Cosmopolitan Criticisms Against Rawl’s Conception of Toleration

Wang, Yu-Hsin
Lecturer, General Education Center, Chaoyang University of Technology

Abstract

It is a controversial claim in John Rawls’s *The Law of Peoples* that liberal toleration should extend to non-liberal decent peoples. According to Rawls, non-liberal decent peoples will agree on the same Law of Peoples affirmed by liberal peoples, and thus be recognized as members in good standing in the Society of Peoples. Cosmopolitan liberals charge Rawls’s notion of international toleration with being distant from the core liberal commitments. For them, only societies that are liberal in character meet the criteria for toleration. Specifically, they take issue with 1) Rawls’s use of the original position device, 2) Rawls’s human rights criteria for decency, and 3) the less than fully liberal principles of the Law of Peoples that Rawls claims would be agreed upon by liberal peoples and decent non-liberal ones. In this thesis, I will examine the cosmopolitan criticisms against Rawls’s conception of international toleration. I argue that Rawlsian toleration is not only defendable from the cosmopolitan charge, but also substantiable within a genuinely liberal framework. I will provide an interpretation of the Law of Peoples as a “principled consequentialist” liberal project. Based on this interpretation, a Rawlsian notion of toleration is not only required by the commitment to fundamental liberal principles, but also conducive to the realization of liberal values across societies in the long term.

Keyword: *The Law of Peoples*, Decent Peoples, Toleration, Human Rights, Cosmopolitan, Liberalism

*本文於 2015.04.23.收稿，2015.05.20.外審審查通過。2015.05.30.修訂後刊登。*
LIST OF ABBREVIATIONS
DPOP............................................Decent Peoples’ Original Position
LPOP..........................................Liberal Peoples’ Original Position
LoP.............................................Law of Peoples
OP.............................................Original Position
SoP...............................................Society of Peoples

Rawls’s Books:
LP..............................................The Law of Peoples
PL..............................................Political Liberalism
TJ...............................................A Theory of Justice

INTRODUCTION

What moral vision ought to guide liberal democracies as they take on the practical problems of foreign relations with non-liberal states? To what extent should liberal societies be tolerant of non-liberal societies in their foreign policy, and in what form should any such toleration take? These are pressing questions, both in theory and in practice. As one of the leading contemporary political philosophers, John Rawls has attempted to provide answers to these questions in *The Law of Peoples* (hereafter *LP*). By the “Law of Peoples,” Rawls means a particular conception of rights and justice that applies to the principles and norms of international law and practice.  

1 In *LP* Rawls outlines an international order in which both liberal democratic societies and non-liberal decent ones can accept the same international law of peoples as the standard for regulating their behavior toward each other.  

Decent peoples are non-liberal societies whose basic institutions meet certain specified conditions of political right and justice 3 and lead their citizens to honor a reasonably just law for the “Society of Peoples,” that is, an international society consisting of all peoples who follow the ideals and principles of the Law of Peoples

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2 My use hereafter of the term “Law of Peoples” refers to the eight principles advocated by Rawls, while the/a “law of peoples” refers to sets of principles and norms of international law and practice governing the relations between peoples. As Rawls said, there are a family of reasonable laws of peoples satisfying the representatives of peoples who will be determining the specifics of the law. See Rawls, *LP*, p.4, n.4.
3 This includes the right of citizens to play a substantial role, say through associations and groups, in making political decisions. Rawls, *LP*, p.3.
(LoP) in their mutual relations. \(^4\) Since decent peoples can, as Rawls believes, on
their own terms endorse the principles of the LoP, they are to be tolerated and
accepted as members in good standing in the Society of Peoples (SoP). This
toleration for non-liberal peoples, for Rawls, means not only non-intervention and
accommodation, but also recognition and respect. \(^5\)

Rawls’s idea of toleration has been submitted to severe criticisms of different
kinds. This thesis will focus on the cosmopolitan critique. Cosmopolitan liberals
are concerned with not only human rights but also liberal freedoms and rights of
individuals in every society. “Decent peoples,” as defined by Rawls, do not fully
honor the liberal rights of their citizens. For cosmopolitan liberals, this amounts to
overriding the universal principle that all individuals are to be treated as free and
equal.\(^6\) If a decent people does not treat its members as free and equal citizens, the
critics argue, why should liberal peoples accord toleration and equal respect to that
society? When comparing \(LP\) with \(A\) Theory of Justice (hereafter \(TJ\)) and Political
Liberalism (hereafter \(PL\)), critics also charge Rawls with inconsistency as he
appears to advocate tolerating illiberal practices at the international level while
denying toleration of such practices at the domestic level. It seems to them, then,
that Rawls has diluted the principles of the LoP to accommodate decent peoples,
and that the LoP as such is a political compromise with non-liberal peoples, an
unprincipled concession to unreasonableness.\(^7\)

Diametrically opposed to the cosmopolitan critique, there are voices from
cultural relativists and communitarians that criticize Rawlsian toleration as too
universalistic. John Grey, for example, maintains that Rawls’s notion of toleration
does not show sufficient attention to cultural diversity. \(^8\) Michael Walzer denies
there can be any universal principle of toleration that can govern all regimes of
toleration; alternatively, he defends a historical and contextual account of

\(^4\) Ibid.
\(^5\) Ibid, p.59.
toleration.  

Although this line of criticism is worthy of examination, it will not be the concern of this paper. This is because while neither cultural relativism nor communitarianism is necessarily incompatible with liberalism, the paper is essentially interested in the division and disputes among liberal theorists.

In this thesis, I attempt to dismiss the challenge from Rawls’s cosmopolitan critics. Moreover, I endeavor to substantiate Rawlsian toleration as true to liberal commitments and conducive for the realization of liberal values in the long run. The rest of the thesis will be divided into four chapters. For some background, I begin with an account of Rawls’s argument for toleration of decent peoples. Then I present the cosmopolitan critique against Rawlsian toleration. Three sub-criticisms over three points of contention will be identified. In the next chapter, I respond to each criticism in defense of Rawls. This will be followed by a two-dimensional substantiation of Rawlsian toleration. I argue that from a principled perspective, Rawlsian toleration is required by what’s central to political liberalism—reciprocity within public reason; from a consequentialist perspective, Rawls’s LoP with a notion of toleration of decent peoples embedded is conducive to the realization of liberal values in the long run, while a less than tolerant attitude could translate into foreign policy that thwarts instead of facilitates changes in the liberal direction.

CHAPTER 1: RAWLS’S ARGUMENT FOR TOLERATION

In this chapter, I aim to lay out Rawls’ argument for international toleration. I will first clarify Rawls’s conception of “decent peoples.” Then I turn to illustrate what Rawls means by toleration of decent peoples and why he rejects the cosmopolitan ideal that contradicts his notion of toleration. Finally I will revisit Rawls’s international “original position” argument by which he aims to demonstrate decent peoples can be part of the “international overlapping consensus” and are thus to be admitted as members in good standing in the SoP.

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1.1 Decent Peoples

“Peoples” are the actors in the Society of Peoples, just as citizens are the actors in domestic society. Peoples reflect a distinctive national community, but lack the traditional power of states to, for example, wage war. In this sense, peoples are to be distinguished from both “societies” and “states.” In addition, the term “people” emphasizes their moral character and the reasonably just, or decent, nature of their regimes. The conduct of just or decent peoples accords with the corresponding principles of the LoP, rather than being moved solely by prudence or rational interests. Based on this conception of peoples, the LoP is thus a law for nation-states capable of sense of justice.

In the LoP Rawls distinguishes five types of domestic societies: liberal peoples, decent peoples, outlaw states, burdened societies, and benevolent absolutisms. The first two sorts of societies are well ordered. To begin with, liberal peoples share three basic features: first, a reasonably just constitutional democratic government; second, citizens united by what John Stuart Mill called “common sympathies;” and third, a moral character which allows peoples to offer fair terms of cooperation to other peoples and honor these terms when assured other peoples will do so as well.

“Decent peoples” is the second type of domestic society. Decent peoples are non-liberal mostly because they do not have a constitutional democratic government. One of Rawls’s first steps towards developing the LoP is to try to conceive of a non-liberal society that liberal peoples might find reasonable to tolerate. He thus identifies the basic structure of one kind of decent people which has what he calls a “decent consultation hierarchy,” and these peoples he calls “decent hierarchical peoples.” He further describes a hypothetical decent hierarchical people called “Kazanistan” in order to illustrate the type of tolerable non-liberal society he has in mind. To be in good standing in the SoP, decent hierarchical people have to

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11 Ibid, 27.
14 Rawls leaves other kinds of decent peoples in reserve, allowing that there may be other decent peoples
satisfy two criteria, one external and the other internal. First, decent societies do not have aggressive aims. They respect the political and social order of other societies, and even if they seek wider influence, they do so in ways compatible with the independence of other societies. The second criterion has three parts. The first part is that its system of law secures basic human rights, including the right to life, to liberty, to property, and to formal equality. The fulfillment of basic human rights is a necessary—though not sufficient—condition of decency. Secondly, a decent peoples’ system of law imposes bona fide moral duties and obligations on all its citizens, and the citizens, in turn, recognize those duties and obligations as fitting with their common good conception of justice. Accordingly, there is a decent scheme of political and social cooperation. Thirdly, there must be a sincere and not unreasonable belief on the part of judges and other officials that the law is indeed guided by a common good idea of justice.

Thus, just as the government of a liberal democratic society, the government of a decent consultation hierarchy has an obligation to honor human rights, to take political dissent seriously and to give a conscientious reply. However, there are major differences between liberal peoples and decent ones such as the hierarchical kind. Other than not having a constitutional democratic government, decent peoples do not have a conception of justice that reflects ideas as to what reciprocity among equal and reasonable individuals requires. The ruling conception in the decent society favors the members of some groups over others though gives an otherwise fair hearing to the representatives of the less favored groups. In addition, the human rights list they adopt does not include all the rights that liberal governments guarantee. Such liberal rights include the right to political participation, equal political representation, and equal liberty of conscience. For example, although no

whose basic structure does not fit his description of a consultation hierarchy but who are worthy of a membership in a SoP.

15 As we shall discuss later, Rawls’s short list of basic human rights is a target of the cosmopolitan attack...

16 Rawls, LP, pp.65-66.

17 A decent hierarchical society allows an opportunity for different voices to be heard. Persons as members of groups have the rights at some point in the procedure of consultation to express political dissent, and the government has an obligation to take a group’s dissent seriously and to give a conscientious reply. Dissent expresses a form of public protest and is permissible provided it stays within the basic framework of the common good idea of justice. Rawls, LP, p.72.
religion is persecuted, the established religion of a decent hierarchical society may have some privileges, which implies some unequal restrictions on liberty of conscience. Despite these differences, given their basic institutions meet certain specified conditions of political rights and justice and lead to their citizens to honor a reasonably just law for the SoP, decent peoples are to be recognized as members of SoP in equal standing with liberal peoples.

Other than reasonable liberal peoples and non-liberal decent peoples, Rawls also identifies “outlaw states,” “burdened societies” and “benevolent absolutisms.” These three types of societies are considered not well ordered. Rawls deals with liberal and decent peoples in the “ideal theory,” and the other peoples in the “non-ideal theory.”

1.2 Toleration of Decent Peoples

According to Rawls, a liberal people is to tolerate and accept a non-liberal society provided its basic institutions meet above-specified conditions and lead its peoples to honor a reasonably just law for the SoP. While the liberal conception of justice is sound on due reflection, the decent common good idea of hierarchical peoples is a minimal idea—its being realized by a society renders its institutions worthy of toleration. Although Rawls outlines an idea of justice of only one kind of decent peoples here, there may be a wide range of institutional forms satisfying decent hierarchical ideas. It is Rawls’s view that although distant from liberal conceptions, decent hierarchical ideas have features that give to societies so regulated the decent moral status required for them to be members in good standing of a reasonable SoP.

To Rawls, toleration means not only refrainment from interventions, but also that these decent peoples should be treated as members of equal standing in the SoP

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18 “Outlaw states” are those who refuse to comply with a reasonable LoP; “Burdened societies” face unfavorable social, economic and historical conditions that make them difficult—if not impossible—to be well-ordered; “Benevolent absolutisms” deny their members a meaning role in political decision making, and hence are not considered well-ordered. Rawls, *LP*, 4-5, p. 106.
19 Ibid, pp. 59-60.
20 Ibid, p. 68.
21 Ibid.
with certain rights and obligations. Decent peoples should not be subjected to intervention, sanctions, or economic or diplomatic incentives to adopt liberal ways of life, as long as they continue to abide by the LoP. In a word, the admission for non-liberal but decent societies to the SoP as Rawls advocates would entail a high degree of toleration of the members’ way of organizing themselves internally.

Rawls acknowledges that some might say there is no need for the LOP to develop an idea of toleration. For it might be argued that liberal peoples should judge other societies by how closely they express and realize a reasonable liberal political conception. The argument would be that since non-liberal peoples fail to treat persons as truly free and equal, they are therefore always properly subject to sanctions. Rawls rejects this view. He provides several reasons as to why liberal societies should accord equal respect to decent hierarchical peoples. First, liberal ways of ordering society is not the only acceptable one, and societies that organize themselves in other ways are worthy of toleration. A liberal society respects its members’ comprehensive doctrines as long as these doctrines are pursued in ways congruent with its political conception of justice; analogously, the SoP should tolerate hierarchical ordering of some non-liberal societies, provided that they fulfill conditions necessary for the protection of “urgent” human rights and for a common good idea of justice. Second, decent hierarchical societies do not deny their citizens’ right to be consulted; rather they allow citizens to play a substantial political role in making political decisions. Rawls has also suggested that given the opportunities for dissent in consultation hierarchies, change towards a liberal society is possible and oppression not inevitable. Third, there is undesirable consequence of not tolerating non-liberal decent societies: those peoples subjected to interventions or politically enforced sanctions will be denied a due measure of respect, which could give rise to great bitterness and resentment that would threaten

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23 Ibid, 59, pp.84-85.
24 Rawls, *LP*, pp.59-60; 82-83.
26 Ibid, p.140.
international stability and peace. Finally, facts of history cannot confirm the claim that only liberal governments can ensure the protection of human rights. The possible existence of oppressive hierarchical societies does not deny the possibility of the existence of decent hierarchical societies whose basic structure complies with the political values of a liberal conception of justice. “Without trying to work out a reasonable liberal Law of Peoples,” Rawls notes, “we cannot know that non-liberal societies cannot be acceptable.”

In view of this, I shall now go on to present how Rawls works out a reasonable LoP shared by liberal and decent peoples, which serves to demonstrate that decent peoples are worthy of toleration.

1.3 International Original Position and Overlapping Consensus

In order to develop the LoP, namely the principles of justice for the international domain, Rawls deploys the original position (hereafter OP) device. The OP is a model of representation, in which parties as rational representatives are equally situated behind a veil of ignorance. In what follows I will review Rawls first use of the OP in his theory of domestic justice, and then explain his second use of the OP, i.e. the original position at the international level.

In PL, Rawls seeks a political conception of justice for a democratic society, one in which there is a diversity of comprehensive doctrines, all perfectly reasonable. This is the fact of reasonable pluralism. It entails that citizens of liberal democracies could reasonably disagree on many fundamental moral, religious and

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29 Rawls, pp.82-83.
30 A comprehensive doctrine is a system of moral beliefs not only about the specific subject of political institutions, but also about a wider range of subjects, such as how best to lead one’s life, what sort of virtues to aspire to, what sort of relationships to have, and so on. Comprehensive doctrines frequently also involve views about the metaphysics and epistemology of the moral beliefs in question. Examples of comprehensive doctrines are: religions, utilitarianism, Kantianism. See “Justice as Fairness as a Political Conception: the Fact of Reasonable Pluralism and Recasting the ideas in *Theory,*” University of California Berkeley, http://sophos.berkeley.edu/kolodny/Su07Phil115H13.pdf (accessed April 27, 2014). Rawls states the difference between political liberalism and comprehensive liberalism as follows: “Beyond the requirements already described [requirements for children’s education including knowledge of constitutional and civil rights] justice as fairness does not seek to cultivate the distinctive virtues and values of the liberalisms of autonomy and individuality, or indeed of any other comprehensive doctrines.” In John Rawls, *Political Liberalism (Expanded Edition)* (New York: Columbia University Press, 2005), p. 200.
philosophical issues. Rawls proposes therefore leaving comprehensive doctrines aside and, instead, drawing the content of a political conception of justice from the public political culture of a democratic society. For that end, Rawls employs the original position, which models conditions for parties who are representatives of individual citizens of liberal societies. The representatives are to specify fair terms of cooperation for regulating the basic structure of this society. “The veil of ignorance” inherent to the OP device deprives the representatives of knowledge which might inappropriately bias their decision. Thus the OP also models appropriate restrictions on reasons for adopting a political conception of justice for the basic structure. By carrying out the original position thought experiment, Rawls suggests we can find a political conception of justice justified by a sufficient “overlapping consensus,” as reflected by the choice of the representatives in the original position. This way we come to have a public basis of justification in a society marked by the fact of reasonable pluralism.  

At the international level, the OP is used again in order to extend a liberal conception of justice to the SoP. At this level, the parties in the OP are rational representatives of peoples, instead of individual persons. The veil of ignorance deprives representatives of knowledge of their peoples’ comprehensive doctrine of the good, the extent of their natural resources, the level of their economic development, or other such information. Behind the veil of ignorance, the representatives are to specify the principles of law of peoples, guided by appropriate reasons.

As the first step in the second use of the original position, Rawls concerns the extension of the general social contract idea to the Society of Liberal Peoples. He thus begins with eight familiar and traditional principles of justice among liberal peoples, none of which “is likely to be violated,” such as the principle of non-intervention, respects for treaties, and the duty to honor human rights. He then justifies them by appealing to the first international original position—liberal

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33 Ibid, p.125.
34 For a full list of the eight principles, see Rawls, *LP*, p.37.
peoples’ original position (hereafter LPOP). In the LPOP the representatives of liberal peoples are to make an agreement with other liberal peoples on the principles for regulating relations between them. According to Rawls, the representatives of liberal peoples situated in this way would agree on the eight principles of the LoP.  

In the second part of the ideal theory, Rawls tries to extend the same idea to the Society of Decent Peoples. The aim is to show that there exists decent though non-liberal peoples who accept and follow the same LoP that liberal societies do. This shared LoP, Rawls says, describes the kind of SoP that all liberal and decent societies want, and it expresses the regulative end of their foreign policies. To this end Rawls appeals to the second international original position—decent peoples’ original position (hereafter DPOP). Rawls argues that non-liberal yet decent peoples will indeed accept the same Law of Peoples as liberal peoples do. Such is the “international overlapping consensus.” Rawls's arguments as to why decent peoples will accept the same LoP are as follows. First, decent peoples do not engage in aggressive wars, so their representatives respect the civic order and integrity of other peoples and accept the equality of the original position as fair. Second, the representatives strive to protect human rights and the good of the peoples they represent and to maintain their security and independence. Third, since representatives of decent hierarchical peoples are decent and rational, members of decent hierarchical societies would accept the OP as fair among peoples, and would enforce the LoP adopted by their representatives.

The account given above should give a sense of the rationale behind Rawls’s use of the original position. Yet for explicitly I shall point out what exactly makes the original position device appropriate for developing political conception of justice, in both the domestic and global contexts. First, the OP perfectly models the reasonableness and rationality of the parties. The veil of ignorance prevents the parties from knowing the particular conditions of the societies they are members of.

36 Ibid, p.5.
37 Ibid, p.69.
The parties are rational in that their aim is to do the best they can for those whose basic interests they represent; they are reasonable in that they specify only those terms of cooperation that they sincerely believe others who are not unreasonable will accept as well. Second, it models the symmetry of the situation of the parties as well as the fairness of their representation. Third, the original position embodies the idea of social contract, and to use it this way is to employ a contractarian methodology that gives legitimacy to the parties’ selection in the OP. The principles properly identified without appealing to any particular sort of moral theory or comprehensive conception of the good will stand as a focal point of an overlapping consensus among diverse moral agents.

According to Rawls, the hypothetical original position argument has shown that decent peoples would accept the same LoP as affirmed by liberal peoples. And this follows, according to Rawls, that they can thus be tolerated, recognized and accepted as members in good standing in the SoP.

CHAPTER 2: THE COSMOPOLITAN CRITIQUE

Cosmopolitans hold that all human beings are equal: individual persons are the primary objects for concern in international relations, and the status of ultimate unit of concern attaches to every living human being equally and globally. In this sense, cosmopolitanism is both individualistic and universalistic. Cosmopolitan liberals are committed to one ideal of liberal justice that they think should make demands across societies as well as within societies. In this sense, cosmopolitanism is “comprehensive,” not “political,” in that it holds that autonomy and individuality should be applied to the whole of life, both social and individual.

For cosmopolitan liberals, Rawls’s idea of international toleration is insufficiently liberal and comprehensively unambitious for a liberal project. The charge is raised

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41 Rawls, *Political Liberalism*, p.78.
42 These critics include, for instance, Charles Beitz, Allan Buchanan, Thomas Pogge and Kok-Chor Tan.
against Rawls that he has relaxed the limits of toleration simply to accommodate illiberal societies. In Rawls’s theory of domestic justice, toleration will not be granted to those who insist that principles of justice be publicly justified on religious grounds, or those who believe that political power should be used to spread comprehensive or philosophical beliefs among the public. However, when Rawls applies his political liberalism to the international sphere, non-liberal projects are tolerated. This has been identified as a problematic incoherency. Unconvinced of Rawls’s arguments, the critics argue that Rawls’s international project is a project of modus vivendi, of seeking a compromise between liberal and non-liberal regimes, rather than that of achieving stability with respect to liberal justice.

In what follows, I will locate three points of contention between Rawls and some of his main cosmopolitan opponents. I regard the criticisms over these points as sub-criticisms of the charge against Rawlsian toleration, because Rawls’s arguments on these points are components of his arguments for toleration of decent peoples. This shall become clearer as I proceed.

2.1 Representatives of Peoples rather than Individuals

One of the first steps in both Rawls’s domestic and international theories of justice is to specify who needs to find the principles of justice acceptable and who should determine what these principles are. The specified agents are situated or represented in the OP, responsible for constructing the principles and entitled with veto power over their content. To specify of the units of concern is of importance here, because who are represented in the OP affects what principles would be agreed upon in the OP, and this further has an impact on who can be admitted as members in good standing in the SoP.

In developing LoP, Rawls places representatives of peoples rather than persons in the international original position. Cosmopolitan writers take issue with this

modeling. For them, individuals should be the ultimate unit of concern for theorizing. Rawls does not provide reasons convincing to them as to why, if actors in the domestic original position are individual persons, actors in the global original position should turn out to be peoples. Without such reasons, they suspect that Rawls has done this in order to accommodate the unjust non-liberal peoples.

Charles Beitz argues that Rawls’s decision to model peoples rather than persons in the original position is based on circular reasoning. He objects that Rawls treats peoples as having independent ethical significance pre-theoretically in order to justify his choice of a tolerant law of peoples. 46 Thomas Pogge suggests that Rawls’s methodology was quite un-Rawlsian, asserting that anyone committed to “Rawlsian (or indeed, any other liberal) conception of domestic justice should want the delegates to any global origins position to be conceived as representatives of persons rather than peoples.” 47 An alternative would be a cosmopolitan approach to the law of peoples which begins “by first taking up the question of liberal cosmopolitan or global justice for all persons.” 48

Beitz and Pogge, among others, argue for a global original position in which parties are representatives of “world citizens”, individuals with two moral powers—being reasonable and rational, and are considered free and equal. 49

2.2 “Minimalistic” Human Rights Standard of Decency

According to Rawls, one of the criteria for a decent hierarchical people to be in good standing in the SoP is that it has to honor and protect basic human rights. It is a matter of great importance as to what are counted as human rights, because it affects who are eligible to be granted toleration and admission into the SoP. For Rawls, human rights set a necessary, though not sufficient standard for the decency of domestic political and social institutions. The fulfillment of human rights is “a necessary condition of the decency of a society’s political institutions and of its

48 Rawls, LP, p.82.
legal order” and “sufficient to exclude justified and forceful interventions by other peoples.” In claiming so, Rawls links human rights with the justifiability of interventions of diplomatic, economic and military forms.

As articulated in the LOP, human rights is “a class of urgent rights,” such as freedom from slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and genocide. These rights are essential to any “common good idea of justice” and therefore are not “peculiarly liberal or special to the Western tradition.” Explicitly Rawls distinguishes human rights from constitutional rights, or the rights of liberal democratic citizenship, or from other rights that belong to certain kinds of political institutions. He does not affirm (as basic human rights) the right to nondiscrimination, the right of democratic political participation, the right of freedom of expression, assembly and association (beyond whatever is required for freedom of conscience and religious practice), or economic rights beyond subsistence. These rights distinguish liberal democratic societies from “decent hierarchical societies” as Rawls understands them. He notes that these and certain other rights of the declaration “seem more aptly described as stating liberal aspirations” or “appear to presuppose specific kinds of institutions.

By contrast, cosmopolitans hold that the limits of toleration should be defined not merely by respect for basic human rights, but also by respect for liberal rights. Such liberal rights include equal political representation, full and equal liberty of conscience, and the right to political participation on terms of equality in political decision-making process, etc. Cosmopolitan critics accuse Rawls’s doctrine of human rights of being implausibly minimalistic, which to them serves the purpose of pandering to peoples who they believe do not deserve toleration given their insufficient respect for full human rights. They are worried that the excessively exercised toleration based on the minimalistic human rights criterion would provide justifications for oppression and injustice.

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50 Rawls, *LP*, p.80.
51 Ibid, p.65.
52 Ibid, p.79
53 Rawls, *LP*, p.80, n.23.
Fernando Teson, for instance, blames Rawls for being insensitive to the problems of democratic dissidents and human rights reformers in non-liberal hierarchical societies. For although according to Rawls dissent in a decent hierarchy is allowed at some point, once political decisions are taken in line with the regulative comprehensive conception no further opposition may be publicly organized and voiced. Moreover, given that the freedoms of liberal democracy are not on Rawls’s short list of human rights, dissidents in hierarchical societies cannot hope to find the public support of liberal democracies that accept the Rawlsian guidelines of foreign policy. Beitz agrees with Teson that the LoP endorses too limited a range of human rights and is excessively deferential to societies with discriminatory or undemocratic institutions. 55

Allan Buchanan criticizes Rawls’s human rights notion from another perspective. According to Buchanan, Rawlsian notion of human rights is grounded without “resource to a conception of minimal human good” and “without reliance on the idea that there are many morally fundamental characteristics that all human beings have.” 56 This gives him reason of objection.

2.3 Insufficiently Liberal Principles of the LoP

The eight principles of LoP that Rawls says would be affirmed in the LPOP are listed as follows (Given the research question of this thesis, the principles of primary concern here are 1, 4, 5, and 6):

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-defense but no right to instigate war for reasons other than self-defense;
6. Peoples are to honor human rights;
7. Peoples are to observe certain specified restrictions in the conduct of war;
8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime.

It is objected that Rawls is too conservative in his development of the LoP. The primary principles that Rawls claims would be agreed upon in the original position at the international level look very much like “familiar and largely traditional principles [...] from the history and usages of international law and practice.” As Pogge remarks in discouragement on an early version of Rawls theory of global justice, “I am at lost to explain Rawls’s quick endorsement of a bygone status quo.”

Some have suggested that the representatives of representatives in the LPOP would choose more demanding liberal principles than Rawls says they would. It is tempting to question: why is a liberally justified law of peoples would not be fully content-liberal—that is—why it would not disallow any form of domestic organization apart from liberalism? One might think that given Rawls’s specification of the fundamental interests of liberal peoples in terms of their securing liberal justice domestically, the parties would agree to principles that promote or ensure precisely that—through intervention or sanctions by other peoples if necessary. For Kok-chor Tan, for example, as soon as the relevant restrictions on liberal societies are removed, an action toward decent hierarchical societies is justified on the ground of liberal values.

Before I proceed to respond to these three sub-criticisms, it is important to clarify why I address the second (human rights “minimalism”) and the third

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57 Pogge, Realizing Rawls, p.246.
58 This is the central contention of Pogge, “An Egalitarian Law of Peoples,“ (1994), for example.
(insufficiently liberal principles of the LoP) points of contention separately. Some might get the impression that the two criticisms are almost indistinguishable, for it might be said that both criticisms target at Rawls’s reluctance to incorporate respect for liberal rights into the principles of LoP. My response is as follows. The content of human rights is determined before the principles of the LoP are agreed upon in the LPOP, for the sixth principle, “peoples are to honor human rights,” couldn’t have been specified without already having a conception of human rights in place. If this is correct, then the OP device has no place (or needs not have a place) in explaining and defending Rawls’s notion of basic human rights. Indeed, there are no features of the second level original position argument that throw light on why, for example, the right to participation in political decision-making process does not get on to the list of human rights.\footnote{Alistair M. Macleod, “Rawls’s Narrow Doctrine of Human Rights,” in Rawls’s Law of Peoples: A Realistic Utopia?, ed. Martin and Reidy, p.142.} This is because the second use of the original position, i.e. the use of OP at global level serves the purpose of identifying principles that regulate the relations between peoples; whereas human rights are to regulate how a government should treat its citizens. Therefore, while I have to look into Rawls’s second use of the original position in order to refute the “insufficiently liberal principles” criticism, I do not have to do so with the “human rights minimalism” criticism. This shall become clear as I proceed to defend Rawls against the sub-criticisms respectively.

\textbf{CHAPTER 3: REBUTTING THE COSMOPOLITAN CRITIQUE}

Rawls is not unaware of possible objections from cosmopolitan critics on the three above-mentioned points. Yet despite his attempts to reject the cosmopolitan view, his arguments are not elaborated in sufficient detail. In this chapter, I will try to defend Rawls on the three points of contention.

\textbf{3.1 Peoples instead of Persons}

Recall that the first sub-criticism says Rawls wrongly places representatives of peoples instead of individual persons in the second OP. My response to this
criticism will appeal to, first, the different conceptions of the person; second, the object that the LoP aims to regulate; and third, the global political culture.

First, it is at least arguable that the OP, as a model of representation, has to be designed in a way consistent with—and reflective of—the particular conception of those who are represented in a particular context that has shaped how they see themselves. In Rawls’s theory of justice within liberal constitutional democracies, the OP of persons is a model for a conception of a person as free and equal citizen. This conception is rooted in the tradition of liberal democratic thought. However, not all peoples are equipped with the tradition of liberal democratic thought. Unlike the liberal conception of person, a decent peoples’ conception of the person does not view persons as citizens first and have equal basic rights as equal citizens. Instead, members of non-liberal decent peoples are viewed—by themselves and by other members—as responsive and cooperating members of their respective groups. They each have a group to belong, and can express their interests through the representatives of their groups. They act in accordance with their moral duties and obligations as members of the associations within the society. As such decent peoples have more of an associationist conception of the person. In view of this conception of the person held by decent peoples, and considering that the LoP is to be extended to these decent peoples, the OP as a model of representatives of peoples is more appropriate than that of representatives of individuals.

Second, the purpose of the LoP is not to regulate a single global society but instead how multiple associations should relate to each other as the plural agents, and the OP as a model of representation should be consistent with that purpose. For Rawls, the LoP sets out the basic moral principles to govern an international order morally acceptable to liberal democratic peoples. He views the LoP as guiding principles for the foreign policy of a liberal democratic regime. The essential concern here is this: in what form should cooperative association at the global level take, so that a reasonably just constitutional democracy can exist as a members of a reasonably just SoP? On this point, Rawls rejects, with Kant, a world

\[\text{Rawls, } LP, \text{ p.66.} \]

\[\text{Rawls, } LP, \text{ p.11.} \]
government. Why? To begin with, justice can be done within a cooperative association smaller in scale than a global one, so there is no need for an association which includes all individuals in the world.  Moreover, it is the current state of affairs that individuals’ basic rights and liberties cannot be fully specified and protected without reference to those individuals’ national and territorial affiliation. Thus the national boundaries and state membership are practically indispensable, and will remain so for a long period of time.  Furthermore, a world government could actually turn out worse than plural associations in maintaining ongoing cooperation and achieving international peace and justice. As Rawls quotes Kant, a world government would “either be a global despotism or else would rule over a fragile empire torn by frequent civil strife as various regions and peoples tried to gain their political freedom and autonomy.”  If this is true, then the basic problem of international justice is not a problem to be solved by principles for a basic structure for a single, global society, as the cosmopolitan critics’ favored global original position would. Rather, it should be solved by many appropriately regulated cooperative associations. Accordingly, the design of the international original position should embody the social contract idea in a way that reflects parties to the contract as multiple associations and their representatives, not individuals and their representatives.

Third, recall that in *PL*, given the fact of reasonable pluralism, Rawls proposes drawing the content of a political conception of justice from the public political culture of a democratic society. For that purpose, the original position with the veil of ignorance serves as an appropriate methodological tool. Likewise, Rawls uses OP in LOP to develop a shared LoP whose content is drawn from the shared *global public culture*. The LoP has to be drawn from the global public culture, because it is the only source where we can find ideas and principles acceptable to all, and therefore the only source of overlapping consensus. Reflecting on the current

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66 Rawls, *LP*, p.36.
67 Porter, “Rawls, Reasonableness, and International Toleration,” p. 44.
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global political culture, few can deny that it is primarily international, not interpersonal. There is simply no robust global political culture that emphasizes that citizens of different countries ought to relate fairly to each other as free and equal within a single scheme of social cooperation. The ideas that regulate the institutions of global society are primarily concerned with the nature of nations and their proper relations, not with the nature of person and their proper relations. This can be seen in the structure of the major political and economic institutions such as the United Nations and the World Trade Organization, as well as in the laws that regulate global cooperation and competition in nearly all areas. Even those documents within the global public culture which do proclaim the freedom and equality of all individuals, such as the *Universal Declaration of Human Rights*, are most exclusively concerned to establish limits on how domestic governments may treat individuals within their territories. They do not set out any substantive conception of how “citizens of the world” should relate directly to one another.  

It is clear, then, for the LoP to be drawn from a shared public culture of the SoP, the OP as a model to work out the principles has to reflect the nature of that culture as being primarily international, not interpersonal.

3.2 A Practical Conception of Human Rights

Recall that as said Rawls’s cosmopolitan opponents criticize him for being too forgiving of oppressions and his human rights notion deprived of any fundamental moral characteristics of human beings. They argue, instead, that liberal standards should serve as a benchmark for the legitimacy of a people. There is some truth in cosmopolitan criticism on this point because, indeed, a broader doctrine of human rights—one that included liberal rights—would make it impossible for Rawls to claim that decent societies respect and protect human rights. Undoubtedly, should the conception of human rights preferred by cosmopolitan liberals be adopted, there would be little—if not no—space for Rawlsian toleration of decent peoples in *the Law of Peoples*. However, the cosmopolitan criticism is unfair to

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claim that Rawls narrows the content of human rights in order to pander to non-liberal peoples. In order to defend Rawls on this point, I shall present two conceptions of human rights, one “orthodox” and the other “practical”; and I will argue that it is Rawls’s concern with the international practice of human rights that leads him to a “practical” conception of human rights, which is more compatible and conducive to human rights enforcement.

The first conception of human rights is what Charles Beitz calls the “orthodox” conception. The distinguishing feature of this conception is the idea that human rights have an existence in the moral order that is independent of their expression in international doctrine. Typically, they are considered to reside at a deep, perhaps even a fundamental, level of our moral beliefs and to be discoverable by reason or rational intuition. Thus, human rights are sometimes said to be “natural” or to belong to persons “simply in virtue of their humanity.” On such views, international human rights derive their authority from these underlying values that constitute their foundation. Adherents of the orthodox view tend to be skeptical that human rights should be construed as embracing the very wide range of political values found in international doctrine.70

By contrast, there is the “practical” conception of human rights which takes the doctrine and discourse of human rights as we find them in international political practice as basic. A practical conception would treat the justification of human rights as a distinct problem from that of their content. There is no assumption of a prior or independent layer of fundamental values whose nature and content can be discovered independently of reflection about the international realm and then used to interpret and criticize international doctrine. Instead, the functional role of human rights in international discourse and practice is regarded as definitive of the idea of a human right, and the content of international doctrine is worked out by considering how the doctrine would best be interpreted in light of this role. 71

Rawls’s view of human rights in The Law of Peoples represents a “practical”

conception. As Rawls emphasizes, the LoP does not follow the path of comprehensive doctrines in basing the idea of human rights on “a theological, philosophical, or moral conception of the nature of the human person.” 72 Rather, human rights “express a special class of urgent rights” whose violation “is equally condemned by both reasonable liberal peoples and decent hierarchical peoples.” Their political function is to “restrict the justifying reasons for war and its conduct, and they specify limits to a regime’s internal autonomy.” 73 The consistency of a regime’s domestic law with human rights is necessary for the regime to be a member “in good standing in a reasonably just Society of Peoples” and “is sufficient to exclude justified and forceful intervention by other peoples.” 74 Thus the fulfillment of the special class of human rights (together with peaceful existence) is taken by Rawls as the sufficient condition for legitimacy and international tolerance. The abstract and constructive idea behind Rawls’s human rights notion is that the public role of a political doctrine of human rights constraints its content. Based on this idea, human rights doctrine should be constructed in a way so that appeals to human rights suffice to justify interference (by the world community or its agents) in the states’ internal affairs. This is one important respect in which a practical approach to human rights can be critical of existing practice. 75

Given what’s been said above, we may now come to appreciate Rawls’s human rights notion in LP. Three merits can be listed as follows. First, a practical conception of human rights would identify human rights as not merely desirable or aspirational goals, but morally necessary ones. Rawls restricts the list to the rights that regulate permissible state action; this way state and social institutions that fail to protect those rights will be considered defective in that they fall short of meeting conditions that anyone would reasonably expect them to satisfy. This has significant implications because it would allow—or sometimes require—international efforts to intervene in the domestic affairs of certain countries. 76 In view of this, instead of

72 Ibid, p.81.
73 Rawls, LP, p.79.
74 Ibid, p.80.
75 Ibid, p.16.
76 Ibid, p.25.
what Rawls’s cosmopolitan critics might suggest, Rawls’s notion of human rights would not grant protection to those truly oppressive regimes. On the contrary, by asserting morally necessary and imperative human rights goals, Rawls’s human rights criteria for decency would leave ample room for justifying coercive foreign policy towards states such as Sudan and Burma.  

Second, unlike a more extensive list of human rights that cosmopolitan liberals would prefer, the acceptance of human rights in LP does not rely on any particular comprehensive moral, religious or philosophical view. Rather, human rights as conceived by Rawls could be accepted as compatible with all reasonable political doctrines. This is important because a relatively undisputed, and political (rather than comprehensive or ideological) view of human rights is crucial to the success of international practice of human rights. With a human rights notion more firmly grounded on an international consensus rather than a particular moral view stemmed from a particular cultural background, the human rights enforcements are likely to take place with greater level of legitimacy and effectiveness and less objections and impediments.

Third, compared with a cosmopolitan conception of human rights which would include all liberal rights, Rawls’s human rights notion provides a better ground for avoiding imperialism and parochialism by restricting liberal states to use coercion and wage war against non-liberal societies. As said, one of the roles of human rights in international political discourse is that human rights violations may serve to justify interference in the internal affairs of states or other local communities. Rawls takes this role very seriously. His cautious approach towards intervention as a means of protecting human rights does not represent a lack of genuine commitment to human rights; nor does his human rights minimalism serve as a function of concessions to or accommodations of neoliberal peoples. Rather, his

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77 Margaret Jenkins, “Being Liberal Abroad: An Elaboration and Defense of Rawls’s Argument for Toleration” (paper presented at the annual meeting of the the Midwest Political Science Association, Palmer House Hilton, Chicago, Illinois, United States, April 7-10, 2005), p.34.
caution is informed by the danger of open-ended decisions followed from general moral principles. By putting the limit of toleration at the violation of a list of “urgent human rights,” Rawls’s human rights notion reduces the risks of international instability and conflicts caused by imperialist conducts.

3.3 Less than Fully Liberal Principles of the LoP

To explain why representatives of liberal peoples would not agree to more content-liberal or even fully liberal principles of LoP, I shall revisit the first international original position (i.e. LPOP) arguments and defend Rawls by appealing to the idea of public reason and the principle of reciprocity.

The idea of public reason is central to political liberalism. In a constitutional democratic regime, political liberalism proposes that comprehensive doctrines of truth or of right are to be replaced in public reason by an idea of the political reasonable addressed to citizens as citizens. Free and equal citizens deliberate in public reason the constitutional essential and matters of basic justice concerning their own governments. In developing LoP within political liberalism, Rawls extends the idea of public reason to the international context. Analogous to the public reason of free and equal citizens, there is the public reason of free and equal peoples debating their mutual relations as peoples. The LoP within its political concepts and principles, ideals and criteria, is the content of the public reason of the SoP. As Rawls says, the LoP ask of other societies only “what they can reasonably grant without submitting to a position of inferiority or domination” and “what they can reasonably endorse once they are prepared to stand in a relation of fair equality with all other societies.”

This public reason operative among members of the SoP requires that the deliberation of the LoP follow the principle of reciprocity. The principle of reciprocity says that it is part of people’s being reasonable and rational that they are

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80 Rawls, LP, p.55.
81 Ibid.
82 Ibid, pp.121-122.
ready to offer to other peoples fair terms of cooperation that they sincerely believes that other equal peoples might accept. This is to say that, in specifying the principles of the law of peoples, liberal peoples’ representatives in the LPOP must believe that it is reasonable for other well-ordered peoples to accept those principles as fair terms of cooperation. They must believe that the principles can be justifiable to all other members of SoP in terms that they accepts, so that they can be approved, endorsed and acted upon as fair terms of political cooperation. This requirement follows that the specified principles of the law of peoples should be in no conflict with the fundamental interest of both liberal and decent peoples, otherwise they would not be seen as justifiable.

Now consider, in the OP, the parties would do their best to secure the fundamental interests of those whom they represent, given their rationality. What are the fundamental interests in question? As discussed, the parties in the LPOP are representing the interests of liberal peoples, not individual citizens within liberal society. Therefore, they are not motivated simply to safeguard the basic interests of citizens as given by the two moral powers—which would have led them to the choice of fully liberal principles. Rather, they are motivated in securing the fundamental interests of peoples—in this case liberal peoples. According to Rawls, a people have fundamental interests in its territory, political independence, self-respect, and autonomy. Most particularly, “self-determination, duly constrained,” says Rawls, “is an important good for a people,” whether liberal or non-liberal decent ones. Many societies that are liberal in character today are developed from a less than liberal society upon their autonomous pursuit of justice. In view of this, the parties in the LPOP would do their best to make sure that the liberal peoples they represent can realize liberal justice in their own way on their own terms.

Then consider, what facts do the representatives of liberal peoples know and what they do not? They would know that they represent liberal societies and accordingly know the reasonably favorable conditions obtain that make

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85 Rawls, LP, p.34.
86 Ibid, p.85.
cosmopolitan democracy possible. They know their fundamental interests are expressed by the liberal principles of justice for a domestic society. They also know that none of the peoples they represent are perfectly just. However, the representatives would have no knowledge of how other peoples are organized internally and what conceptions of justice they hold, though they do know that many of the peoples they represent will reasonably disagree over what liberal democratic justice requires and the extent to which any of them approximates those requirements. Therefore, situated behind the veil of ignorance, the representatives of liberal peoples are uncertain of whether domestic liberalism would be seen as acceptable to other peoples with diverse conceptions of justice and the good.

Having specified the known and the unknown, we come to the question: given the rationality of the representatives and the commitment to reciprocity within public reason, are fully content-liberal principles likely to be affirmed? Since the law of peoples is not only the law for the SoP but also the guiding principles for the foreign policy of liberal peoples, an agreement on a fully content-liberal law of peoples would have dramatic implications on the rights and international status of less-than-liberal peoples. In terms of rights, the right of nonintervention, territory integrity, and political autonomy of peoples less than fully liberal would likely be compromised or denied. The fully content-liberal law of peoples would license or even require measures against non-liberal societies in people’s domestic affairs in order to guarantee liberal institutions, such as intervention, sanction, isolation, and condemnation, etc. In terms of international status, under a fully liberal law of peoples, non-liberal peoples who do not honor full liberal rights would not be recognized as members in equal standing with liberal peoples, but instead be excluded from the SoP. Given what has been said, would a fully content-liberal law of peoples be seen as acceptable, first, to liberal peoples who take pride in their achievement of liberal justice as a result of autonomous pursuit of justice independent from external interference? I would answer in negative. Would a fully content-liberal law of peoples be seen as acceptable, second, to non-liberal peoples

87 Ibid, p.33.
whose fundamental interests could be encroached by such a law? The answer is, again, a resounding “No.” Thus whether from the perspective of the rationality of parties in the LPOP or of the principle of reciprocity, representatives of liberal peoples would find themselves unable to agree to principles requiring the realization of a particular kind of liberal justice binding on (and in principle enforceable against) all member peoples.

The consideration in the foregoing argument—one that explains why a liberally justified law of peoples would not permit forced intervention for instituting domestic liberalism in members peoples—can be invoked again to explain why sanctions are also to be restricted by the LoP. Although sanctions are less interventionist, they are still unduly coercive. Just as forced interventions are not compatible with member peoples’ political autonomy, so are sanctions. In addition, Rawls argues against offering non-liberal decent peoples incentives to become more liberal in their domestic organization. As Joseph Raz argues, manipulation is objectionable for the same reasons that coercion is objectionable: it interferes with autonomy of a people as well as its individual members. Rawls’s objection to the granting of incentives or subsidies to decent peoples can be understood as an objection to manipulation. Just like forced interventions and sanctions, interference by granting incentives would threaten decent peoples’ opportunity “to decide their future for themselves,” and fail to honor the principle of reciprocity.

Some might object that Rawls’s conception of international toleration leaves democratic injustice within decent non-liberal societies unresolved. This objection is unfounded, because as far as LP is concerned domestic injustice is beside the point. In developing the LoP, Rawls is not concerned with the fate of citizens of different societies, but with the justice and stability of a society of peoples who need not to be fully just but sufficiently just (decent and legitimate).

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CHAPTER 4: SUBSTANTIATING RAWLSIAN TOLERATION

While the previous chapter deals with the individual sub-criticisms, it does not give an overall vindication of Rawlsian toleration. Why should the LoP express toleration for decent but non-liberal peoples? Why are decent peoples to be accepted as members in good standing in the SoP? In this chapter, I will build upon previous arguments and put the pieces together into a two-dimensional justification of Rawlsian toleration, one principled and the other consequentialist. The first dimension allows us to see the necessity of Rawlsian toleration by appealing to principled reasons such as the norm of legitimacy, the principle of reciprocity and respect for comprehensive doctrines. The second-dimension justification appeals to the long-term consequence of Rawlsian toleration on the prospect of realizing liberal values globally.

4.1 The Principled Dimension

“Political liberalism, with its ideas of realistic utopia and public reason, denies that stability among peoples can never be more than a modus vivendi.”92 In extending a liberal conception of justice from a domestic regime to a SoP, Rawls aims to ensure the content of the LoP remain stable not as a modus vivendi, but for the right reason over time and applicable to ongoing cooperation. To that end there has to be an allegiance to the LoP itself. 93 What is important to note here is Rawls’s shift from his earlier focus on “justice as fairness” in TJ to “a family of liberal principles” in his later works such as PL and LP. Underlying this political turn is Rawls’s increasing concern with the legitimacy of reasonably just democratic societies (in PL) and the reasonably just Society of Peoples (in LP). 94

92 Rawls, LP, p.19.
93 Ibid, pp.44-45.
94 The fundamental norm of legitimacy is a generalization of the liberal principle of legitimacy in PL. Legitimacy is a more permissive standard than justice: institutions may be legitimate without being wholly just, and no doubt many nations’ institutions are exactly this way. Yet the laws of a legitimate basis structure are sufficiently just that it is justifiable to enforce them. Moreover, the laws of a legitimate basic structure are sufficiently just that foreigners may not permissibly intervene to attempt to change these laws. Legitimacy is in this way a primitive concept of normative recognition both for those within and for those outside a basic structure. Citizens who recognize laws as legitimate will see these laws as appropriately rather than as merely coercively enforced; and foreigners who recognize a government as legitimate will see this government as a rightful authority. Rawls’s vision of a well-ordered society of people is, in essence, that each people should be just by its own lights within the bare constraints of political legitimacy, and
Rawls believes that for global institutions to legitimately exercise coercive political power, those institutions and the principles guiding them have to be accepted and endorsed by all well-ordered peoples. Accordingly, the compliance with the law of peoples should be grounded in public norms and shared reasons. In Rawls words, a reasonable law of peoples must be acceptable and justifiable to all reasonable peoples who are diverse; and it must be fair between them and effective in shaping the larger schemes of their cooperation.\textsuperscript{95} The idea is not to “prescribe principles of justice for decent peoples, but to assure that “the ideals and principles of foreign policy of a liberal people are also reasonable from a decent non-liberal point of view.”\textsuperscript{96} As David Reidy points out, Rawls certainly hopes for a world within which all peoples are liberal and democratic; but he hopes even more deeply that we can find our way to that world without violating the demands of reciprocity within a shared human reason.\textsuperscript{97}

It can be said, then, that Rawls’s theory of international justice takes the justifiability of a law of peoples as the measure of its legitimacy. Here, the norm of legitimacy encounters the principle of reciprocity on the point of justifiability. Recall that reciprocity within a shared public reason is a commitment fundamental to political liberalism; it provides that those specifying terms of cooperation’s must think that it at least reasonable for others to accept them (3.3). In specifying principles of the law of peoples, the representatives of peoples have to sincerely believe that other equal peoples might accept those principles also; and should they do so, a people will honor the terms it has proposed even in those cases where that people might profit by violating them.

Only when a law of peoples expresses a Rawlsian notion of international toleration can it be deemed by member peoples as legitimate and reciprocal. As Rawls maintains, if “member peoples employ public reason in their dealing with

\textsuperscript{95} Rawls, \textit{LP}, pp.11-12.
\textsuperscript{96} Rawls, \textit{LP}, p.10, p.58.
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one another,” “the effect of extending a liberal conception of justice to a Society of Peoples makes it inevitable” that “toleration must follow.” By contrast, a cosmopolitan law of people, one that does not tolerate decent peoples in the sense that Rawls does, would fail to honor the norm of legitimacy and the principle of reciprocity. Why? According to cosmopolitan liberal Kok-chor Tan, a “cosmopolitan conception of toleration” would ask liberal peoples to take a more critical stance toward non-liberal societies and to not recognize them as members in good standing of the SoP. Tan seems to think liberal states simply cannot accept decent hierarchical societies as members of good standing in a SoP without compromising their own commitment to liberal values. However, in light of the the norm of legitimacy and the principle of reciprocity accounted above, we have to ask whether this stance really accords with fundamental liberal values or compromise them. The decent peoples, by being decent, already satisfy the criteria of non-aggressiveness and domestic legitimacy. Further, they are willing to honor the commitment to reciprocity by complying with the agreed-upon set of international legal rules. If these conditions are already met, is there any sound ground for liberal cosmopolitans to exclude decent peoples from the SoP? By denying decent peoples as equal participating members with certain rights and obligations as liberal peoples, a cosmopolitan law of people would make decent peoples vulnerable to threats to their political autonomy, free culture, self-respect, among others. It can hardly be imagined how an international order as such, one guided by a cosmopolitan conception of toleration (if it can really be called “toleration”), could be seen as reciprocal and fair. If a law of peoples fails to be reciprocal and fair, how legitimate could it be? And how liberal could it be?

By expressing toleration for decent peoples, Rawls’s LoP secures space for individuals to develop principles of justice to govern their own society and to base their political institutions on a common good idea of justice to which they subscribe. Rawls does not assume that all persons hold or desire a liberal

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100 Jenkins, “Being Liberal Abroad,” p. 23.
conception of the person, or the good, or the just. Underlying Rawls’s conception of international toleration is an objection to imposing principles of justice that people do not understand or agree with, namely those that, however just, are not their own. In Rawls’s word, “regardless of whether some ways of life are good in themselves, it is surely a good for individuals and associations to be attached to their particular culture and to take part in its common public and civic life.”

Rawlsian toleration protects individuals who believe in non-liberal political, which further helps minimize public conceptions of justice that are unacceptable for those governed by them.

4.2 The Consequentialist Dimension

The consequence referred to here is the ultimate realization of a liberal conception of justice globally (and preferably domestically as well). Since cosmopolitan liberals and political liberals like Rawls share their commitment to liberal principles and values, there is sufficient reason to believe that this goal is desirable in the eyes of both Rawls and his cosmopolitan critics. The difference is that while Rawls’s progressive approach to international justice—with an expression of respect and toleration for diversity as well as a sense of caution towards force and coercion—is conducive to achieving the desired outcome, liberal cosmopolitans’ dogmatic advocacy for the application of liberal principles everywhere would make that outcome unlikely. In what follows I shall explain in greater detail why this is the case.

Rawls’s LoP with a notion of toleration shows a historical and progressive view of political change, one that gives ample room for those peoples to become liberal in their own ways. No country is built liberal and democratic. Liberal justice can be realized only if it is based on consent, mutual recognition and respect and through a people’s autonomous pursuit of justice. As Reidy points out, liberal democratic peoples today regard their own domestic orders as their own achievements and thus

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102 Ibid, p.35
103 Jenkins, “Being Liberal Abroad,” p.25.
as one of their greatest sources of pride as peoples. All societies undergo gradual changes and there is no reason to doubt decent people’s own abilities to change in the right way. By recognizing these societies as bona fide members of the SoP, liberal peoples encourage this change. If liberal societies can respect and cooperate with non-liberal societies, decent societies will be more likely to recognize the superiority of liberal institutions and take steps in a liberal direction on its own initiative. By positively engaging non-liberal decent peoples in international affairs with liberal peoples, there could exist a positive externality that may foster change in the liberal direction. Moreover, prodded by the dissents of members of these peoples, as Rawls mentions, the common good conception of justice held by decent peoples may gradually change over time. “If a liberal constitutional democracy is indeed superior to other forms of society,” as Rawls says he believes, “a liberal people should have confidence in their convictions and suppose that a decent society, when offered due respect by liberal peoples, may be more likely, over time, to recognize the advantages of liberal institutions and take steps toward becoming more liberal on its own.”

By contrast, adopting a cosmopolitan alternative law of peoples lacking of Rawlsian toleration would have negative implications on the achievement of liberal justice. Cosmopolitan liberals’ dogmatic adherence to a fully liberal law of peoples would imply a foreign policy of liberal people that is “to act gradually to shape all not yet liberal societies in a liberal direction, until eventually all societies are liberal.” This foreign policy could easily translate into unrestricted use of interventionist measures in order to change non-liberal political institutions. However, genuine and lasting changes in a society’s political arrangements towards liberalism are unlikely to be fostered by forceful interventions or coercion. The desirableness of liberalism does not change the coercive nature of imposition, and

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105 Rawls, LP, p.61.
106 Ibid.
110 Ibid, p.82.
cannot be used to justify imposition. Just as liberal people would find the imposition of non-liberal practices outrageous, non-liberal people would likewise find the imposition of liberal way of life outrageous.\textsuperscript{111} As a result, sanctions or interventions could lead decent peoples to withdraw their willingness of cooperation with liberal peoples and even their allegiance to the LoP,\textsuperscript{112} and invite the resolution of reasonable international disagreements through ongoing violence cut free of shared or potentially shared reasons.\textsuperscript{113} Even if as an immediate result the intervention managed to install liberal institutions in a previously non-liberal society, it would not be conceived by members of decent peoples as their autonomous achievement of justice. In the long run, the imposed liberalism is unlikely to survive and thrive in an environment that does not yet provide robust resource for liberal institutions to be supported. Consider historical facts of military interventions in the name of democratization. In how many cases did these interventions really succeed in eliminating injustice and “implanting” democracy?

Of course, it might be argued that there is the option of a non-interventionist cosmopolitan alternative to Rawlsian toleration. Kok-chor Tan, for example, states that a global basic structure informed by the cosmopolitan ideal need not diverge in practice from Rawls’s LoP while the cosmopolitan position will set higher ideals for a just society of peoples to aspire to.\textsuperscript{114} According to Tan, cosmopolitans will agree with Rawls not to engage in military intervention against decent peoples. Yet unlike Rawls, cosmopolitans like Tan do not recognize non-liberal societies as equal members of the SoP. Here is my response to Tan. First, it is at least questionable whether a cosmopolitan conception of toleration can really stay non-interventionist when applied to the practical problems of foreign policy. In his discussion on interventions, Tan argues that the illegitimacy of a domestic society as defined in liberal terms is the necessary but not sufficient condition for

\textsuperscript{113} Ibid; Of course, intervention in order to protect urgent human rights will not be an encroachment on the fundamental interests of a people, but may serve to prevent a people from dissolution resulted from gross human rights violation.
intervention with liberal goals. He mentions several other conditions to be met in order to intervene in a non-liberal society, including: the existence of a moral crisis in that society, the proper authorization of intervention, and a good chance that the action will produce the desired result. But Tan omits an element absolutely central in the just-war tradition, namely that of “right reason.” It seems that Tan conceives the “right reason” issue as being settled on the basis of the moral superiority of liberal values. Tan is so convinced in this superiority that he could not imagine members of a decent but non-liberal society would not benefit if their society (and the world) is “converted” into a liberal one, even—if needed—by means of force.\textsuperscript{115} In my view, Tan’s cosmopolitan conception of international toleration entails high risks. Although it does not explicitly state a norm of intervention, its implicit prejudice against moral and political doctrines other than liberal ones tends to lead to interventionism for the imposition of liberal values.

Second, let us set aside for now whether cosmopolitan liberalism needs not to be interventionist. Let me assume, for the sake of argument, that Tan is correct in saying that under a cosmopolitan law of peoples a less-than-fully-liberal state is not vulnerable to interventions and attack. Even if this was the case, I believe the less than respectful and tolerant policies against decent peoples followed from a cosmopolitan theory would still result in undesired consequence. As said, according to Tan, liberal states should not recognize decent non-liberal peoples as equal members of the SoP.\textsuperscript{116} However, this “withholding” policy is inadvisable for both principled or consequentialist reasons. To begin with, non-recognition tends to isolate non-liberal societies and give rise to greater “bitterness” and “resentment.” Considering the practice of international relations, it is rarely—if not never—the case that non-recognition alone turns out to succeed in making non-liberal societies adopt liberal principles. Moreover, who is to decide which societies would qualify for membership of the SoP, and based on what criteria? Tan might suggest that the liberal league of peoples has the right to decide. Yet given what I have said in the


previous section, there are sufficient principled reasons (legitimacy, reciprocity, etc.) for not making liberal peoples as the sole decision/law-maker. In addition, this “withholding” policy entailed by Tan’s cosmopolitan conception of toleration would lead to an international society that falls far short of a liberal ideal, one that is not even capable of effectively dealing with international issues of cooperation and disputes. If only societies that are liberal qualify as members of good standing in the SoP, then only a small number of societies would be admitted into the SoP. This SoP, due to its exclusive nature and limited scale, would be ineffective in providing overarching regulations of international affairs. Non-liberal peoples who are denied admittance to the exclusive Society would not conceive its exercise of power as legitimate; without equal recognition, they would not even be willing to negotiate with liberal peoples on matters of international concern. Thus a Society with less stringent criteria for entrance would likely be established in order to address issues of imminent importance. 117 The coexistence of such two Societies, one exclusively “liberal” and the other more inclusive, is obviously conducive to the establishment of a global order informed by the liberal idea of justice. For one thing, decent peoples would not view the non-recognition policy as incentives for them to make changes towards democratization and liberalization—instead, they would see the self-righteous liberal societies as unfriendly and liberalism unappealing. For another, in such a dual-Society system, there would be no global regulations and institutions able to legitimately and effectively govern all political entities. Without such regulations and institutions, how can a liberal idea of justice be promoted, extended and realized world widely?

4.3 “Principled Consequentialist” Liberalism

Given what has been said in the two sections above, I propose an understanding of Rawls’s LoP as a “principled consequentialist” liberal project. By characterizing the LoP as “principled consequentialist,” I am suggesting this: On the one hand, Rawls is committed to liberal principles (individualism, freedom,
equality, autonomy, public reason, reciprocity); on the other hand, he takes into serious consideration the real-world political, historical and social conditions and reconcile to them when necessary in order to secure the best outcome available for the realization of the liberal values in the long run. To better comprehend my use of the term “principled consequentialist” liberalism, consider John Stuart Mill’s attempt to reconcile the principle of utility with the privileged role of individual freedom. Of course, it is controversial whether his attempt is successful, but that’s beside the point. My point in bringing Mill up here is this: just like Mill’s appeal to utility does not undermine the priority he assigns to liberty, Rawls’s invoking considerations of stability does not make his LoP less genuinely liberal.

To give a more specific explanation of what I mean by “liberal consequentialist” liberalism, I shall draw upon Rawls’s account of the “realistic utopia”. According to Rawls, political philosophy is “realistically utopian when it extends what are ordinarily thought to be the limits of practical political possibility.” A reasonably just law of peoples is “utopian,” on the one hand, in that it uses political and moral ideas, principles, and concepts to specify the reasonably right and just political and social arrangements for the SoP. This can be related to what I mean by “principled.” In LP as much as in TJ and PL, Rawls is committed to the liberal idea of justice and explicit about his preference for liberal constitutional democracy. This much he shares with cosmopolitan liberals. Otherwise, he would not have taken the liberal idea of justice as the starting point for developing the LoP and later extended it to the SoP.

The “realistic” part of “realistic utopia”, on the other hand, asks us to reconcile to conditions that limit what is practicably possible in our search for a law of peoples that is workable and applicable to ongoing cooperative political arrangements and relations among peoples. This account of the “realistic” can be related to what I mean by the “consequentialist” dimension. The consequence in

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118 In making the link between “principled consequentialism” and “realistic utopia”, I am not saying that the two are identical; Rather, I am simply indicating that “principled consequentialism” can be viewed through the lenses of Rawls’s “realistic utopia” account.

119 Rawls, LP, p. 11.

120 Ibid, p. 17.
question, i.e. the realization of liberal justice, would be unlikely if a stable peace cannot be maintained among pluralistic societies. To maintain a stable peace, it is imperative to take the real-world conditions into serious consideration when developing the law of peoples, one of them being the pluralism of conceptions of justice held by diverse peoples.

The idea of toleration among peoples embodies how the two seemingly incompatible dimensions—principled and consequentialist—fit together in Rawls’s theory of international justice. It reflects Rawls’s efforts, in extending the liberal justice to the international order, to keep a delicate balance between liberal idealism and political realism. The LoP is not opposed to the promotion of liberal values, but shows a proper sense of caution against the imposition of liberal values. To appreciate Rawls’s LoP, we must not understand it as purely principled/idealist or utterly pragmatic/realistic. Rather, its plausibility and strength lies precisely in the balance between the principled and the consequentialist dimensions. In light of this interpretation of the LoP, we come to see that Rawls’s realistic concern with the outcome of the extension of the LoP does not undermine his liberal commitments.

It might be opposed that in advocating toleration for non-liberal peoples, Rawls leaves very little room for liberal peoples to actively enhance the prospect of a fully liberal international order. If following the requirements of Rawlsian toleration, it might seem that liberal peoples can do little more than wait for non-liberal peoples themselves to change. To defend Rawls, such can be said. Rawls’s LoP states minimal conditions of cooperation among liberal and non-liberal peoples rather than the conditions of a full-fledged global order. A decent hierarchical society is accepted to the SoP because it satisfies the minimal conditions of a politically just liberal world order.\(^\text{121}\) As minimal conditions of an unfinished project, the terms of the Law of peoples can be conceived as complete and ideal in themselves; but at the same time, the list of principles of the LoP is provisional and incomplete, and new principles may be added to the list and some principles such as the fourth must be qualified.\(^\text{122}\) In view of this, we can say that the LoP with an expression of

\(^{121}\) Dogan, “The Law of Peoples and the Cosmopolitan Critique,” p.146.

Rawlsian toleration lays a solid foundation for (and leaves ample room for) a greater extent of justice to come about within the international society.

Political philosophers should not aim at defining a universal idea of justice, because no one can define universal justice without violating the fact of reasonable pluralism. But they surely can help make a just and stable world order more likely by examining what the conditions are for such an order to exist. And the LoP does exactly that. While cosmopolitan liberals are committed to global moral values that support liberal rights of individuals, Rawls in the LP aims at establishing a “realistic utopia” in which the “great evils of human history”—unjust wars, oppression, religious persecution, slavery and the rest—have been eliminated and just or at least decent basic institutions established by both liberal and decent peoples who honor the LoP. This is not an unambitious aspiration. Undoubtedly, liberal justice would not be desirable if the world order built upon it can not remain not peaceful and stable for the right reasons. Only having established a “realistic utopia” can we possibly hope for a world that is fully just in a liberal term. For anyone who aspires to a world like that, Rawls’s LoP with his notion of toleration has provided necessary conditions for it to come.

CONCLUSION

In The Law of Peoples, John Rawls argues for toleration of decent non-liberal peoples as long as their basic institutions meet certain conditions of political rights and justice and they honor a reasonably just law for the SoP. His arguments for international toleration are laid out in the first chapter of the thesis. In Chapter 2, I present three points of dispute between Rawls and his cosmopolitan critics. Specifically, cosmopolitan liberals criticize Rawls for 1) his use of the OP as a model of representation of peoples rather than individual person, 2) his “minimalist” notion of human rights, and 3) his insufficiently liberal principles of the LoP. In the third chapter, I defend Rawls from these three criticisms.

124 Rawls, LP, p.126.
Furthermore, Chapter 4 provides a two-dimensional substantiation of Rawlsian toleration, one that views Rawls’s LoP as representing a “principled consequentialist” liberal theory. According to this view, Rawls LoP with a notion of Rawlsian toleration is not only required by the liberal principles, but also conducive to the realization of a just and liberal world order stable over time. Along with my substantiation of Rawlsian toleration, I have also attempted to illustrate that a cosmopolitan conception of toleration alternative to Rawls’s (if it really is a conception of toleration, not intolerance) would not only compromise liberal commitments but also do harm to the realization of liberal justice in the long run.

Rawlsian political liberalism is based on the appeal of liberal values to people with diverse cultures, religious beliefs, and conceptions of justice across very different social and historical conditions. In Rawls’s theory of international justice, a law of peoples is reasonably just and legitimate only if it is drawn from an international overlapping consensus. In criticizing Rawlsian toleration, however, cosmopolitan writers do not attach sufficient importance to achieving this consensus. More than often, their advocacy for an idea of liberal justice is based on the intrinsic universality and superiority of liberal values. Contrary to what they wish, cosmopolitan liberals’ urge to eliminating injustice across national boundaries might translate into foreign policy that undermines the legitimacy of the liberal doctrine as well as the exercise of power by the so-called liberal states.

In addition, cosmopolitans have been underestimating the value of stability both as a good in itself and as a necessary condition for achieving international justice. Without a law of peoples reasonably just and stable for the right reasons over time, there can be no “realistic utopia” as Rawls envisions, not to speak of a world order in which a cosmopolitan ideal of justice is fully realized. Recall that Kant developed his conception of toleration in close connection with the veto that moral reason proclaims in the face of war. ‘There shall be no war’, even if liberals are sincerely convinced that other peoples hold wrong views on what justice demands. Rawls, much more than some of his cosmopolitan followers, has digested this
When “well-ordered peoples in a reasonably just society have learnt to coordinate the actions of their governments,” Rawls believes, the society of these peoples will “form a group of satisfied peoples” whose fundamental interests are satisfied and thus have no reason to go to war with one another.\textsuperscript{126}

Toleration has to be defended against the danger of intolerance. The theoretical debate on international toleration as presented in this thesis bears dramatic implications on pressing real-world questions of our time. What is the limit of international toleration for a domestic society, and based on what criteria? To what extent are human rights relevant to international relations, and in what mechanism? Under what conditions are liberal states or the world community justified to intervene in a sovereign state, or to demand a fundamental change in its domestic organization? How to balance foreign policies devised to reduce injustice in a not-fully-just society against an appropriate level of respect for national particularities and diversities? Rawls in \textit{LP} does not provide a one-for-all solution—and certainly he does not aim to. In fact, his characterization of decent peoples is intentionally hypothetical in a way that it is not clear whether or how many domestic societies in reality would fit his criteria. However, through his arguments for international toleration, Rawls has conveyed an important message for all international relations theorists and practitioners to keep in mind: principles of global justice should not trespass into the lives of peoples and individuals who do not endorse those principles, and to “promote” liberal reforms by manipulative or coercive power is, in itself, illiberal.

\textsuperscript{125} Mertens, “Defending the Rawlsian League of Peoples,” p.715.
\textsuperscript{126} Rawls, \textit{LP}, p.19.
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從世界主義批判羅爾斯《萬民法》容忍度的概念

王瑜欣
朝陽科技大學通識教育中心兼任講師

摘 要

在羅爾斯著的《萬民法》裡依然充滿爭議的是，自由的容忍度應該延伸到非自由的上層人民的主張。根據羅爾斯的說法，非自由的上層人民同樣會認同由自由人民所申明的人民法，因此，前者在人類社會中可以被視為是擁有良好信譽的成員。世界自由主義者認為羅爾斯概念中的國際容忍度偏離了自由主義的主軸，對他們來說，唯有自由的社會才符合容忍度的標準。以下提出了三點議題進行精確的詳述：一、針對羅爾斯使用的原始位置裝置，二、羅爾斯對於何謂得體的人權之標準，三、在本書中羅爾斯聲稱非自由的上層人民與完全自由的人民都會認同的人民法是建立在一個不完全的自由主義原則之上。

在此篇論文中，我會從世界主義針對羅爾斯國際容忍度的概念之批判進行檢視。我的個人主張是，羅爾斯派的容忍度概念不僅可以通過世界主義對其的質疑，甚至可以說是更加真實也更具重要性的自由主義架構。我會試圖將這本書的概念轉化成一個具原則性的結果主義產物之下的自由主義方案。根據以上的解讀方式，我們可以理解以長遠的角度來看，羅爾斯派中針對容忍度的概念，不僅需要自由主義原則作為基礎，更有助於理解自由在社會中的長遠價值。

關鍵辭：《萬民法》、上層人民、容忍度、人權、國際化、自由主義

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