

# THEORIZING JUSTICE FOR PERPETUAL PEACE: *THE LAW OF PEOPLES* AND ITS PLACE IN THE LIBERAL TRADITION

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In *The Law of Peoples*, John Rawls extends his theory of justice as fairness to the international realm. In it, he specifies “a particular conception of right and justice that applies to the principles and norms of international law and practice”: the titular “Law of Peoples.”<sup>1</sup> Peoples, each of whom have their own internal governments, are admitted to a global political order, the “Society of Peoples” if they “follow the ideals and principles of the Law of Peoples in their mutual relations.”<sup>2</sup> Membership in the Society of Peoples is open to both liberal democrats and non-liberal societies, though the purpose of Rawls’s book is to establish the proper foreign policy for constitutional democracies, particularly those whose basic structures are regulated by the principles of justice outlined in Rawls’s earlier works, such as *A Theory of Justice* and *Justice as Fairness: A Restatement*.<sup>3</sup>

According to Rawls, non-liberal peoples are owed a duty of toleration by liberal states. Inclusion of the non-liberal peoples has led to much criticism. One strong line of criticism focuses on the fact that, as Catherine Audard notes, “Rawls is mostly concerned with justice *between* societies, not with justice *within* societies, whereas for most people the two are deeply connected.”<sup>4</sup> This criticism may have some merit, but sidesteps Rawls’s project in favour of the adoption of a new one. Ultimately, this is a methodological critique rather than a *per se* criticism of the inclusion of non-liberal peoples in the Society of Peoples. Critics seem to ask Rawls to simply reiterate the idea of justice as fairness as a global principle. Taking Rawls’s own project seriously and adopting his methods, however, uncovers benefits of toleration even beyond those explicitly mentioned in his account. The purpose of this essay is to examine those benefits.

This essay proceeds in three substantive parts and a conclusion. It begins by outlining Rawls’s argument in Part II of *The Law of Peoples*, “The Second Part of Ideal Theory,” for the toleration of non-liberal decent peoples and their inclusion in the Society of Peoples. It then proceeds to give an account of the Kantian liberal backdrop

against which the general Rawlsian picture is adopted. The final substantive section demonstrates how an understanding of that tradition brings to light benefits of the toleration of non-liberal decent peoples within the Rawlsian law of peoples that are not explicitly explicated in Rawls's section on their toleration, but can be inferred from other components of Rawls's theory. In short, toleration of non-liberal decent peoples in the international realm engenders greater protection of rights within domestic liberal states.

### **RAWLS'S ARGUMENT FOR THE TOLERATION OF NON-LIBERAL DECENT PEOPLES**

Before analyzing Rawls's position, it is useful to clearly restate his argument. For Rawls, the toleration of non-liberal peoples by liberal peoples is not merely negative. It is not enough to refrain from sanctioning other peoples. To tolerate "means to recognize these non-liberal societies as equal participating members in good standing in a Society of Peoples, with certain rights and obligations, including the duty of civility requiring that they offer other peoples public reasons appropriate to the Society of Peoples for their actions."<sup>5</sup> In other words, liberal peoples have positive obligations to recognize other peoples, act in a manner that they can justify to those peoples on the basis of principles that they all agree to, and actually make justifications on those bases.

Rawls's argument for toleration is a logical consequence of his establishment of a second original position for the purposes of selecting the principles for regulating a Society of Peoples. In that position, "the parties are representatives of equal peoples and equal peoples will want to maintain this equality with one another."<sup>6</sup> Since they are selecting "interpretations" of a list of principles already accepted to by liberalisms, the representatives will be forced to act in a manner acceptable to liberal thinkers.<sup>7</sup>

Rawls assumes that there are non-liberal ways of ordering societies that are acceptable for the purposes of membership in the Society of Peoples.<sup>8</sup> He defines decent peoples as those who 1) are non-aggressive towards other peoples externally and 2) are internally regulated in a manner that i) respects human rights, ii) is constituted of human beings who view each other as responsible and cooperating, if not free and equal, and iii) has a judiciary guided by justice.<sup>9</sup> These peoples should be accorded respect.

To respect them is to recognize them as free and equal and this, in turn, entails respect for their right of self-determination.<sup>10</sup> These peoples are able to rationally self-determine themselves in a manner that makes them appear to be free and equal as a people even if individual members are not free and equal vis-a-vis one another. There is social cooperation based on responsible self-determination. The rule of law ensures its promulgation. Though these societies chose different sets of principles to regulate their political order, liberal societies regulated by the principles of justice must recognize non-liberal societies' right to do so in order to properly operationalize the liberal society's own commitment to freedom. So long as a society does not fundamentally violate principles of international justice that it is reasonable for all peoples to accept, liberal peoples should engage them as equals. According to Rawls, tolerating non-liberal peoples in this manner will actually encourage their movement towards liberal ideals by engendering a spirit of respect among people.<sup>11</sup> Presumably, this spirit of

respect at the international level will reflect itself domestically.

Rawls's toleration for non-liberal peoples addresses concerns even beyond those listed by Rawls in his account. It is a logical consequence of Rawls's continued evolution within a liberal tradition drawing a close link between domestic and international justice and suggesting similar mechanisms must be used to establish justice at each level.

### THE KANTIAN TRADITION

At the end of *The Law of Peoples*, Rawls suggests, "If a reasonably just Society of Peoples whose members subordinate their power to reasonable aims is not possible ... one might ask, with Kant, whether it is worthwhile for human being to live on the earth".<sup>12</sup> Justice as fairness seeks to create a set of political principles for the regulation of political society that is acceptable to all regardless of their comprehensive doctrines. It "presupposes no particular comprehensive view" including Kantianism.<sup>13</sup> The theory itself nonetheless has Kantian origins and follows in the contractarian tradition of Kant and others. In earlier work, Rawls describes justice as fairness as a variant on Kantian moral constructivism (though it is not merely applied moral theory) and, more directly, as a Kantian doctrine.<sup>14</sup> His ultimate claim is that we can arrive at the principles of justice independent of any comprehensive doctrine. Descriptions of the theory as Kantian undermine this point, which is why, in his final works, Rawls abandons describing the theory as Kantian. Even as late as the restatement, however, Rawls argues that justice as fairness is Kantian rather than Hobbesian.<sup>15</sup>

A deep Kantianism lurks in the background of Rawls's thinking, even if pure procedural background justice requires that Kantian concerns not be the basis of ultimate decision-making. *The Law of Peoples*, a text following "in the tradition of the late writings of Kant" in its search for a realistic utopia also follows Kant in its invocation of the necessity of international justice for domestic justice.<sup>16</sup> While Rawls is not as comprehensively systematic as Kant, refusing to move outside the political realm, Rawls does follow Kant in creating a system that covers the political realm both domestically and internationally.

Given his Kantian background, Rawls is likely aware of the placement of the passage he refers to in Kant's legal philosophy treatise, "The Doctrine of Right." The phrase "if justice perishes, then it is no longer worthwhile of men to live upon the earth" appears in the context of Kant's discussion of "the Right to Punish and Grant Clemency," part of the discussion of rights that follow "from the Nature of the Civil Union."<sup>17</sup> It is an issue of right within the domestic sphere, not a matter of international justice or relations. In invoking this statement in the context of his own discussion of the necessity of a just and well-ordered global political regime, however, Rawls makes an important link between justice in the domestic sphere and global justice. This link is also present in Kant's theory.

The ending of "The Doctrine of Right" suggests that

establishing universal and lasting peace constitutes not merely a part of the doctrine of right but rather the entire final end of the doctrine of right within the

limits of reason alone; for the condition of peace is the only condition in which what is mine and what is yours is secured under *laws* for a multitude of human beings living in proximity to one another and therefore under a constitution.<sup>18</sup>

Peace is the entire final end of the doctrine of right. The final words of the book are an exhortation for the necessity of perpetual peace.<sup>19</sup>

The aim of the state for Kant is securing individuals' acquired rights under universal reciprocal coercion. The role of the state is to exert coercion so as to protect individual's rights under the law. This is the rightful condition. Its coercive elements make acquired rights possible, such that individuals can own items beyond their person in a more than provisional manner.<sup>20</sup> Kant does not believe that a world state is possible and instead advocates a voluntary congress of states.<sup>21</sup> In order for the rightful condition to be fully realized, a rightful condition between states is required. Without a rightful condition between states, the rightful condition within it is undermined.<sup>22</sup> Rights cannot be secured within the rightful condition in the absence of a rightful condition between states. In the absence of such a condition, it is not only possible that the state cannot properly perform its function such that your rights are not secured but can be taken by another nation who does recognize the rightful condition of your own state. It is also the case that if your own nation has a propensity towards refusing to recognize the rights of citizens of others nations, there is nothing to suggest it will protect rights domestically.<sup>23</sup> Despite its short length (5.5 pages out of 138 in my translation), "The Right of Nations" is a crucial component of 'The Doctrine of Right' in general.

### THE TRADITION, INTERNATIONAL NORMS, AND TOLERATION

Similarly, *The Law of Peoples* is a necessary component of the Rawlsian oeuvre. Rawls does not wish to maintain the Kantian rights (or the Kantian emphasis on "states" since Rawls prefers to deal with "peoples"). Kant's systematic theory does not admit competitor comprehensive doctrines. Rawls's ideal society must be regulated by principles that are open and accessible to all regardless of their comprehensive doctrine. In Rawls, unlike in Kant, mutual reciprocity binds citizens only in the political realm, simultaneously ensuring their ability to pursue their own conception of the good and develop their own moral powers. Rawls does not suggest that the Society of Peoples is a necessity or even something that will come into being.<sup>24</sup> It is, however, a logical consequence of his ideal model for the domestic case.

In *Justice as Fairness: A Restatement*, Rawls explicitly adopts Kant's assumption that "a world government would be either an oppressive global despotism or a fragile empire torn by frequent civil wars as separate regions and cultures tried to win their political autonomy."<sup>25</sup> He reiterates this point in *The Law of Peoples*.<sup>26</sup> He emphasizes social cooperation as a basis of peace instead, consistent with his general approach. At base, "the Law of Peoples is an extension of a liberal conception of justice for a domestic regime to a Society of Peoples" and seeks to establish the proper foreign policy for a liberal people.<sup>27</sup>

The liberal conception of justice is rooted in recognition of the individual as free and equal and a requirement of social cooperation. Achieving the latter on the inter-

national stage requires extending the notion of the former to peoples as a whole. Accordingly, the principles of justice for the international case explicitly require that peoples view each other as free and equal, even if certain peoples do not recognize their own members as such.<sup>28</sup> Cooperation between peoples also requires treaties, non-intervention (except in self-defence or the defence of human rights) and restrictions on the conduct of war, all of which are mirrored in the list of international principles forming the “basic charter of the Law of Peoples.”<sup>29</sup>

To recognize political actors as fundamentally free and equal is to acknowledge that they can select principles different from the liberal ideal. As in the domestic case, the guiding principles are selected from a set list of existent principles. So long as these principles are respected at the international level, a society must be respected even if it is not internally liberal. Reasonable pluralism exists among peoples just as it does among individuals.<sup>30</sup> Respect for peoples entails engaging them as free and equal, which entails recognition of their capability of organizing their own internal structure. Political liberalism must “uphold the equal freedom both of liberal and decent peoples and of liberal peoples’ free and equal citizens” and ensure that *all* citizens have a sufficient share of primary goods to pursue their ends.<sup>31</sup>

To expand justice as fairness to the international realm is not to export democracy, but to expand the notions of freedom and equality to peoples. For a liberal democracy to export democracy would be to undermine its commitment to freedom and equality. It would also undermine social cooperation with other nations, raising Kant’s concerns that another could impose itself on the democracy, but more importantly suggesting the societal commitment to liberal values may not be as strong as suggested. While Audard argues that the relationship between international justice and international stability and peace is unresolved,<sup>32</sup> it is perhaps best dealt with against the backdrop of a Kantian tradition which recognizes that peace, both in the domestic and international realms, depends on social cooperation in both realms.

### A LONG VIEW

For Rawls, liberal democracy is a continuum. One does not get very far along the continuum without respect for the law of peoples. Indeed, since we are already in political liberalism and assuming the standpoint of a liberal democracy engaged in foreign policy, lack of respect for the law of peoples, at least as an ideal, is a logical impossibility.

Toleration of non-liberal peoples, then, has benefits even beyond those listed by Rawls in his original text. He hints at these by noting that treating non-liberal peoples with respect will engender respect of those peoples. Rawls takes a long-term view of justice. The original position is a one shot deal: “there is no second chance.”<sup>33</sup> If the second original position (concerning international relations) is as forward-looking as the first one, it should concern itself with long-term international peace. Perpetual peace, an ideal shared by both Rawls and Kant, is best achieved by promoting respect among peoples.

NOTES

1. John Rawls, *The Law of Peoples* (Cambridge: Harvard UP, 2001) at 3 [hereinafter “Rawls, *Law*”].
2. *Ibid.* 3.
3. John Rawls, *A Theory of Justice: Revised Edition* (Cambridge: Belknap Press, 1999); John Rawls, *Justice as Fairness: A Restatement* (Cambridge: Belknap Press, 2003) [hereinafter “Rawls, *JAF*”].
4. Catherine Audard, “Cultural Imperialism and ‘Democratic Peace,’” *Rawls’s Law of Peoples: A Realistic Utopia?*, eds. Rex Martin & David A Ready (Malden: Blackwell Publishing, 2007) 59 at 59.
5. Rawls, *Law* 59.
6. *Ibid.* 60.
7. *Ibid.*
8. *Ibid.* 59.
9. *Ibid.* 64-67.
10. *Ibid.* 61.
11. *Ibid.*
12. *Ibid.* 128.
13. Rawls, *JAF*, 33.
14. John Rawls, “Kantian Constructivism in Moral Theory,” *John Rawls: Collected Papers*, ed. Samuel Freeman (Cambridge: Harvard UP, 1999) 303; John Rawls, “Social Unity and Primary Goods,” *John Rawls: Collected Papers*, ed. Samuel Freeman (Cambridge: Harvard UP, 1999) 359-60.
15. Rawls, *JAF* 82, note 2.
16. Rawls, *Law* 126.
17. Immanuel Kant, *The Metaphysics of Morals*, trans. Mary Gregor (New York: Cambridge UP, 1996) at 105, 104, 95. This translation reads: “For if justice goes, there is no longer any value in human beings living on the earth.”
18. *Ibid.* 123.
19. *Ibid.* 124.
20. *Ibid.* 45, 119.
21. *Ibid.* 114-115, 119.
22. *Ibid.* 89.
23. *Ibid.*
24. Rawls, *Law* 127.
25. Rawls, *JAF* 13.
26. Rawls, *Law* 36.
27. *Ibid.* 55.
28. *Ibid.* 37, arts 1, 4.
29. *Ibid.* 37.
30. *Ibid.* 54-55.
31. *Ibid.* 127.
32. Audard 60.
33. Rawls, *JAF* 103.