁶ Tan, *The Problem of Decent Peoples* (2006), 78.

7. Peoples are to observe certain specified restrictions in 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.

In other words, they would select principles that would enable them to protect the rights and freedoms, as well as ensure their right to self-determination, and fair dealings with other societies including the right to wage a defensive war. The representatives to these original positions are very different than the first instance where the agents were chosen to represent other individuals, as was the case in *A Theory of Justice*. In this case, they represent “peoples”.

In order to understand what Rawls means by peoples, he identifies five types of domestic societies. First, reasonable liberal peoples, who possess three basic features; namely democratic constitutional regimes that recognize and protect certain fundamental rights and liberties for all citizens equally, a shared attitude towards justice, and a certain moral character that allows citizens to interact rationally according to the basic structure of the society and reasonably with fairness in their mutual dealings.⁵⁷

The second category is that of decent peoples. The basic structure of these non-liberal decent peoples is one of a consultation hierarchy, but Rawls allows for some room for decent societies that may be otherwise structured.⁵⁸ These societies are usually organized around a common conception of the good, a comprehensive doctrine. Examples include a religion, ethnicity or some type of caste system that in essence trumps the fact of reasonable pluralism or the basic equality of citizens. As a result the basic structure privileges members of the official religion above others but that protects

⁵⁷ Rawls, *The Law of Peoples* (1999), p. 23-5.

⁵⁸ Rawls, *The Law of Peoples* (1999), p. 63.

those of other faiths from persecution and respects a limited number of basic human rights. Basic human rights include the right to life, (subsistence and security), liberty (freedom from arbitrary arrest, slavery, serfdom and a sufficient freedom of religion and thought; to personal property; and to fair and equal treatment before the law.⁵⁹

Furthermore, as Rawls describes them, these societies must have a common idea of justice from which members of the society derive their feeling of duty and obligation to adhere to its principles and upon which their legal system is based. This feeling of duty arises from a sense of right and wrong as understood in that particular society. Similarly, Rawls explains that for a given system of law to be upheld, the administrators of justice must “sincerely and reasonably believe” this common idea of justice. It does not matter that this common idea does not reflect the belief that all individuals are free and equal, only that they are cooperating members of society, recognizing their moral duties and obligations as members of the society.⁶⁰ This means that the various minorities (or non-power-wielding majorities) are represented in the legal system and their opinions are considered, but their interests are not necessarily given the same weight or may be ultimately rejected, when public policy is determined. The ruling members however do justify their laws to these groups, but differently –some only get consulted. Finally, these decent non-liberal societies do not harbour belligerent foreign policy aspirations and respect the self-determination of other decent societies.⁶¹

There are three other types of peoples that are not included in the category of “well ordered” peoples and as a result to not warrant admittance to the Society of Peoples. These are: Outlaw States which refuse to comply with a reasonable law of

⁵⁹ Rawls, *The Law of Peoples* (1999), p. 65.

⁶⁰ Rawls, *The Law of Peoples* (1999), p. 66.

⁶¹ Rawls, *The Law of Peoples* (1999), p. 66.

peoples; Burdened Societies, which are subject to unfavourable conditions of social, economic and historical circumstances that make the achievement of a well ordered regime, either liberal or decent, extremely difficult; and finally Benevolent Absolutisms which honour human rights but do not allow for meaningful political participation.⁶² From the first two types of domestic societies, Rawls creates the category of a “well-ordered peoples” which comprise the society of peoples.

The Society of Peoples

The most striking difference between the domestic conception of the principles of justice and the international conception is the employment of a “people” as the main actor in the original position of the international conception. A *people* is classified by three basic features. First, it is organized under a reasonably just government that furthers their fundamental interests; second, it is united by common sympathies like a shared historical or political consciousness and/or common language so that any combination thereof predisposes them to desire to be governed uniformly; and third, it possesses a certain moral character that underscores their rational conduct under a shared conception of what is deemed fair terms of cooperation with other citizens.⁶³

The law of peoples is the fundamental terms of cooperation for the society of peoples. It lays out the duties and obligations for fair dealing among liberal and decent peoples. The institutional structure of the society of peoples does not include a form of world government like a unified political regime with legal powers and monopoly of

⁶² This brings up the question of what counts as meaningful political participation. Do the people that get “consulted” in what Rawls calls decent hierarchical societies enjoy meaningful political participation? I believe members of a liberal society would argue that they do not.

⁶³ Rawls, *The Law of Peoples* (1999), p. 23-5.

force that is normally exercised by central governments. Such a structure is prone to abuse and most likely to be reduced either to despotism or a weak union marked by civil strife as subjugated peoples fight to gain a modicum of freedom and autonomy.⁶⁴

According to Rawls, a society of peoples shares many of the same characteristics as a society of *citizens*.⁶⁵ It is realistic and workable in the same sense as the domestic case; meaning that it is organized among reasonable and just societies and applicable to ongoing political relationships. Peoples are politically independent and equally entitled to respect, just as are citizens in a liberal democratic society. It is utopian in the sense that it specifies the reasonable and just social and political arrangements for the society of peoples. Peoples are reasonable in that they will deal with each other fairly. It is a political conception, meaning that at the level of interaction, all of the “non-essential” characteristics of those societies that may hinder the establishment of a relationship among peoples are removed from the mindset of those actors party to the arrangement. As a result, they will not try to impose their interests on other peoples within the society of peoples.

Furthermore, a society of peoples is tolerant. By extending the conception of justice from the liberal democracy to the Society of Peoples, there are many more varieties of comprehensive doctrines than those that exist within a single people. As a result, in order for the political conception to work, all public dealings must be imbued with toleration.⁶⁶

⁶⁴ Rawls, *The Law of Peoples* (1999), p. 36. Also see Markus, *Cultural Pluralism* (2002), p. 405.

⁶⁵ Here I refer to Rawls conception of a just society in *Political Liberalism*.

⁶⁶ Rawls’s conception of Toleration is: that reasonable people do not all hold the same comprehensive doctrines; that none of these comprehensive doctrines is publicly recognized as true or right above all others; that it is not unreasonable to hold any of these reasonable doctrines, nor is it unreasonable to affirm our holding of one of these reasonable comprehensive doctrines; and that it would be unreasonable to use

Not all societies are considered as peoples. As Charles Beitz points out, although both nations and peoples share many of the same characteristics like common sympathies and a moral nature, nations have a necessary historical and cultural element; “a nation’s unity is thought to be based on a common language and history, ethnic or racial uniformity, probably a common religion, and so forth.”⁶⁷ Rawls however does not regard the origin of a peoples common sympathies as paramount. He writes that “the law of peoples starts with the need for common sympathies, no matter what their source may be. My hope is that, if we begin in this simplified way, we can work out political principles that will, in due course, enable us to deal with more difficult cases where all the citizens are not united by a common language and share historical memories”.⁶⁸

The Pragmatism of Peoples

Ultimately Rawls’s decision to use peoples rather than individuals and states was pragmatic.⁶⁹ It was compelled by a realistic view of current international politics. He explains that the law of peoples is realistic in the sense that “it is workable and may be applied to ongoing cooperative political arrangements and relations between people.”⁷⁰ Rawls explains that if he used the individual rather than peoples as primary it would inevitably result in the conclusion that only a liberal democratic society is acceptable.⁷¹

political power to suppress reasonable comprehensive doctrines other than one’s own. *Political Liberalism* p. 58-61.

⁶⁷ Beitz, *Political Theory and International Relations* p. 672.

⁶⁸ Rawls, *The Law of Peoples* (1999), p. 24-5.

⁶⁹ Beitz, *Political Theory and International Relations* p. 681.

⁷⁰ Rawls, *The Law of Peoples* (1999), p. 17.

⁷¹ Rawls, *The Law of Peoples* (1999), p. 82.

Furthermore, Rawls chooses the idea of a peoples over the more familiar notions of a state or nation for a variety of reasons. According to Rawls, governments are a construction meant to serve the more important actor, the people. Peoples lack the traditional sovereignty ascribed to states. Rawls identifies three critical differences between the two conceptions that serve to distinguish them.⁷² First, states typically have the right to wage war as a tool of statecraft, whereas peoples do not. Peoples have no right no wage war except in self-defence.⁷³ Second, States typically have significant autonomy in dealing with its own people. Rawls's conception of peoples limits a government's internal sovereignty especially where it concerns human rights.⁷⁴ Third, states lack a moral character whereas peoples have a definite moral character.⁷⁵ Thus a state's sovereignty is limited in the ability to pursue its policy interests through war, oppression, discrimination, and unfair economic exploitation of other peoples.

Thus the conception *peoples* is meant to distinguish the traditionally sovereign powers of states such as the ability to pursue a foreign policy of war and an insular domestic policy with the more "reasonable" interests of peoples. These interests include the protection of its political and geographic independence, its cultural and social uniqueness, as well as the security of its citizens. These interests ensure that peoples will develop and maintain its proper self-respect.

⁷² Not all critics agree that Rawls succeeds in distinguishing a Peoples from a State. See Buchanan, *Rawls's Law of Peoples: Rules for a Vanished Westphalian World* p. 698-9. and Beitz, *Political Theory and International Relations* p. 672. Critics seem to suggest that Peoples are simply States (a society with a common culture and/or language) with limited powers of sovereignty and a stronger duty of assistance.

⁷³ Rawls, *The Law of Peoples* (1999), p. 25-6. Also see Buchanan, *Rawls's Law of Peoples: Rules for a Vanished Westphalian World* p. 699.

⁷⁴ Rawls, *The Law of Peoples* (1999), p. 26-7.

⁷⁵ Rawls, *The Law of Peoples* (1999), p. 27. Buchanan, *Rawls's Law of Peoples: Rules for a Vanished Westphalian World* p. 699.

Some critics have argued that the use of peoples as the representatives who choose the international principles of justice is a betrayal of liberalism because it lends legitimacy to very inegalitarian regimes.⁷⁶ If the representatives to the original position represent peoples and given that no single people is completely homogeneous then all these representatives will be representing is the interest of the official and dominant conception of the good or justice in society, and they will probably prejudice or disregard the interests of minorities or dissidents.⁷⁷ Although there is much truth to the argument, it is not the focus here.

In the original position, peoples are tasked to select a conception of justice that will be used to decide the institutional order among decent societies. The main difference between the two types of parties⁷⁸ is the values they embody. In the case of citizens of a liberal democratic society, it is the liberty and fundamental equality of all persons that must be respected. However, at the international level, because of the variety of comprehensive doctrines that exist it would be impractical or unrealistic to demand that all societies embrace liberal values; in the law of peoples, Rawls believes to do so would show insufficient tolerance and respect for non-liberal societies.

The problem of international political theory is that the norms of international conduct arising from these various political cultures may not coincide. The possibility of a peaceful international life, in which liberal societies can flourish, depends upon finding a basis on which reasonable and decent peoples can cooperate willingly given the international analog of the fact of reasonable pluralism.⁷⁹

⁷⁶ Buchanan, *Rawls's Law of Peoples: Rules for a Vanished Westphalian World* p. 697-8.

⁷⁷ Buchanan, *Rawls's Law of Peoples: Rules for a Vanished Westphalian World* p. 598.

⁷⁸ The parties I am referring to are liberal and decent non-liberal peoples.

⁷⁹ Beitz, *Rawls's Law of Peoples* p. 672.

It is the values of liberty and equality of peoples that are considered paramount at the international level because Rawls claims they are more unobjectionable to non liberal societies. Nevertheless, any form of organization, be it a domestic society or international in the case of the society of peoples, is going to be held together either by force or common interest. Rawls's requirement that a people be *reasonably* just rules out the former. The second requirement is more of a spirit of nationality that encourages cooperation among its members and fosters a desire to remain under the same agreement.⁸⁰ The last characteristic reflects a moral choice of limiting its rational desires in favour of working in harmony with others that have equally legitimate interest. All three characteristics are reflective of a liberal democratic society, but Rawls aims to show that they apply equally to decent non-liberal peoples as well.⁸¹

The Challenge of Stability for the Law of Peoples

Rawls identifies two kinds of stability: stability as a balance of forces (a *modus vivendi*) and stability for the right reasons. In the first instance, *stability as a balance of forces* is achieved in the realm of international politics through a *practical* means of addressing national interests. It is practical in the sense that it assumes states are primarily motivated by economic and military security rather than by ideological or ethical considerations. It assumes that states are the primary agents in the international sphere and that no superior agent or organization has the authority (although they may have the power) to regulate, dictate or influence multilateral relationships. The primary pursuit of states is national security with economic and military security being

⁸⁰ Beitz, *Rawls's Law of Peoples* p. 679.

⁸¹ Beitz, *Rawls's Law of Peoples* , p. 679.

paramount. In this pursuit states seek to amass resources in a global realm marked by scarcity.⁸² As a practical pursuit, the ideological basis of international relations is neither a policy guideline nor even a factor for consideration. At its most extreme form, it is an approach Machiavellian in nature, without regard to neither ethical considerations nor legal constraints. Thus, the nature of these relationships is primarily competitive rather than cooperative and it is a goal oriented approach limited only by practical limitations.⁸³

Stability for the right reasons is a stability based on moral considerations and a sense of justice. It is developed when citizens act according to principles that follow from a sense of justice that grows out of participation and education in a just society.⁸⁴ This is as true in the international realm as it is in the domestic one. The foundation of a stable law of peoples is based on principles that are both acceptable to liberal democratic societies and decent peoples.

As a realistically utopian idea, the law of peoples must have a parallel process that leads peoples, including both liberal and decent societies, to accept willingly and to act upon the legal norms embodied in a just law of peoples.⁸⁵

Much like in the domestic case, stability occurs from the continued participation of peoples under the law of peoples. Once people learn to honour and respect the law of peoples wholeheartedly, and receive in return the respect, and witness the compliance of other peoples, they develop a level of trust and confidence in other peoples. This in turn leads them to the recognition of mutual respect and the equality of all decent peoples and

⁸² Cvijanovic, *Modus Vivendi: Concept of Coexistence in Pluralist Global Society* (2006), p. 32.

⁸³ Arnhart, *Political Questions* p. 32.

⁸⁴ Rawls, *The Law of Peoples* (1999), p. 13. Also see *Political Liberalism*, p. 150.

⁸⁵ Rawls, *The Law of Peoples* (1999), p. 44.

they begin to accept the law of peoples as right conduct.⁸⁶ If this type of stability can be achieved, then the law of peoples can serve as a normative standard for judging international institutions, law and relations and it would have achieved it without imposing liberal doctrine on non-liberal societies.⁸⁷ In a sense, this is analogous to human flourishing in the domestic case. But also similarly to the domestic case the law of peoples also depends on the obtainment of an overlapping consensus. If such a consensus is absent it means that the relationship among peoples is not inherently stable. Rawls would not have demonstrated that the law of peoples was “universal in its reach.”⁸⁸

Cosmopolitanism Considered

It seems natural to consider if it would have been less problematic to use individuals rather than peoples as the main actor. The law of peoples has drawn criticism from many liberal theorists due to Rawls’s use of peoples rather than individuals as the primary political agent.⁸⁹ Rawls chose peoples over individuals as the principal agent in the context of international relations primarily as a means of including other societies in the society of peoples based on only what they can “reasonably grant” in terms of liberal values and still allow them to be treated with equal respect.⁹⁰ Rawls explicitly prohibits

⁸⁶ Here I use “right” according to Rawls’s distinction between public and private reason. Public reason deals with issues of the right; universal in nature; in other words, things that are acceptable to all reasonable people, despite their comprehensive doctrines, like a prohibition against slavery. Private reason covers issues of the good; issues over which there may exist ‘reasonable disagreement’, like a prohibition against gay marriage. According to Rawls, public reason should be used when discussing ‘basic political’ matters and private reason deals with ethical commitments, often a result of comprehensive doctrines that specify conceptions of the good. p. 132

⁸⁷ Boucher, *Uniting What Right Permits with What Interest Prescribes* (2006), p. 26.

⁸⁸ Rawls, *The Law of Peoples* (1999), p. 121.

⁸⁹ Carney, *Cosmopolitanism and the Law of Peoples* p. 98-99; Beitz, *Rawls’s Law of Peoples* 670; Pogge, *An Egalitarian Law of Peoples* (1994), p. 198; Tan, *Liberal Toleration* (1998), p. 284-5 .

⁹⁰ Rawls, *The Law of Peoples* (1999), p. 121.

any conceptions of justice that may appear unreasonable to have terms of cooperation that are reluctantly accepted through a coercive action resulting from an inferior political, social or economic position.⁹¹

Some critics argue that cosmopolitanism is a more natural development of Rawls domestic theory of justice. In its most basic version, cosmopolitanism is the idea that all of humanity is part of a single community.⁹² It would be a natural extension of Rawls's thoughts about justice at the domestic level because it ascribes the same moral rights and standards to all human beings. Under cosmopolitanism, all people (not peoples) are to be treated as free and equal. The boundaries between states, nations and peoples are considered morally irrelevant.

Rawls does not argue for cosmopolitanism for the simple reason that it makes excessive demands on the participating societies.⁹³ Under a purely cosmopolitan theory of international justice, one that seems to follow directly from Rawls's domestic conception, justice would require a society of peoples to look to secure the individual rights of each citizen.

...by dropping the egalitarian features of justice as fairness [Rawls] seeks to arrive at an account of justice that has the 'greater generality' called for in the international setting. In short, since non-liberal societies cannot 'reasonably be expected' to accept liberal principles of justice, even a liberal political conception of international justice would be unreasonable to insist on them.⁹⁴

⁹¹ Rawls, *The Law of Peoples* (1999), p.14.

⁹² "Cosmopolitanism" Stanford Encyclopedia of Philosophy. Ed. Edward N. Zalta.
<http://plato.stanford.edu/entries/cosmopolitanism/>

⁹³ Petit, *Rawls's Law of Peoples: A Realistic Utopia* p. 39.

⁹⁴ McCarthy, *Two Conceptions of Cosmopolitan Justice* p. 197.

Cosmopolitanism would demand that non-liberal societies “liberalize” themselves to become members in good standing; an exacting and upon reflection, an idealistic demand in the current global context.

Despite the seemingly easy extension of his domestic conception to the international realm, through a demand for a cosmopolitan theory to develop the principles of justice among societies, Rawls reaches what he believes is a workable solution for a realistic utopia by choosing peoples as the main actor when we are considering international relations. He rejects cosmopolitanism as an approach because he believes that it is tantamount to fashioning a foreign policy to “act and gradually shape all not yet liberal societies in a liberal direction, until eventually (in the ideal case) all societies are liberal”.⁹⁵ As mentioned previously the move sparked criticism because it seemingly eschewed liberal principles to reach a workable solution. However, even if no such criticism was forthcoming, it is far from uncontroversial that even decent hierarchical peoples would embrace the more liberal law of peoples with open arms.

An example of the incompatibility is provided by a recent supreme court ruling in Turkey. Sharia, the body of Islamic religious law, the legal framework that regulates public and private aspects of life those Muslim countries subject to it, was found to be irreconcilable with the principles of democracy. For example, in 1998 the Turkish high court banned and dissolved the Refah Party because the court believed the laws of Sharia were irreconcilable with the law of democracy. The Court ruled that Sharia,

...which faithfully reflects the dogmas and divine rules laid down by religion, is stable and invariable. Principles such as pluralism in the political sphere or the constant evolution of public freedoms have no place in it...It is difficult to declare one’s respect for democracy and human rights while at the same time supporting a regime based on Sharia, which

⁹⁵ Rawls, *The Law of Peoples* (1999), p. 60.

clearly diverges from Convention values, particularly with regard to its criminal law and criminal procedure, its rules on the legal status of women and the way it intervenes in all spheres of private and public life in accordance with religious precepts.⁹⁶

The Acceptability of Equality

Decent peoples in a hierarchical society may have a more fundamental objection to the proposed principles of justice. Specifically, before these hierarchical societies could adopt the law of peoples for the right reasons they would have to develop a sense of equality of persons that is most likely very foreign to them.⁹⁷ The value of egalitarianism, which seems to underlie the entire concept of the law of peoples, makes it difficult to imagine how Rawls could successfully extend the principles of justice into non-liberal contexts.⁹⁸

This poses a unique problem. In order for stability for the right reasons to obtain, the law of peoples must be accepted by non-liberal societies, not for practical reasons but for moral reasons.

...to say that the society of democratic peoples is stable in the right way is to say that it is stable with respect to justice, that is, that the institutions and practices among peoples always more or less satisfy the relevant principles of justice, although social conditions are presumably always changing. It is further to say that the law of peoples is honoured not simply because of a fortunate balance of power—it being in no people's interest to upset it—but because, despite the possibly shifting fortunes of different peoples, all are moved to adhere to their common law accepting it as just and beneficial to all.⁹⁹

⁹⁶ Moe, *Refah Revisited* (2005), p. 12-13.

⁹⁷ As mentioned previously, the right reasons means citizens acting according to the principles of justice that have developed out of a sense of justice acquired and nurtured under a just regime. It may be argued that such people do not have a just regime; but Rawls would most likely respond that the regime was not perfectly just but just enough for us to enter into peaceful international relations with them.

⁹⁸ Tan, *Liberal Toleration* (1998), p.277.

⁹⁹ Rawls, *The Law of Peoples* (1993), p. 48-49.

Furthermore, when someone holds a moral conviction, it is the result, not of expediency, but of a deeply held commitment. Of course Rawls distinguishes between public and private reason, but even in the broader category of public reason, it is not evident how and why a hierarchical society, organized in a ranked series of classes or castes, would be expected to hold deep seated moral commitments to the equality of peoples as found in the Law of Peoples, when it is questionable that there is a clear divide between private and public reason. This calls into question the strength of the alleged overlapping consensus that is supposed to exist at the international level.

The stability of the law of peoples is dependent upon the strength of an overlapping consensus that is not necessarily, or perhaps even likely to be, acceptable to non-liberal societies.¹⁰⁰ Thus when Rawls moves from ideal to non-ideal theory, he rests the extension on a questionable premise, namely the moral conviction of non-liberal societies to an equality of peoples. If stability is to obtain for the right reasons, an overlapping consensus must be acceptable to all well ordered peoples. In other words, the basis of the international relationship among or between societies cannot be based on strategic or power related reasons or it risks being nothing more than a *modus vivendi*, a practical means of securing military, economic or social peace. Any of these types of security are invariably sought by societies, but for Rawls, if they comprise the basis for the relationship, then it is not an acceptable arrangement, and it is not stability for the right reasons.

The challenge for Rawls is to show that these non-liberal societies would at least entertain upholding the law of peoples; to ask him to do more would be unreasonable. In

¹⁰⁰ Audard, *Cultural Imperialism and Democratic Peace* p. 59-60.

order to do so, Rawls must show how the principles may fit within the set of beliefs – their public beliefs– which currently shape their societies. If he cannot, then the claim that these societies would embrace, or at least entertain, upholding the law of peoples is unsupported. The answer to this question lies in the use of the original position.

The original position is considered by Rawls to be the most appropriate perspective from which the parties can reach an objective agreement on the laws and social institutions that will govern their relationships. For even if agreement were possible given the current state of affairs, it would assume that the existing state of affairs along with the concomitant bargaining advantages were valid.¹⁰¹ Rawls uses this hypothetical device to argue that the results of the negotiations would be fair to both liberal and non-liberal peoples.

The ground rules for the use of the original position are that the participants need to be rational, reasonable, and behind a veil of ignorance. Although there may be legitimacy to Kok-Chor Tan's criticism that the veil of ignorance in the case of the third iteration of the original position that includes non-liberal societies is "thin", meaning it is "overly generalized and less demanding than a real liberal global theory would be", this is not of primary concern in this instance.¹⁰² What is of concern is the assumption that the acceptability of the principles of justice be reasonable and rational to both liberal and hierarchical societies alike. So in order for the law of peoples to be stable for the right reasons, Rawls must provide an account of the reasonableness of non-liberal peoples for the right reasons.¹⁰³

¹⁰¹ Freeman, *John Rawls – An Overview*, p. 10.

¹⁰² Tan, *Liberal Toleration* (1998), p. 285.

¹⁰³ Tan, *Liberal Toleration* (1998), p. 287.

Reasonableness means adopting fair terms of cooperation and following them willingly given the assurance that others will do the same. Rational agents are those that pursue interests that are specifically their own (but not necessarily exclusively). Rawls accounts for rationality by ascribing a common view of the good conception of justice, explaining that the parties care about the good of the peoples they represent and want to ensure it security from aggression. Rawls uses the concept of reasonableness in particular to buttress the concept of right and the ideas of fairness and a willingness to temper ones claims in view of the legitimate claims of others.¹⁰⁴ In fact the idea of the original position is to subject rational decisions to reasonable moral constraints.¹⁰⁵

The original position is a hypothetical setting for rational parties seeking their self interest seeking to ensure that the principles of justice will be such as to enable them to pursue their own conception of the good. Our capacity for a conception of the good and the capacity for a sense of justice are the capacities needed to come to a reasonable conception of justice. As liberal democratic citizens, they see themselves as free and equal and despite differing comprehensive doctrines, the original position acts as a level playing field given the fact of reasonable pluralism.¹⁰⁶

Clearly the original position works for liberal peoples. The original position by use of the veil of ignorance models the restrictions appropriate on the reasons for adopting a political conception of justice. Among equals, it is reasonable to adopt the fair terms of cooperation and to follow them willingly, given the assurance that others will do the same.

¹⁰⁴ Rawls, *A Theory of Justice* (2003), p. 15-17.

¹⁰⁵ Rawls, *A Theory of Justice* (2003), p. 128.

¹⁰⁶ Freeman, *John Rawls – An Overview* p. 26.

As complementary ideas, neither the reasonable nor the rational can stand without the other. Merely reasonable agents would have no ends of their own they wanted to advance by fair cooperation; merely rational agents lack a sense of justice and fail to recognize the independent validity of the claims of others.¹⁰⁷

The distinction is clear, and the concepts are quite different. Rawls argues that both are necessary for the law of peoples just as it is for justice as fairness.¹⁰⁸ Since the parties to the agreement are equally rational and equally reasonable, none can force or trick another into accepting principles that would benefit one over the other. Rawls reasons that just as the equality of persons exists intra-society, the equality of peoples exists inter-society.¹⁰⁹

Reasonableness in this sense however, is acceptable only to those who recognize the unfairness of inequality when conceiving of the principles of justice.¹¹⁰ This means that reasonableness, when considered in the context of the law of peoples, creates an assumption that the rational parties engaged in the original position of peoples would not expect unfair privilege for their peoples. This is the basis for the overlapping consensus at the international level for the liberal democratic peoples as well as at the domestic level despite varying comprehensive doctrines; and this is the basis for stability for the right reasons.

The strength of Rawls's claim that hierarchical peoples would accept and support the law of peoples is dependent on the claim that reasonableness as defined, is acceptable to them. Rawls identifies two criteria necessary to consider a hierarchical peoples well ordered; given that he only admits decent hierarchical peoples to the original position,

¹⁰⁷ Rawls *Political Liberalism* (1993), p. 52.

¹⁰⁸ Rawls, *Political Liberalism* (1993), p. 50-53.

¹⁰⁹ Society in this case being "peoples". There is considerable debate on this point as mentioned previously. See Tan, *Liberal Toleration* (1998), Pogge, *An Egalitarian Law of Peoples* (1994), Teson, *The Rawlsian Theory of International Law* (1995).

¹¹⁰ March, *The Demands of Citizenship* (2005), p. 322.

let's examine their characteristics. The first criterion relates to the relationship among peoples. Decent hierarchical peoples are not aggressive towards other peoples. They respect the integrity of other peoples and do not seek to impose their will, as understood through their comprehensive doctrine, on other peoples. They do seek to influence other peoples they do so while respecting the political and social orders of these other societies.¹¹¹ In other words, they are civil, peaceful, and respectful members of the international society of peoples.

The second criteria relates to the internal workings of the decent hierarchical society. It has three parts. First, that the society is governed in accordance with a common ideal of justice and secures basic human rights for its members. Basic human rights include the right to life, which include the right to subsistence and security, the right to liberty, which includes freedom from arbitrary arrest, slavery, serfdom and a sufficient freedom of religion and thought, the right to personal property; and to fair and equal treatment before the law.¹¹² No common good is achievable without first respecting the basic rights of citizens.¹¹³

Second, these societies must have a common idea of justice from which members of the society derive their feeling of duty and obligation to adhere to its principles and upon which there legal system is based. This feeling of duty arises from a sense of right and wrong as understood in that particular society. Rawls wants to ascribe a capacity for acting morally and cooperatively to each member of decent hierarchical societies.

¹¹¹ Rawls, *The Law of Peoples* (1999), p. 64.

¹¹² Rawls, *The Law of Peoples* (1999), p. 65.

¹¹³ Critics have pointed out that the basic human rights Rawls discusses here are very different from the basic human rights Rawls thought so important in a liberal democratic society, namely equal liberty of conscience, individual equality before the law, equal individual right of dissent, and democratic political rights. See Tan, *The Problem of Decent Peoples* (2006), p. 79; Beitz *Political Theory and International Relations* (2000), p. 681. Teson, *The Rawlsian Theory of International Law* p. 79.

Third, Rawls explains that for a given system of law to be upheld, the administrators of justice must “sincerely and reasonably believe” in the society’s common idea of justice. It does not matter that this common idea does not reflect the belief that all individuals are free and equal, only that they are cooperating members of society, recognizing their moral duties and obligations as members of the society.¹¹⁴ This means that the various minorities (or non-power-wielding majorities) are represented in the legal system and their opinions are considered, but their interests are not necessarily weighed to the same degree when public policy is determined. The ruling members however do justify, by their own beliefs, its laws to these groups. It also means that although the various members of society may not have the equal stature and influence in the society, they are not treated arbitrarily before the law –similar cases are treated similarly.¹¹⁵

Rawls explains that the first of these criteria, the respect for the integrity of other societies, is a sufficient condition for our accepting a hierarchical society as reasonable. He explains that the representatives in the original position for decent hierarchical peoples would adopt the same principles as those adopted by liberal societies.

...decent hierarchical 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 the 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 time 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

¹¹⁴ Rawls, *The Law of Peoples* (1999), p. 66.

¹¹⁵ Rawls, *The Law of Peoples* (1999), p. 66.

would accept [as members of different decent hierarchical societies] –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.¹¹⁶

But respect for the integrity of other societies is more a measure of a hierarchical society's toleration than of its reasonableness.¹¹⁷ Respect for other peoples does not by itself specify the fair terms of political cooperation between peoples. The description of these decent hierarchical societies in the *Law of Peoples* only describes them in terms of toleration and indulgence, not of reasonableness. Rawls describes them as not having aggressive intentions toward other societies but this not enough to show the connection between toleration and the fair terms of political cooperation.¹¹⁸ In addition to respecting the integrity of other peoples, these societies would also have to recognize the legitimacy of interests and the equality of other societies and the right to exist free of outside influence or intervention. Only then could we say that such a hierarchical society was reasonable and that the law of peoples was stable for the right reasons.

Rawls's intention is not to restrain the aggressive intentions of societies, but to provide a basis for the law of peoples. The law of peoples is based on the equal representation of decent peoples; his third principle is "peoples are equal and are parties to the agreements that bind them."¹¹⁹ At a minimum, society's party to the law of peoples are entitled to equal freedom. Therefore the principles of justice that result from the original position must apply to each society as an equal.

¹¹⁶ Rawls, *The Law of Peoples* (1999), p. 69. Emphasis added.

¹¹⁷ Tan, *Liberal Toleration* (1998), p. 278-9.

¹¹⁸ Tan, *Liberal Toleration* (1998), p. 278.

¹¹⁹ Rawls, *The Law of Peoples* (1999), p. 37.

However, a society that acknowledges the integrity of other societies, as well as their independence and security, does not necessarily also treat them as equals. It is unlikely that a society of peoples would expect less than equal respect from other societies but it is certainly possible that a society would expect more respect than others.¹²⁰ First among equals, certainly that is how the U.S. views itself and its role in the U.N. Some would argue that the U.S. is due more consideration in terms of U.N. policy initiatives.¹²¹ To understand the difference between the external tolerance of other societies and the expectation of privilege for one's own, one has to look into the domestic policies of hierarchical societies as described by Rawls.

Hierarchical societies are only required to have formal equality. Formal equality in this context means adherence to and respect for their domestic laws.¹²² This is outlined in the second criteria for decent hierarchical societies. Rawls explains that peoples are entitled to basic human rights like the right to life, the freedom from slavery, the right to personal property and to “formal equality as expressed by the rules of natural justice (that is similar cases are to be treated similarly)”¹²³ This is far from the liberal notion of equality of members. More to the point Rawls writes

These rights do not depend on any particular comprehensive religious doctrine or philosophical doctrine of human nature. The law of peoples does not say, for example, that human beings are moral persons and have equal worth in the eyes of God; or that they have certain moral and intellectual powers that entitle them to these rights. To argue in these ways would involve religious or philosophical doctrines that many decent hierarchical peoples might reject as liberal or democratic, or as in some

¹²⁰ Costa, *Human Rights and the Global Original Position* p. 53.

¹²¹ See comments made by Kiyoo Akasaka, Under-Secretary General for Communications and Public Information, March 7, 2008. Mr. Akasaka urges the next US administration to continue to be an important supporter of the United Nations efforts. He says that the United States is *the* most important member of the U.N. <http://www.youtube.com/watch?v=2Lc6SRk3i8o&feature=related>

¹²² Dworkin, *Taking Rights Seriously* (1978), p. 223.

¹²³ Rawls, *The Law of Peoples* (1999), p. 65.

way distinctive of Western political tradition and prejudicial to other cultures.¹²⁴

This kind of equality is simply adherence to the laws of the society of any decent people including the particular hierarchical society. It says nothing about the nature of the rules themselves. These rules can be significantly weighted towards a particular comprehensive doctrine or religion and as a result may treat those outside of these groups with considerable inequality.¹²⁵

Rawls allows for a means of dissent. The basic structure of decent non-liberal peoples calls for a right to dissent and the requirement of the executive and judiciary to give a respectful reply and weight the complaint against the laws as interpreted by the judiciary.¹²⁶ But clearly this right has its limits. These laws

must admit a sufficient measure of liberty of conscience and freedom of religion and thought, even if these freedoms are not as extensive nor as equal for all members of the decent society as they are in liberal societies.¹²⁷

Thus hierarchical societies have a formal channel for dissent, but there is no equal freedom of speech. The formal requirement ensures a consistent application of the law, but the law itself may favour some to the detriment of others.

Rawls does seek to protect minority groups.¹²⁸ The protection of basic human rights only ensures that the law does not overwhelmingly favour one group to the total

¹²⁴ Rawls, *The Law of Peoples* (1999), p. 68.

¹²⁵ I use the example of religion due to the wide availability of examples in hierarchical societies, but I could easily substitute another common conception of the good.

¹²⁶ Rawls, *The Law of Peoples* (1999), p. 61.

¹²⁷ Rawls, *The Law of Peoples* (1999), p. 74.

¹²⁸ I am using "minority" to mean those groups that do not wield power in the particular hierarchical society. In reality there are numerous hierarchically organized societies where those in power are actually numerically inferior to those over whom they rule.

exclusion of others. As a result, Rawls's specifications of formal equality eliminate the most abusive scenarios such as slavery.¹²⁹ However, despite these protections, Rawls does expect the dominance of one group within the hierarchical society over all others and accords "legitimacy to very inegalitarian regimes."¹³⁰

A decent hierarchical society's conception of the person...does not require acceptance of the liberal idea that person are citizens first and have equal basic rights as equal citizens. Rather it views persons as responsible and cooperating members of their respective groups. Hence, persons can recognize, understand, and act in accordance with their moral duties and obligation as members of these groups.¹³¹

Thus it seems clear to Rawls that typically one comprehensive doctrine will enjoy greater privileges and liberties than all others.

It follows then that if the internal design of the hierarchical society affords greater liberties and privileges for some people over others with respect to their position as a member of the dominant group, and that it is consistent with the legal foundation of the society, then the society's respect for the integrity of other societies is consistent with unfair terms of political cooperation in the relations among peoples.¹³² The reasonableness of such a hierarchical society calls for a consideration of the moral commitments held by the citizens of these societies who accept this inequality as reasonable.¹³³ These citizens are in the dominant position in society. Since Rawls grants these societies legitimacy, it is these citizens that are the ones to which we would ask to assure the acceptability of the principles and standards that govern the society. Therefore,

¹²⁹ Naticchia, *The Law of Peoples: The Old and the New* p. 355.

¹³⁰ Buchanan, *Rawls's Law of Peoples: Rules for a Vanished Westphalian World* p. 697.

¹³¹ Rawls, *The Law of Peoples* (1999), p. 66.

¹³² Buchanan, *Rawls's Law of Peoples: Rules for a Vanished Westphalian World* p. 719.

¹³³ Tan, *Liberal Toleration* (1998), p. 285.

in order to assess the acceptability of a particular society as decent and well ordered, Rawls needs to account for the acceptability of reasonableness to citizens in the dominant group for moral reasons.¹³⁴

The second requirement of hierarchical societies in respect to individuals necessitates only a minimal conception of the person.¹³⁵ Rawls does not call for a political conception of the person as free, reasonable and rational as he does for liberal societies. The reason being is that he wants to avoid imposing liberal standards in a non-liberal context.¹³⁶ The question though, is whether Rawls can account for the reasonableness of these privileged individuals for the right reasons. If the political system is inherently unfair, and some enjoy greater privilege than others, and given the minimally conceived concept of persons, then the only moral duties and obligations of these privileged ones are to adhere to political caste.¹³⁷

Citizens in this position may freely recognize and accept their duties and obligations in performing their dominant roles, and may not expect special consideration for performing them. Rawls explains that in hierarchical societies, all citizens are responsible members who can recognize and act in accordance with their moral duties and obligations and play their part in social life.¹³⁸ Since to them this would be a natural way of acting and an observance of the law, it is possible to believe that they would not expect any exceptions for their society just because it is their own when they negotiated

¹³⁴ Tan, *Liberal Toleration* (1998), p. 286-287.

¹³⁵ Kuper, *Rawlsian Global Justice* p. 642.

¹³⁶ Tan, *Liberal Toleration* (1998), p.277.

¹³⁷ Tan, *Liberal Toleration* (1998), p. 280.

¹³⁸ Rawls, *The Law of Peoples* (1999), p. 66.

the principles of justice in the original position. However, reasonableness requires that claims based on privilege be excluded.¹³⁹

When we consider the relations among people, peoples –as they appear in Rawls’s minimum conception, namely only needing to know their role in social life – those that were accustomed to greater privileges would rationally insist upon privileges for their society at the international level. The only instance where we could conceive of these societies accepting the condition of reasonableness is if we assume they have a deep commitment to the value of equality among nations.¹⁴⁰

Clearly Rawls does ascribe some belief in equality to hierarchical societies. But his account seems insufficient to explain why they would accept reasonableness for the right reasons either at the domestic level or at the international level. At best, we could conceive of them regarding other members of their dominant group as equal. However, because they are supposed to be following their role in society, their commitment to equality is based on the particular characteristics of the group in questions and the legal and political privileges they enjoy. For example, in some Muslim countries the privileges will be based on whether the Shia or the Sunni are the ruling party.¹⁴¹ One sect typically dominates the other. So when citizens in that country consider the relation among citizens within the society, they will think of them along those lines and award the privileges accordingly. So when it came turn to consider the relation among societies, as adherents to their roles, they would expect that they would be entitled to similar privileges.¹⁴²

¹³⁹ One of the basic requirements of the original position: *symmetry (equality)*.

¹⁴⁰ Beitz, *Rawls’s Law of Peoples* (1979), p. 210.

¹⁴¹ This has been the case since the great schism in Islam after the prophet Mohammed’s death. The split was based on political differences –who would run the Muslim nation, not religious ones.

¹⁴² As Andrew March points out, “one of the main features of political liberalism is the belief that the state should remain neutral between the various conception of the good existing in society, which requires that the state not intentionally seeks to advantage any particular ethical or religious doctrine but rather protect

Furthermore, it would be exceptional for those citizens in privileged positions to separate their commitment to equality of each other from their attachment to dominant status.¹⁴³ The commitment to equality of a privileged group is not a reasonable assumption. There is little reason to believe they would embrace the value of equality outside of their privileged status. Therefore, there seems to be no clear relationship between the commitment to equality that the dominant groups within a hierarchical society have and their acceptance of reasonableness as conceived in the law of peoples for the relations among societies. In order for Rawls to make the assumption of the acceptance of reasonableness work, he must assume one additional criterion when describing hierarchical societies; that these societies have a deep commitment to equality that supersedes all positions of privilege.¹⁴⁴

If these hierarchical societies had such a commitment to the value of equality, then they would be able to separate it from the equality that all enjoy as members of the dominant class and from the connected political and legal privilege. Reasonableness can then be acceptable to them for the right reasons because it will reflect their deeper commitment to equality, despite the inequality of the society they presently live in.

If this argument is sound then Rawls fails to provide an unassailable account of decent non-liberal societies' acceptance of equality. It is not the equality of persons within a society (a liberal value) that must obtain in the case of decent hierarchical societies. It is the equality that is presupposed at the original position that is called into question. This is a more fundamental equality with regard to the law of peoples. Without

individual citizens' rights to freedom and equality in their choosing of their conceptions of the good." March, *The Demands of Citizenship* (2005), p. 317.

¹⁴³ Pogge, *Rawls on International Justice* (2001), p. 213.

¹⁴⁴ March, *The Demands of Citizenship* (2005), p. 317.

a clear account of a non-liberal society's acceptance of equality among peoples, Rawls would find it difficult to claim that these non-liberal societies were reasonable. It is the assumption of reasonableness and not rationality that provide the objective status of the principles of justice derived from the original position. Of primary concern is that the principles resulting from the original position be reasonable and rational to both liberal and decent hierarchical peoples alike.

In order for the law of peoples to be stable for the right reasons, Rawls must provide an acceptable explanation as to why decent hierarchical societies would adopt fair terms of cooperation and follow them willingly when fair for these societies and fair for liberal societies are arguably quite different.

Conclusion

There are many similarities between Rawls's conception of justice in his earlier works and the *Law of Peoples*. The law of peoples is closely related to the law of nations that Rawls described in *A Theory of Justice*. But it is better understood in contrast to the ideas presented in *Political Liberalism*. *Political Liberalism* is the result of a perceived weakness in *A Theory of Justice* regarding the unreasonableness of a single comprehensive doctrine in a liberal democratic society. It was the idea of reasonable pluralism that drove Rawls to develop a *political* account of liberalism that could account for the fact that a plurality of conflicting reasonable comprehensive doctrines, or conceptions of the good life, is the normal result of a liberal democratic culture and free institutions. Many of the peoples we disagree with in terms of comprehensive doctrines are reasonable, meaning fair minded, sincere, intelligent and well intentioned. They also

have good reasons for believing as they do, even though we might not find these reasons compelling. This is not a temporary situation, but a permanent feature of a liberal society. It is not the case for a hierarchical society, even a decent one.

The stability of the law of peoples is founded on the values of equality and basic human rights. These conditions however, may run contrary to other possible conceptions of autonomy and stability. For justice to remain stable over time it must be willingly and sincerely supported by those subject to it. Since the law of peoples, unlike the law in a decent hierarchical society, is not the result of a single comprehensive view, it must be supported through moral commitments to values such as equality.

The only way it seems possible for a group of peoples profoundly divided on philosophical and religious fundamentals to endorse a common political conception of justice to govern international relations is through an overlapping consensus. The concept of an overlapping consensus is supposed to answer the question of stability. Remember that Rawls identified two possible ways that a society, domestic or international like the society of peoples, could remain stable. It could be stable for the right reasons, which requires conformity to and acceptance of the principles of justice wholeheartedly. The right kind of stability involves a level of moral justification for the basic structure of society. The second type is a *modus vivendi*; it is based on concession.

The only reason stability would obtain in the case of a *modus vivendi* is as long as the balance of power remained. As soon as one party to the agreement became dominant, the agreement might be abandoned. Rawls wants the stability of the law of peoples to be something more solid than a balance of power; he wants it to be based on an overlapping consensus. In order for an overlapping consensus to obtain, it must be based on values

found within the comprehensive doctrines of the peoples party to the agreement. In such a case, each people would see the principles of justice among all decent peoples as a component, an essential constituent part that fits into its own comprehensive doctrine.

The problem stems from the fact that the moral commitments and convictions that these decent, non-liberal societies actually hold conflict with the ones they would need to adopt for the law of peoples. Rawls claims that the value of equality of peoples is one of the more acceptable values to decent non-liberal societies. But the challenge for Rawls is to explain how these decent hierarchical societies might develop a sense of equality that is most likely foreign to them. The value of equality that underlies the entire concept of the law of peoples is a moral conviction, not the result of expediency but of a deeply held commitment.

The ground rules of the original position include the requirement that participants be rational and reasonable. To be reasonable means to adopt the fair terms of cooperation and to follow them willingly. Clearly this is not a problem for liberal democratic societies. Among equals, it is reasonable to adopt the fair terms of cooperation and to follow them willingly. If being reasonable means treating peoples as equal, then to do otherwise must be unreasonable. But in a society where reasonable means that some enjoy privileges others do not, it is hard to accept that representatives of these people in the original position would neither expect special consideration for their people nor rank themselves in importance above others. Thus, the stability to the law of peoples is dependent upon the strength of an overlapping consensus that is not necessarily acceptable to decent non-liberal societies.

The requirement of reasonableness calls into question commitments to equality and the limits of toleration and intervention. It may lead to a pervasive concern on the part of non-liberal societies that see these conditions, necessary for the stability of the law of peoples, as an indirect way for liberal societies to advance the cause of democracy, human rights and individual equality, all liberal values. The law of peoples is intended to avoid this possible source of instability. When Rawls outlines the parallel conditions of the society of peoples, one of the conditions is one of toleration. As a result, decent hierarchical peoples need not be wary of liberal intrusion. But this toleration may come at the expense of a genuine acceptance on the part of hierarchical peoples of the equality of all peoples.

Toleration by itself is not sufficient to conclude that stability in the law of peoples will obtain. The limits of toleration will be marked based on the liberal conception of justice. Rawls explains that it is important to understand that the law of peoples is developed within political liberalism and is an extension of a liberal conception of justice for a domestic regime to a society of peoples. Thus, in developing the law of peoples with a liberal conception of justice he works out the ideals and principles of the foreign policy of a reasonably just liberal people. In a liberal society, Rawls explains that reasonable people think it unreasonable to use political power to repress other comprehensive doctrines that are reasonable yet different from their own. Furthermore, since a plurality of reasonable comprehensive doctrines is the “inevitable outcome” of human reason under free institutions, wide spread social agreement on a single doctrine can be achieved only through oppression –the oppressive use of state power. That is the case even in decent hierarchical societies by definition.

As a result, it becomes less apparent that the interests of decent non-liberal peoples be accommodated at the international level. Rawls fails to provide justification of why we should tolerate non-liberal politics at the international level. In *A Theory of Justice* he clearly argues that liberal toleration in the domestic context does not require the toleration of non-liberal politics. Consequently, by not offering adequate justification, it appears that he simply relaxes the limits of toleration in order to accommodate decent non-liberal peoples in the Society of Peoples. Thus, it appears Rawls's real motivation is to extend the law of peoples acceptance to decent non-liberal societies and that no ultimate values are shared. Consequently, stability is not achieved for the right reasons and Rawls's law of peoples is, beneath it all, a *modus vivendi*.

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