

Rawls's Opposition to Cosmopolitan Justice

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Abstract

Rawls has two theories of justice, one of which applies to the domestic politics, and the other applies to the international politics. He begins his political philosophy with a domestic theory to demonstrate the possibility of assuring the stability and justice in the internal affairs of liberal democratic societies. In a further step, he hopes to show the possibility of assuring peace and justice in the foreign affairs of liberal democratic societies.

Cosmopolitan liberals have charged Rawls, firstly, that he is not justified in beginning with domestic theorisation with a narrow purpose of determining the terms of social cooperation among citizens of liberal democratic societies. Secondly, they have questioned Rawls's refraining from applying his initially articulated domestic theory of justice at the global level. Thirdly, Rawls's critics have argued that his shift from the Kantian idea of equal respect for all *persons* in his domestic theory to the idea of equal respect for all *peoples* in his international theory is not consistent.

This paper would argue that Rawls's reluctance towards cosmopolitan justice lies in his concern about the *stability* of society that can only be guaranteed by an overlapping consensus of a majority of politically active citizens on the terms of social cooperation. This concern accounts for both his initial articulation of a domestic theory and his further prevention from applying the domestic principles of justice at the global scale.

Rawls's Project in Political Theory

Rawls has two distinguished theories of justice, one of which applies to the domestic politics, and the other applies to the international politics. He calls his domestic theory 'justice as fairness', 'political liberalism', and 'a liberal political conception of justice',¹ which should be conceived of as being 'the most appropriate moral basis for a democratic society'.² He entitles his international theory of justice the 'Law of Peoples', which is 'a political conception of right and justice that applies to the principles and norms of international law and practice'.³

Rawls's purpose, both in his domestic theorisation and his international theorisation, is limited to articulating theories that justify and guarantee a peaceful and just political order for liberal democratic societies domestically and globally. In other words, Rawls is not concerned with philosophising about the right political order, which

has to be universally applicable. Rather, he is motivated to justify the current political order of liberal democratic societies against any domestic and international threat. In the first step, *A Theory of Justice* (1971) and *Political Liberalism* (1993) attempt to demonstrate the possibility of assuring stability and justice in the internal affairs of liberal democratic societies, given the fact that individual members of those societies are deeply divided by diversity of religious and non-religious doctrines. In the second step, *The Law of Peoples* (1999) hopes to show the possibility of assuring peace and justice in the foreign affairs of liberal democratic societies, given the fact that peoples throughout the world are deeply divided by diversity of cultures and traditions.⁴

To elaborate: with regard to his domestic theory, Rawls is faced with the fact of 'reasonable pluralism', as well as the fact of 'the burdens of judgment'.⁵ Encountered with permanent reasonable pluralism, Rawls intends to fundamentally support 'the conviction that a constitutional democratic regime is reasonably just and workable, and worth defending'.⁶ He is motivated to answer the question: 'how is it possible for there to exist over time a just and stable society of free and equal citizens, who remain profoundly divided by reasonable religious, philosophical, and moral doctrine?'⁷ Therefore, he is concerned with the stability and justice of contemporary liberal societies. 'The principles of justice for the basic structure of a liberal democratic society', argues Rawls, 'are not ... fully general principles. They do not apply to ... the basic structures of all societies'.⁸

With regard to his international theory, the parallel problem with which Rawls is faced is the diversity of cultures and traditions of thought among peoples, a fact that threatens the assurance of justice and peace in liberal democratic societies.⁹ Encountered with this problem, Rawls intends to propose to liberal societies a foreign policy by which those societies can safeguard their justice and peace in their international relations. He is not motivated to propose the principles of international law

to all societies. Nor does he intend to recommend principles of justice to non-liberal societies.¹⁰ A 'concern with the foreign policy of a liberal people', declares Rawls, 'is implicit throughout' *The Law of Peoples*.¹¹ Therefore, Rawls intends to fundamentally justify a foreign policy for liberal democratic societies that safeguards them against threats arising from 'outlaw states' and 'burdened societies', and serve the national interests of liberal societies. According to Rawls, 'in developing the Law of Peoples within a liberal constitutional justice, we work out the ideals and principles of the *foreign policy* of a reasonably just *liberal* people'.¹²

Rawls's Domestic Theory

To fully capture Rawls's domestic theory, I sharply distinguish between his 'assertion' and 'argument' in his domestic theory. This pattern seems crucial in capturing Rawls's international theory, as I understand it. Hence, to illustrate his two theories similarly, the same pattern is adopted in demonstrating Rawls's domestic theory of justice.

Rawls's Domestic Assertion

Rawls's domestic assertion includes two principles in lexical order. These principles are hoped to be the focus of an overlapping consensus of reasonable individuals of liberal democratic societies affirming different philosophical, religious, and moral doctrines.¹³ They read as follows:

- a. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.¹⁴
- b. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of

opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society.¹⁵

With regard to the first principle, what Rawls incorporates in his list of 'the rights of liberal democratic citizenship'¹⁶ can be classified into three groups: what he calls *political rights*, what he calls *personal or civil liberties*, and what can be called *protection rights*. Political rights include: (1) the right to vote and to stand for elections to hold political offices, (2) the right to liberty of political speech, and (3) the right to liberty of political association.¹⁷ Personal or civil liberties encompass the following: (4) liberty of conscience and thought, (5) liberty of non-political speech, and (6) liberty of non-political association.¹⁸ Protection rights, firstly, cover immunities required by 'integrity of the person', including (7) freedom from psychological oppression, and (8) freedom from physical assault and dismemberment. They, secondly, include those rights protected by 'the rule of law', including (9) freedom from arbitrary arrest and (10) freedom from seizure. Protection rights, thirdly, include (11) the right to hold private property.¹⁹

In his domestic theory, Rawls is definitely *liberal* and *egalitarian*. Yet, Rawls's liberalism is a thin theory of liberalism,²⁰ as opposed to the thick theory of comprehensive liberalism.²¹ Likewise, his egalitarianism is a weak version of egalitarianism, as opposed to strong egalitarianism.²² With regard to his first principle of justice, he is liberal, for supporting a list of basic rights and liberties prior to social and economic distributive advantages. He accords such an absolute priority to the basic rights and liberties that he admits the legitimacy of compromising a case of liberty only by another case of liberty.²³ With regard to the first principle of justice, Rawls is also egalitarian, for advocating the fair value of the political liberties, rather than formal equality thereof.²⁴

With regard to the first part of the second principle of justice, again, Rawls is egalitarian by advocating the principle of fair equal opportunity. Likewise, in the second part of the second principle of justice, he is egalitarian by suggesting that social and

economic inequalities should be designed such that they bring the most advantage to the worst-off members of society.²⁵ Therefore, Rawls domestic theory definitely reveals his advocacy of egalitarian liberalism.

Rawls's Domestic Argument

Rawls's domestic argument has employed and enhanced some ideas implicit in the public political culture of liberal democratic societies added to some general facts leading altogether to the priority of justice over all ideas of the good. Employing his method of reflective equilibrium, Rawls deliberately selects some ideas from 'a variety of possible organising ideas' found in the public political culture of liberal democratic societies to provide a coherent argument in support of, firstly, a collection of individual rights and freedoms, secondly, fair equal opportunity, and thirdly, promoting the conditions of the worst-off members of societies with regard to inequalities in economic and social benefits.²⁶

The general facts he ascribes to liberal democratic societies are the following: (1) It is impossible to arrive consensually at one conception of the good life, due to the burdens of judgement. (2) Therefore, the reasonable pluralism in these societies is permanent. (3) Consequently, the domination of one comprehensive doctrine requires oppression of other doctrines. (4) Moreover, we know from experience that stability depends upon justifiability of any conception of justice to the majority of active citizens. (5) Nevertheless, the political culture of a liberal democratic society contains some ideas the resort to which enables us 'to work up a political conception of justice suitable for a constitutional regime'. These selected ideas, according to Rawls, are as follows: (6) the idea of society as a fair system of cooperation; (7) the idea of a well-ordered society and its application to the basic structure; (8) the original position as conditions under which the terms of social cooperation should be determined; and finally (9) the

idea of the persons who engage in social cooperation as free, equal, rational, and reasonable citizens.²⁷

Employing the aforementioned facts recognised in liberal democratic societies, along with the above ideas selected from the public political culture of those societies, Rawls articulates an argument in support of his two principles of justice. His argument in support of his domestic assertion can be capsulated into the follow ten steps:²⁸

- 1) Since diversity of doctrines of the good in contemporary liberal democratic societies is an *inevitable* and *permanent* fact, an attempt for achieving agreement on one comprehensive doctrine of the good life is destined to failure.
- 2) Since agreement on one doctrine of the good is impossible, the only available alternative to any comprehensive doctrine of the good for domination is suppression of other doctrines.
- 3) Since suppression of other doctrines is unjustifiable, the governmental institutions should avoid the pursuit of one comprehensive doctrine of the good.
- 4) Since governments should avoid the pursuit of one doctrine of the good, the most appropriate way of organising basic political and social institutions is the pursuit of a just and stable order, in which all reasonable comprehensive doctrines of the good life can endure and get adherence.
- 5) Since citizens of liberal democratic societies conceive themselves as free and equal persons, and given the illegitimacy of coercion, they should consensually accept the principles of justice with which they would be expected to comply.
- 6) Since there are various conceptions of justice, the only probable agreement on a conception of justice can be achieved by constructing a thin political conception of justice acceptable to citizens who affirm various conceptions of justice and divergent doctrines of the good life.

7) Since the political conception of justice should be constructed, the justice of the terms of social cooperation depends on the fairness of the procedure by which equal and free citizens engage in determining them.

8) Since the fairness of the procedure for establishing the terms of social cooperation requires the removal of those circumstances under which prejudice might enter into the construction of the conception of justice, the constructors should decide behind a thick veil of ignorance about those cases of knowledge, which might affect their fair judgment.

9) Since each risk-averse constructor of the terms of social cooperation located behind the veil of ignorance sees it probable that after lifting the veil of ignorance he would turn out to be among the worst-off members of society, all individuals primarily would consent to a list of equal rights and liberties, as well as the principle of equal opportunity.

10) Since economic efficiency necessarily requires inequality in wealth, since the efficiency of social and political institutions requires differences in authority, since these inequalities make everyone better off in comparison with the benchmark of equality, and since envy is irrational, all individuals would consent to fair equality of opportunity, along with the difference principle confirming inequalities and increasing the life chances of the worst-off members of society.

This is a brief sketch of Rawls's domestic theory of justice. I have presented his assertion consisting of the two principles of justice distinctly from his argument consisting of ten steps. In the following section, a parallel exploration will be made concerning his international theory.

Rawls's International Theory

As indicated in the preceding section, one way to understanding Rawls's theory is to sharply distinguish between what he asserts and what he delivers as justification for that assertion. Since Rawls's international theory has received various

interpretations and criticisms from different sides,²⁹ I assume that a helpful way to interpreting Rawls's international theory is to determine precisely what he asserts and what argument he has explicitly or implicitly provided to justify his assertion.

Rawls's International Assertion

Rawls expresses his assertion concerning the international relations by introducing eight principles. He adopts these principles from the history and practices of international law, expecting that well-ordered peoples would find these principles advantageous and forceful, provided that they are followed reciprocally.³⁰ They read as follows:³¹

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

His list of 'human rights' (referred to in principle 6) is 'distinct from constitutional rights, or from the rights of liberal democratic citizenship',³² and encompasses the following cases: (1) the right to life (meaning the means of subsistence and security), (2) the right to freedom from slavery and forced occupation, (3) the right to liberty of conscience, (4) the right to personal property, and (5) the right to the formal equality, meaning that similar cases be treated similarly.³³

In his international theory, Rawls seems to be *liberal*, though committed to a very thin theory of liberalism compared to his domestic liberalism. We can call this very thin theory of liberalism 'minimal liberalism' or 'universal liberalism' to distinguish it from 'comprehensive liberalism' and 'political liberalism'.³⁴ What indicates his commitment to liberalism is, firstly, his support of a list of universal human rights and liberties at the top of moral values, which place restrictions on the right to self-determination and autonomy of states in their internal affairs.³⁵ He is liberal, further, for demanding that individuals throughout the world should cooperate in the formation of their political and social life. The third indication of Rawls's loyalty to liberalism lies in his commitment to the liberal idea of legitimacy, on the basis of which he rejects the legitimacy of imposing a legal system on individuals in any society.³⁶ Rawls's minimal liberalism is realised in societies he calls 'decent societies'.³⁷

In his international theory, Rawls seems to be *egalitarian*, though committed to a very weak version of egalitarianism compared to his domestic egalitarianism. He is egalitarian for suggesting that every individual's basic needs should be equally met, irrespective of the territory where they live.³⁸ Here, Rawls proposes a very weak principle of distributive justice globally applicable. 'What must be realized', argues Rawls, 'is that merely dispensing funds will not suffice to rectify basic political and social justice (though money is often essential). But an emphasis on human rights may work to change ineffective regimes'.³⁹ Therefore, compared to libertarian liberalism,⁴⁰ whose principles are empty of any egalitarian consideration, Rawls's international theory seems to manifest a very weak version of egalitarianism.

While Rawls's commitment to egalitarian liberalism remains safe in his international theory, however much shrunk it might seem, there is no trace of cosmopolitanism therein. It is true that Rawls's international theory advocates a *very thin version of liberalism*. Equally true is his support of a *very weak version of*

egalitarianism in his international theory. Yet, Rawls's international theory cannot be properly characterised as a *very weak version of cosmopolitanism*. He is not cosmopolitan at all.⁴¹

Cosmopolitanism, according to Thomas Pogge, is a view constructing its principles upon three ideas. The first cosmopolitan idea is 'individualism' in the sense that human persons are directly and ultimately the focus of concern, rather than families, communities, or nations. The second cosmopolitan idea is 'universality' meaning that the ultimate concern is every person equally, rather than some subsets, such as men or whites. The third cosmopolitan idea is 'generality' indicating that the moral status of every person individually makes claims against everyone in the world.⁴² On this definition of cosmopolitanism, Rawls is a nationalist, rather than a cosmopolitan. For his ultimate concern is the articulation of a foreign policy for liberal democratic societies that can assure their justice and peace in their foreign affairs,⁴³ whereas the 'ultimate concern of a cosmopolitan view is the well-being of individuals', as Rawls himself admits.⁴⁴

As opposed to cosmopolitanism, Rawls can best be characterised as a *nationalist* liberal, seeking ultimately to safeguard the interests of liberal democratic societies at the international scale.⁴⁵ In this light, we can reformulate Rawls's international theory in a way to illustrate his nationalism. At the international scale, Rawls is consequentialist proposing an ultimate goal for a liberal democratic society in its foreign relations. That ultimate goal can fully be achieved in an ideal world system. The latter idea leads Rawls to suggesting a foreign policy for a liberal democratic society to move towards that ideal world system, and to guarantee its ultimate goal in the contemporary non-ideal world system. Hence, Rawls's recommendations concerning the foreign policy of a liberal democratic society can well be categorised into two groups, that is, a long-term policy and a short-term policy. This explanation of

Rawls's assertion concerning the foreign policy of a liberal democratic society can be illustrated as follows:

(A) The ultimate foreign goal of a liberal democratic society should be the assurance of its peace and justice,⁴⁶ rather than the establishment of a global liberal government or an international society of liberal democratic peoples.⁴⁷ This ultimate goal is harmonious with guaranteeing the peace and a very thin version of justice for all individuals across the world.⁴⁸

(B) The ideal situation conducive to the ultimate foreign goal of a liberal democratic society is a world system, wherein only liberal democratic societies and decent non-liberal societies exist.⁴⁹

(C) The long-term foreign policy of a liberal democratic society includes the succeeding principles:

1. A liberal society ought to impose forcefully, through economic and diplomatic sanctions, all outlaw states to change their way, up to the point where they are non-aggressive and respectful of human rights.⁵⁰

2. A liberal society ought to dispense funds to all burdened societies (which are non-aggressive but underdeveloped⁵¹), along with giving advice for respecting human rights, up to the point where they become well-ordered.⁵²

3. A liberal society ought not to impose non-liberal decent societies to become fully liberal.⁵³

(D) The short-term foreign policy of a liberal democratic society includes the following principles:

4. A liberal society ought to go to defensive war against any attack, but not to aggressive war for its rational interests.⁵⁴

5. A liberal society ought to interfere with outlaw states for the purpose of defending human rights.⁵⁵

6. A liberal society ought to retain some nuclear weapons to safeguard itself (and of course decent societies, as well) against outlaw states.⁵⁶

Having explained Rawls's international assertion, we face with two questions concerning its justifiability: (1) Is Rawls consistent in proposing a type of nationalism and rejecting cosmopolitanism? (2) Assuming that Rawls is justified in his nationalism, does he provide any argument to justify the principles for the foreign policy of a liberal democratic society? In what follows, I shall examine these two questions consecutively.

Rawls's Anti-Cosmopolitan Argument

Rawls's strategy is to start with articulating a theory of justice applicable only to liberal democratic societies at the domestic scale. 'In developing the Law of Peoples', argues Rawls, 'the first step is to work out the principles of justice for domestic society'.⁵⁷ Then, he attempts to develop the principles for international politics as 'an extension of a liberal conception of justice for a domestic regime to Society of Peoples'.⁵⁸

Rawls's aforementioned strategy pushes him towards restricting the purpose of his international theory to articulating the principles for a foreign policy of a liberal democratic society, rather than a cosmopolitan theory for a global government or a society of states. He is not led to apply the domestic liberal principles of justice neither to the society of states nor to a world government. Put another way, Rawls rejects both 'institutional' or 'legal' cosmopolitanism and 'moral' cosmopolitanism.⁵⁹ Hence, Rawls neither advocates a global liberal government implementing the liberal principles of justice for all individuals throughout the world, nor an international system consisting of several liberal governments, each of which implements more or less the same liberal principles of justice for its citizens.

With regard to institutional cosmopolitanism, Rawls argues that 'the Law of Peoples ... will not affirm a world-state'.⁶⁰ With regard to moral cosmopolitanism, Rawls suggests that 'if liberal peoples require that all societies be liberal ... then decent nonliberal peoples – if there are such – will be denied a due measure of respect by

liberal peoples. This lack of respect may wound the self-respect of decent nonliberal peoples as peoples, as well as their individual members, and may lead to great bitterness and resentment'.⁶¹

Cosmopolitan liberals have charged Rawls, firstly, that he is not justified in beginning with domestic theorisation with a narrow purpose of determining the terms of social cooperation among citizens of liberal democratic societies. Rather, he should initially articulate a cosmopolitan theory of justice and later work out its implications for the domestic case.⁶² Secondly, they have questioned Rawls's refraining from applying his initially articulated domestic theory of justice at the global level.⁶³ Thirdly, Rawls's critics have argued that his shift from the Kantian idea of equal respect for all *persons* in his domestic theory to the idea of equal respect for all *peoples* in his international theory is not consistent.⁶⁴ This shift culminates in neglect of the interests of dissident individuals or minorities in non-liberal societies.⁶⁵

Therefore, according to the critics, Rawls is required to confirm a more expanded list of universal human rights that encompasses the liberal right to freedom of expression and freedom of association, as well as the democratic right to equal participation.⁶⁶ Rawls's critics, further, argue that he should endorse a global distributive principle such as his domestic 'difference principle' guaranteeing the continuous enhancement of the condition of the worst-off individuals worldwide.⁶⁷ Here, I defend Rawls's position against all the above three charges:

- (1)** Rawls is bound to begin with political theorisation for the basic structure of liberal democratic societies.
- (2)** Rawls is required not to apply his liberal principles of justice at the global level.
- (3)** Rawls should consider the relations of peoples at the global level, rather than individuals.

What argument can be provided to justify Rawls's three aforementioned positions? Samuel Freeman connects Rawls's primary concern with social justice rather than cosmopolitan justice with the 'pervasive significance of social relations to our development as moral and rational beings', whereas 'global cooperation is not a precondition of our survival or flourishing as developed persons'. It is for the crucial effect of social cooperation on the development of individuals' moral capacity, argues Freeman, that Rawls decides to begin his project by articulating the domestic principles of justice, rather than the cosmopolitan principles of justice.⁶⁸

Yet, while Freeman's explanation can illuminate the ground for Rawls's primary concern with social justice, it fails to account for Rawls's inclusion of the representatives of peoples, and not individuals, in the international original position at the next step. For it would well be possible for Rawls to ask the representatives of citizens of all societies to enter a global original position, after they leave several domestic original positions, to determine the principles of global justice regulating the relations of individuals throughout the world.

Leif Wenar attempts to account for Rawls's position regarding the participation of the representatives of peoples in the global original position. He argues that since the reasonable pluralism of comprehensive doctrines of the good at the global level is even greater than it is within any liberal society, Rawls must employ some ideas from '*global public political culture*' to provide an argument that can be acceptable to all. Consequently, when Rawls decides to select some ideas from global public political culture, he finds that '[t]he ideas that regulate the institutions of global society are concerned primarily with the nature of nations and their proper relations – not with the nature of persons and their proper relations'.⁶⁹ In this light, according to Wenar, Rawls is compelled to propose a global original position, into which enter the representatives of

peoples, rather than the representatives of individuals. The global public political culture is state-centric, rather than being individualistic.

However, Wenar's attempt does not correspond to Rawls's general project in the international relations. Rawls is explicit that his 'Law of Peoples is neither a treatise nor a textbook on international law' aimed at prescribing principles of justice for non-liberal societies. Rather, 'in developing the Law of Peoples', argues Rawls, 'we work out the ideals and principles of the *foreign policy* of a reasonably just *liberal* people'.⁷⁰ Hence, by drawing the features of an international original position, Rawls intends only to convince liberal peoples that the principles of international justice can be acceptable to non-liberal peoples. He does not aim at providing a set of principles of international law for regulating the international relations, whereon various nations can actually agree.

It would seem that Rawls's reluctance towards cosmopolitan justice lies in his concern about the *stability* of society. This concern accounts for both his initial articulation of a domestic theory and his further prevention from applying the domestic principles of justice at the global scale. When Rawls begins his political theory as a committed philosopher to liberal constitutional democracy, he notices the fact that 'an enduring and secure democratic regime ... must be willingly and freely supported by at least a substantial majority of its politically active citizens'.⁷¹ It is for the sake of stability that Rawls seeks to discover a secure ground for an 'overlapping consensus' among 'society's politically active citizens' who are committed to 'reasonable ... comprehensive doctrines'.⁷²

What accounts for an overlapping consensus of a majority of politically active citizens lies in a set of ideas found in the public political culture of liberal democratic societies.⁷³ An overlapping consensus of a majority of politically active individuals is not something available at the global scale, where peoples are deeply divided by 'their different cultures and traditions of thought'.⁷⁴ Global pluralism is so deep that a sufficient

collection of shared ideas required to determining the terms of social cooperation among individuals throughout the world is unavailable. Specifically, the fundamental idea of society as a fair system of cooperation among free, equal, and rational-reasonable citizens is not held by the majority of individuals living in the world.⁷⁵ By contrast, in the domestic case where individuals have shared culture and traditions, Rawls hopes that a political conception of justice can obtain 'support of an overlapping consensus of reasonable religious, philosophical, and moral doctrines'.⁷⁶

Therefore, the most Rawls can reasonably attempt to achieve is confined to providing a political conception of justice for liberal democratic societies. There is no conception of justice that Rawls can hope to be accepted by a majority of politically active individuals throughout the world.

Put another way, Rawls's liberal theory is essentially different from other theories of liberalism. As Rawls explains it, the purpose of political philosophy in modern constitutional democracies no longer concerns the pursuit of the truth. Rather, it is aimed at achieving 'free agreement, and reconciliation through public reason'. In this light, the task of modern political liberalism is 'to provide a more secure and acceptable basis for constitutional principles and basic rights and liberties than utilitarianism seems to allow', rather than discovering the truth about liberty and human rights. It is for this purpose that Rawls suggests that his political philosophy 'deliberately stays on the surface, philosophically speaking'.⁷⁷

Therefore, since Rawls's attempt for political philosophisation at the global level would be destined to failure, he begins with articulating a thin version of liberalism for liberal democratic societies. Moreover, since his initial attempt resorts to some ideas acceptable hopefully to a majority of politically active citizens of liberal democratic societies, he becomes hopeless of their acceptability to a majority of politically active

non-liberal individuals in other societies. Hence, Rawls is bound to refrain from applying his domestic principles of justice as fairness at the global level.

So far, I have discussed the first two assertions regarding Rawls's initial concern with a domestic theory, along with his prevention from applying his domestic principles of justice at the global scale. The remaining assertion concerns Rawls's inclusion of peoples, rather than individuals, in his international theory. What explains this position? Why does Rawls shift from a core liberal commitment to individualism, which is honoured in his domestic theory, to a collectivistic position in his international theory? Here, I would argue that the underlying assumption for Rawls's collectivism in the international relations lies in the major idea of *contractarianism*.⁷⁸ If Rawls is justified in articulating initially a domestic theory, if he further is justified in refraining from applying his domestic principles of justice at the global level, he should be justified in collectivism in his international theory.

To elaborate: After individuals leave the domestic original position, they are committed to the two liberal principles of justice, whose implementation necessarily requires a collective body, that is, a liberal democratic government. That liberal democratic government is obliged primarily to guarantee equal basic rights and liberties for all its citizens, as well as providing fair equal opportunity for them, along with distributing continuously economic shares to the advantage of the worst-off members of its society. Hence, through the original position, 'a government as the political organization of its people',⁷⁹ appears on the scene. This collective body consists normally of three branches, that is, an executive, a judiciary, and a legislature.⁸⁰ Therefore, an attempt to implement the two principles of justice necessitates creating a collective body. Whilst there are only individuals in a given liberal society before the making of a social contract, there are citizens along with a government after the making of that social contract. It should be noted that a liberal democratic government is a

moral collective entity, firstly, for its creation by free individuals, and secondly, for its endeavour to implement the principles of justice, which is the supreme social value.

Therefore, citizens have a moral obligation to obey their liberal government. A liberal government is 'the representative and effective agent of a people they take responsibility for their territory and its environmental integrity, as well as for the size of their population'.⁸¹ It is for establishing a government as their representative, that 'peoples act ... through their governments', and not directly on their own.⁸² Hence, in any relations with other individuals and peoples, citizens of a liberal democratic society should communicate through their government. A liberal government concerning its relations with other peoples is tasked to serve the purposes for which it has been created, that is, the peace and justice of the liberal society over which it rules. For this reason, Rawls suggests that in 'a second original position at the second level ... the representatives of liberal peoples make an agreement with other liberal peoples ... and later with nonliberal though decent peoples'.⁸³

So far, I have demonstrated that Rawls is consistent in his anti-cosmopolitan theory in his international theory. Now, I would discuss his nationalistic argument recommending the principles for a foreign policy of a liberal democratic society in its relations with other societies.

Rawls's Nationalistic Argument

Although Rawls sets the assurance of the peace and justice of a liberal democratic society as the ultimate foreign goal in his international theory, one should acknowledge that Rawls's chief concern about the peace and justice of liberal democratic societies is in most part moral, and not brutally realistic. What demonstrates the morality of Rawls's foreign policy lies, firstly, in its crucial concurrence with guaranteeing a minimum set of universal human rights and a minimum decent standard of living for all individuals across the world.⁸⁴ Secondly, Rawls's proposed foreign policy

prohibits a liberal government's intervention into, and instigation of war against, any society that is non-aggressive and respectful of human rights.⁸⁵ In this way, Rawls sufficiently shows his concern about peace and justice for all individuals across the globe, and hence should properly be considered as moralist.

However, having determined the ultimate goal in international relations of a liberal democratic society, Rawls draws a picture of an ideal world system, wherein that ultimate goal will fully be achieved. That ideal world system is a 'Society of Peoples', in which only liberal democratic societies and decent non-liberal societies exist.⁸⁶ What accounts for Rawls's aspiration regarding the global order lies in his notice of three facts surrounding the contemporary world that threaten either the peace or the justice of liberal democratic societies. Those threats include the succeeding cases: (1) mass migration from outlaw states and burdened societies to liberal democratic societies,⁸⁷ (2) the possibility of unjust war by outlaw states against liberal and decent peoples,⁸⁸ and finally (3) the proliferation of nuclear weapons and other weapons of mass destruction.⁸⁹

The first problem threatening the justice of liberal democratic societies, argues Rawls, is mass migration from outlaw states and burdened societies into liberal democratic societies. There are three major sources of mass immigration. The first source, according to Rawls, is 'oppression, religious persecution and the denial of liberty of conscience' in outlaw states, which are aggressive and violators of basic human rights. A second ground culminating in mass immigration is 'starvation' and 'famine' found in both outlaw states and burdened societies. Finally, what leads to mass immigration is 'inequality' and 'subjection' of women, again existing in both outlaw states and burdened societies.⁹⁰ Mass immigration, according to Rawls, threatens the protection of 'a people's political culture and constitutional principles'.⁹¹

As opposed to the current world order, in an ideal society of liberal and decent peoples, since every individual enjoys a collection of basic human rights, since every

individual participates in decision-making about the public issues of his society, and since every individual's basic needs are met, there is no serious ground for mass immigration in liberal democratic societies. As Rawls maintains, the causes of mass immigration 'would disappear in the Society of liberal and decent Peoples'.⁹² The disappearance of the other two threats in Rawls's ideal world system is clear. In such an ideal international system, there is no outlaw state with expansionist ambitions to threaten the peace of liberal democratic societies.

Having discussed the ideal world system, Rawls proposes a set of principles for the long-term foreign policy of a liberal democratic society. These principles, are as follows: (1) a duty of imposing forcefully all outlaw states to change their way, (2) a duty of helping all burdened societies to become well-ordered, and (3) a duty of refraining from imposing non-liberal decent societies to become fully liberal. The argument for these principles is clear enough. For the first two contribute apparently to the establishment of the ideal world system, whereas the latter is based upon the superfluity of imposing liberalism on decent peoples for arriving at the ideal world system.

In addition to the long-term policy, Rawls suggests a set of principles for the short-term foreign policy of a liberal democratic society. These principles are as follows: (4) a right to engage in defensive war against any attack, but not a right to instigate aggressive war, (5) a right to humanitarian intervention into outlaw states, and (6) a right to retain some nuclear weapons for defensive purposes.

The recognition of a right to engage in defensive war of a liberal society is for the purpose of preserving 'the basic freedom of its citizens and its constitutionally democratic political institutions'. However, instigating war for the purpose of gaining economic wealth or advancing power is illegitimate.⁹³ Here, Rawls distinguishes between rational interest and reasonable interests by connecting the former with 'the struggles of states for power, prestige, and wealth', whereas reasonableness meets the

requirements of reciprocity.⁹⁴ The argument for the illegitimacy of aggressive war is based upon Rawls's determination of the ultimate goal. Recall that, according to Rawls, the ultimate goal of a liberal society in its foreign relations is the assurance of its peace and justice. Hence, with regard to the assurance of the justice, a liberal democratic society is reliant upon its basic structure with no dependence upon any foreign source. As for the assurance of the peace, the most a liberal society needs is the right to defensive war, which is recognised. Other types of war would definitely oppose the peace of liberal societies, and hence should be banned.

Rawls's argument for the legitimacy of humanitarian intervention into outlaw states, which violate universal human rights, is that they cause mass immigration in liberal democratic societies making problem for the latter in protecting its 'political culture and constitutional principles'.⁹⁵ What is more, Rawls argue that not only are outlaws states dangerous for liberal democratic societies, but they are also dangerous for all peoples. Hence, the change of their way will benefit all.⁹⁶ So far, Rawls's legitimisation of humanitarian intervention seems realistic with no flavour of morality, intended to serve the interests of liberal societies. Yet, Rawls shows the moral feature of this principle when he discusses the conduct of war. There, he demands well-ordered peoples to distinguish the outlaw states' leaders and officials from its civilian population. Then, he stipulates that not only must the well-ordered societies refrain from targeting the civilian population in wartime, but they are also obliged to respect the human rights of both the enemy's soldiers and civilian population.⁹⁷

The final principle for a foreign policy of a liberal society concerns the retention of some nuclear weapons for purposes of self-defence against outlaw states. Here, Rawls argues that as far as liberal and decent peoples are concerned, they can easily ban the production and retention of such weapons among themselves. Yet, since there are aggressive outlaw states in the contemporary world, the only means for keeping them at

bay is a policy of nuclear deterrence.⁹⁸ Here, one may charge Rawls that his policy of nuclear deterrence seems problematic for two reasons: firstly, for its counterproductiveness, and secondly, for its inconsistency with his universal human rights.

As for the counterproductiveness of a policy of nuclear deterrence, it should be noted that empirical studies of warfare has questioned the adequacy of the democratic peace theory.⁹⁹ As William J. Dixon argues, many studies have shown that although democratic states are rarely, if ever, engage in war against each other, they 'are no less likely to become involved in foreign wars, crises, or potentially violent disputes than states organized under alternative governing arrangements'.¹⁰⁰ What is more, according to some other empirical studies, '[d]emocracies are more likely to initiate wars against autocracies than are autocracies against democracies'.¹⁰¹

In the light of these empirical findings, the inclination of liberal democratic societies towards a policy of nuclear deterrence would seem to persuade non-liberal societies towards adopting the same policy. Consequently, nuclear competition would threaten the international peace and security, rather than serving to keep them. Rather than broadening nuclear competition, liberal democratic societies must show willingness for gradually destroying their current nuclear arsenal. In this way, they can discourage other states from trying to reciprocally obtain nuclear weapons. Simultaneously with taking steps towards destroying the current nuclear arsenal, they should pursue an effective and comprehensive international supervision through which everyone can assure that no new society would obtain nuclear weapons.

As for its inconsistency with Rawls's universal human rights, it is clear that using nuclear weapons would broadly target civilians. This intrinsic feature of this type of weapons would definitely violate the right of everyone to life, which is the most important case in Rawls's list of universal human rights. Hence, Rawls seems to be

inconsistent when legitimises broadly targeting civilians in accordance with the 'Supreme Emergency Exemption'.¹⁰² The moralisation of the conduct of war requires us to protect, as far as possible, civilians from military attacks. It seems that the most that can be justified according to the supreme emergency exception is targeting civilians in wartime after a prior announcement, which allows them to escape from a specified place at a specified time. This policy both makes sufficient troubles for the enemy and diminishes damages made to the civilians.

Notes

¹ John Rawls, *A Theory of Justice*, 2nd edition, [1971] (Oxford: Oxford University Press, 1999), p. 3; John Rawls, *Political Liberalism*, [1993] (New York: Columbia University Press, 1996), p. xlvii.

² Rawls, *Political Liberalism*, p. xxxix.

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

⁴ Rawls, *The Law of Peoples*, pp. 6, 11. My interpretation of Rawls's strategy in political theory is different from Leif Wenar. He argues that while Rawls is concerned with developing a theory of justice as fairness in his works in the 1970s and early 1980s, his concern is developing a theory of political legitimacy in his works in the late 1980s and 1990s. See: Leif Wenar, 'Why Rawls is Not a Cosmopolitan Egalitarian', in Rex Martin and David A. Reidy (eds.) *Rawls's Law of Peoples, A Realistic Utopia?*, (Oxford: Blackwell, 2006), p. 100.

⁵ Rawls, *Political Liberalism*, p. 54.

⁶ John Rawls, *Justice as Fairness, A Restatement*, ed. by Erin Kelly, (Cambridge, MA: Harvard University Press, 2001), p. 37.

⁷ Rawls, *Political Liberalism*, p. 4.

⁸ Rawls, *The Law of Peoples*, p. 85.

⁹ Rawls, *The Law of Peoples*, p. 11.

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

¹¹ Rawls, *The Law of Peoples*, pp. 6, 9-10.

¹² Rawls, *The Law of Peoples*, p. 10.

¹³ Rawls, *Political Liberalism*, pp. xlvi, 10.

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

¹⁵ Rawls, *Political Liberalism*, p. 6.

¹⁶ Rawls, *The Law of Peoples*, p. 79.

¹⁷ Rawls, *A Theory of Justice*, p. 53.

¹⁸ Rawls, *A Theory of Justice*, p. 53; Rawls, *The Law of Peoples*, p. 134.

¹⁹ Rawls, *A Theory of Justice*, p. 53.

²⁰ Rawls's domestic theory of liberalism is thin in two major aspects: its application and its assertion. Firstly, his domestic theory applies only to the basic structure of society, rather than all aspects of life of persons. See: Rawls, *Justice as Fairness, A Restatement*, pp. 12-4. Secondly, he departs from the assertion of the 'truth' of his theory. Rather, his purpose is practical seeking to provide a basis for agreement on the 'appropriateness' and 'reasonableness' of his theory. See: Rawls, *Political Liberalism*, pp. 94, 98.

²¹ As opposed to political liberalism, the ideal of freedom as self-determination and individuality is the ultimate goal of traditional and comprehensive liberalism, which liberals would prefer as the best conception of the good life. See: Charles Larmore, *Patterns of Moral Complexity*, (Cambridge: Cambridge University Press, 1987), p. 46.

²² According to strong egalitarianism, individuals should have 'equal access to advantage', where the advantage includes more than mere welfare. See: G. A. Cohen, 'On the Currency of Egalitarian Justice', *Ethics*, Vol. 99, No. 4 (Jul., 1989), p. 907.

²³ Rawls, *A Theory of Justice*, pp. 53-4.

²⁴ Rawls, *Political Liberalism*, p. 6.

²⁵ Rawls, *Political Liberalism*, pp. 5-6.

²⁶ Rawls, *Justice as Fairness, A Restatement*, pp. 25, 41.

²⁷ Rawls, *Justice as Fairness, A Restatement*, pp. 25, 33-6.

²⁸ For this formulation of Rawls's theory, see: Hamid Hadji Haidar, *Liberalism and Islam: Practical Reconciliation between the Liberal State and Shiite Muslims*, (New York: Palgrave Macmillan, 2008), pp.118-131.

²⁹ Rex Martin and David A. Reidy, 'Introduction: Reading Rawls's *The Law of Peoples*' in Rex Martin and David A. Reidy (eds.) *Rawls's Law of Peoples, A Realistic Utopia?*, (Oxford: Blackwell, 2006), pp. 7-8.

³⁰ Rawls, *The Law of Peoples*, pp. 39-41.

³¹ Rawls, *The Law of Peoples*, p. 37.

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

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

³⁴ No doubt, Rawls's minimal liberalism is more demanding than Locke's Liberalism, by the stipulation of absolute freedom of conscience lacking in the latter.

³⁵ Rawls, *The Law of Peoples*, pp. 37-8.

³⁶ Rawls, *The Law of Peoples*, p. 66.

³⁷ Rawls, *The Law of Peoples*, pp. 64-7.

³⁸ Rawls, *The Law of Peoples*, p. 38.

³⁹ Rawls, *The Law of Peoples*, pp. 108-9.

⁴⁰ Robert Nozick's libertarian liberalism confirms only the following five individual rights: (1) the right not to be assaulted, (2) the right not to be robbed, (3) the right not to be defrauded, (4) the right to the performances that others contract to, and finally, (5) the right to liberty to the extent that it does not infringe any of the other four rights. See: Michael Teitelman, 'Anarchy, State, and Utopia: Book Review',

Colombia Law Review, Vol. 77, No. 3 (Apr., 1977), p. 500. Consequently, Nozick libertarian liberalism would legitimise the starvation of orphans to death if its prevention requires imposing taxes upon the rich. See: Samuel Scheffler, 'Natural Rights, Equality and the Minimal State', in Jeffrey Paul (ed.), **Reading Nozick: Essays on Anarchy, State, and Utopia**, (Oxford: Basic Blackwell, 1982), p. 151.

⁴¹ Samuel Freeman considers Rawls's idea of universal human rights along with his recognition of the duty to assist burdened societies as cosmopolitan features of his international theory. See: Samuel Freeman, **Rawls**, (New York: Routledge, 2007), p. 419.

⁴² See: Thomas Pogge, 'Cosmopolitanism and Sovereignty', **Ethics**, Vol. 103, No. 1 (Oct., 1992), pp. 48-9; Charles Beitz, 'International Liberalism and Distributive Justice: A Survey of Recent Thought', **World Politics**, 51, (1999), p. 287; K.C. Tan, **Justice without Borders**, (New York: Cambridge University Press, 2004), pp. 10-12.

⁴³ Rawls, **The Law of Peoples**, p. 6.

⁴⁴ Rawls, **The Law of Peoples**, p. 119.

⁴⁵ Charles R. Beitz classifies liberalism into 'social liberalism' and 'cosmopolitan liberalism'. He defines the latter as the idea that the social world is composed of individuals, rather than some collectivities. Hence, the ultimate concern of the relations of societies should be serving the interests of individuals, rather than collective bodies. See: Charles R. Beitz, 'Rawls's Law of Peoples', **Ethics**, Vol. 110, No. 4 (Jul., 2000), p. 677.

⁴⁶ Rawls, **The Law of Peoples**, p. 34.

⁴⁷ Rawls, **The Law of Peoples**, pp. 36, 80, 85.

⁴⁸ Rawls, **The Law of Peoples**, p. 92.

⁴⁹ Rawls, **The Law of Peoples**, p. 5.

⁵⁰ Rawls, **The Law of Peoples**, p. 93.

⁵¹ Rawls, **The Law of Peoples**, p. 106.

⁵² Rawls, **The Law of Peoples**, pp. 108-11.

⁵³ Rawls, **The Law of Peoples**, p. 85.

⁵⁴ Rawls, **The Law of Peoples**, pp. 91-2.

⁵⁵ Rawls, **The Law of Peoples**, p. 81.

⁵⁶ Rawls, **The Law of Peoples**, p. 9.

⁵⁷ Rawls, **The Law of Peoples**, p. 26.

⁵⁸ Rawls, **The Law of Peoples**, p. 9.

⁵⁹ Following Charles Beitz and Thomas Pogge, Simon Caney distinguishes between 'institutional' or 'legal' cosmopolitanism, which demands the establishment of a global state, and 'moral' cosmopolitanism, which accepts the existence of many states that are committed to the same moral principles. See: Simon Caney, **Justice Beyond Borders, A Global Political Theory**, (Oxford: Oxford University Press, 2005), p. 5.

⁶⁰ Rawls, **The Law of Peoples**, pp. 35-6.

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

⁶² An alternative strategy requires that the starting point in political theory should be dealing with political morality at the global level, and then considering its implications for local institutions. See:

Thomas Pogge, 'An Egalitarian Law of Peoples', *Philosophy and Public Affairs*, Vol. 23, No. 3 (Summer, 1994), p. 197.

⁶³ See: Charles Beitz, *Political Theory and International Relations*, (Princeton, NJ: Princeton University Press, 1979); Brian Barry, *Theories of Justice*, (Berkeley, CA: University of California Press, 1989); Thomas Pogge, *Realizing Rawls*, (Ithaca, NY: Cornell University Press, 1999).

⁶⁴ Freeman, *Rawls*, p. 419.

⁶⁵ Allen Buchanan, 'Rawls's Law of Peoples: Rules for a Vanished Westphalian World', *Ethics*, Vol. 110, No. 4 (Jul., 2000), p. 698.

⁶⁶ Fernando R. Teson, 'The Rawlsian Theory of International Law', *Ethics and International Affairs*, Vol. 9 (Dec., 1995), p. 79; Allen Buchanan, 'Taking the Human out of Human Rights', in Rex Martin and David A. Reidy (eds.) *Rawls's Law of Peoples, A Realistic Utopia?*, (Oxford: Blackwell, 2006), p. 150.

⁶⁷ Freeman, *Rawls*, p. 442.

⁶⁸ Freeman, *Rawls*, pp. 420-2.

⁶⁹ Wenar, 'Why Rawls is Not a Cosmopolitan Egalitarian', pp. 102-3.

⁷⁰ Rawls, *The Law of Peoples*, p. 10.

⁷¹ Rawls, *Political Liberalism*, p. 38.

⁷² Rawls, *Political Liberalism*, pp. 134, 144.

⁷³ Rawls, *Justice as Fairness, A Restatement*, pp. 25, 41.

⁷⁴ Rawls, *The Law of Peoples*, p. 11.

⁷⁵ Rawls, *The Law of Peoples*, p. 60.

⁷⁶ Rawls, *Political Liberalism*, p. 10.

⁷⁷ John Rawls, 'Justice as Fairness: Political not Metaphysical', *Collected Papers*, ed. by Samuel Freeman, (Cambridge, MA: Harvard University Press, 1999), pp. 391, 395.

⁷⁸ Rawls is explicit that he is a contractarian liberal: 'My aim is to present a conception of justice, which generalises and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant. See: Rawls, *A Theory of Justice*, p. 10.

⁷⁹ Rawls, *The Law of Peoples*, p. 26.

⁸⁰ Rawls, *The Law of Peoples*, p. 133.

⁸¹ Rawls, *The Law of Peoples*, pp. 38-9.

⁸² Rawls, *The Law of Peoples*, p. 23.

⁸³ Rawls, *The Law of Peoples*, p. 10.

⁸⁴ Rawls, *The Law of Peoples*, pp. 37-8.

⁸⁵ Rawls, *The Law of Peoples*, p. 37.

⁸⁶ Rawls, *The Law of Peoples*, p. 5.

⁸⁷ Rawls, *The Law of Peoples*, pp. 8-9.

⁸⁸ Rawls, *The Law of Peoples*, p. 8.

⁸⁹ Rawls, *The Law of Peoples*, p. 9.

⁹⁰ Rawls, *The Law of Peoples*, pp. 8-9.

⁹¹ Rawls, *The Law of Peoples*, p. 39 (footnote No. 48).

⁹² Rawls, *The Law of Peoples*, p. 9.

⁹³ Rawls, *The Law of Peoples*, p. 91.

⁹⁴ Rawls, *The Law of Peoples*, p. 28.

⁹⁵ Rawls, *The Law of Peoples*, pp. 8-9, 39 (footnote No. 48).

⁹⁶ Rawls, *The Law of Peoples*, p. 81.

⁹⁷ Rawls, *The Law of Peoples*, pp. 94-6.

⁹⁸ Rawls, *The Law of Peoples*, p. 9.

⁹⁹ See: Steve Chan, 'Mirror, Mirror on the Wall: Are the Freer Countries More Pacific?', *Journal of Conflict Resolution*, Vol. 28, No. 4 (Dec., 1984), pp. 617-48; Erich Weede, 'Democracy and War Involvement', *Journal of Conflict Resolution*, Vol. 28, No. 4 (Dec., 1984), pp. 649-64; Michael D. Ward and Kristian S. Gleditsch, 'Democratizing for Peace', *American Political Science Review*, Vol. 92, No. 1 (Mar., 1998), pp. 51-61.

¹⁰⁰ William J. Dixon, 'Democracy and the Peaceful Settlement of International Conflict', *American Political Science Review*, Vol. 88, No. 1 (Mar., 1994), p. 14.

¹⁰¹ See: Bruce Bueno De Mesquita et al., 'An Institutional Explanation of the Democratic Peace', *American Political Science Review*, Vol. 93, No. 4 (Dec., 1999), p. 791.

¹⁰² Rawls, *The Law of Peoples*, pp. 98-9.