

The Law of Peoples and the Cosmopolitan Critique

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In *The Law of Peoples*, John Rawls extends the domestic version of his political conception of justice as fairness to the relations among peoples at the international level. Rawls argues that not all peoples accept liberal values,¹ but this does not require liberal peoples to leave all nonliberal peoples² outside the international community—the society of peoples endorsing the law of peoples. If a society is not aggressive and is respectful to human rights, and yet nonliberal such as a “decent hierarchical society,”³ liberal peoples can tolerate it, and delegates of liberal peoples accept to enter into an international original position with its delegates. Rawls then contend that delegates of decent hierarchical societies would agree on a set of principles of international law, such as the principle of non-intervention, respect for treaties and human rights.

The distinction Rawls made between political liberalism and comprehensive doctrines in *Political Liberalism* is crucial for the law of peoples: “... there are many reasonable comprehensive doctrines that understand the wider realm of values to be congruent with, or supportive of, or else not in conflict with, political values as these are specified by a political conception of justice for a democratic regime.”⁴ Individuals or groups of a liberal society might have different conceptions of a good life or religious, philosophical and moral doctrines but they have some political values,⁵ which unite them as members of the same society. The separation of political liberalism from liberalism as a

¹ Central to liberal values are “belief in the supreme value of the individual, his freedom and rights” and “advocacy of toleration in matters of morality and religion.” See Roger Scruton, *A Dictionary of Political Thought* (New York: Hill and Wong, 1982), p. 265.

² Rawls distinguishes five kinds of political regime, the three of which are excluded from the membership of a reasonable society of peoples. In addition to liberal and decent hierarchical societies, there are societies “burdened by unfavorable conditions. These societies are handicapped by lack of natural resources or appropriate political culture. In the fourth category are “benevolent absolutisms,” which honor some human rights but do not consult their citizens in any way. Finally, Rawls mentions outlaw societies that are aggressive and may infringe upon human rights in *The Law of Peoples* (Cambridge: Harvard University Press, 1999), pp. 4-5.

³ Such societies do not apply the principles of justice as fairness to their basic structure; yet, their systems of law satisfy a common conception of good in that their rulers take the main interests of all citizens into account while making laws.

⁴ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 169.

⁵ Political values are values such as justice, the general welfare, and equality of opportunity. See Rawls, *The Law of Peoples*, p. 144.

comprehensive doctrine allows Rawls to include nonliberal peoples in the society of peoples.⁶ Just as a citizen of a liberal society respects other citizens' comprehensive doctrines within the limits of a political conception of justice,⁷ so a liberal society must respect other societies, which have comprehensive doctrines different from liberalism, provided that the terms of the law of peoples are secured.

Rawls has been charged with inconsistency, however, as he appears to advocate tolerating some illiberal practices at the international level while denying to tolerate similar practices at the domestic level. To accord equal respect to decent hierarchical societies, whose members do not have a right to freedom of expression and conscience equally, the critics argue, is to be "excessively differential to societies with discriminatory or undemocratic institutions."⁸ In this paper, I shall argue that Rawls's extension of his idea of toleration to nonliberal peoples does not result in a serious flaw in his account. To exclude nonliberal peoples from the society of peoples just because they hold "philosophically unreasonable" ideas or have some illiberal practices is to be "politically unreasonable." Leaving nonliberal peoples outside the society of peoples is also inconsistent with the liberal idea of toleration. If nonliberal peoples are to comply with common political values specified by the law of peoples and to avoid imposing their philosophical conception of the good on other peoples, they must not only be tolerated in the narrow sense of accommodation but also be recognized as equally participating members of the society of peoples with certain rights and obligations. In what follows, I first state Rawls's idea of the law of peoples and toleration. Having examined basic tenets of the law of peoples and Rawls's view on tolerating nonliberal peoples, I shall encounter a number of arguments made against Rawls's attempt to extend his notion of toleration to nonliberal peoples. I try to show that Rawls's theory has adequate resources to dismiss the challenges of his cosmopolitan critics.

⁶ Rawls provides Kant and Mill's liberalisms as examples of comprehensive liberalism and states the difference of political 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 doctrine." In *Political Liberalism*, p. 200.

⁷ Questions of political justice are questions about political rights and liberties as well as questions concerning basic economic structure of society and social justice. See Rawls, *The Law of Peoples*, p. 133.

⁸ See Charles Beitz, "Rawls's Law of Peoples," *Ethics* 110 (2000), p. 687.

I

Rawls describes liberal societies as having three basic features.⁹ Firstly, a reasonably just constitutional democratic government of a liberal society is effectively under political and electoral control of people, and it serves its people's main interests. Secondly, the citizens of a liberal society are united by common sympathies based on a common language, historical consciousness, and political culture.¹⁰ Lastly, liberal peoples have a certain moral character, i.e., the citizens of a liberal society are to cooperate on fair and reasonable terms with one another.

Rawls uses the procedure of the original position and the veil of ignorance a second time as a model of representation for liberal peoples in selecting the principles of the law of peoples.¹¹ The reasonable representatives of liberal peoples are, as in the domestic case, situated symmetrically, i.e., they are free and equal and thus fairly situated. In addition, the representatives ignore any knowledge of their peoples' comprehensive doctrine of the good. Another parallel to the domestic case is the recognition of social and economic inequalities in various cooperative institutions among peoples.¹² The representatives of liberal peoples situated in this way would then agree on the following principles:

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe a duty of non-intervention.
5. Peoples have the right of self-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.

⁹ See Rawls, *The Law of Peoples*, pp. 23-5.

¹⁰ Though Rawls is aware of the difficulty of finding a country whose people are united by common sympathies such as common language, he suggests the idea as a kind of simplification or as a concept of a general theory in expecting it to be a ground of a more complicated and realistic theory. *Ibid.*, pp. 24-5.

¹¹ In the domestic case, Rawls uses the notions of the original position and the veil of ignorance to advance a conception of justice as fairness that could be accepted by individuals who share certain political values. See John Rawls, *A Theory of Justice* (Cambridge, Mass.: The Belknap Press, 1971), p. 12.

¹² *Ibid.*, pp. 32-5.

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.¹³

Rawls claims that decent hierarchical societies would accept the same law of peoples, and like liberal societies, they deserve equal respect and tolerance as members of a reasonable society of peoples.¹⁴ He defines “decency” in terms of a weaker notion of reasonableness and sees the fulfillment of basic human rights as a necessary condition of decency: “Their [human rights] fulfillment is a necessary condition of decency of a society’s political institutions and of its legal order.”¹⁵ He states the characteristics of a decent hierarchical society as follows:

... a decent people must honor the laws of peace; its system of law must be such as to respect human rights and to impose duties and obligations on all persons in its territory. Its system of law must follow a common good idea of justice that takes into account what it sees as the fundamental interests of everyone in society. And, finally there must be a sincere and not unreasonable belief on the part of judges and other officials that the law is indeed guided by a common good idea of justice.¹⁶

If a hierarchical society has these features, then liberal peoples should tolerate that society and accord equal respect to it. To tolerate nonliberal peoples, Rawls notes, means not only to refrain from applying political sanctions but also to “recognize them as equal participating members in good standing of the Society of Peoples with certain rights and obligations.”¹⁷

II

Like a just constitutional democratic government of a liberal society, the government of a decent hierarchical society has an obligation to honor human rights, to take a group’s political dissent seriously and to give a conscientious reply.¹⁸ Yet, there are differences between liberal and nonliberal societies. A decent hierarchical society does not have an individualistic conception of a person with one vote. In addition, although no religion is persecuted, the established religion of a decent hierarchical society may have some privileges, which implies some unequal restrictions on liberty of conscience. Another

¹³ Ibid., p. 37.

¹⁴ Ibid., pp. 69-70.

¹⁵ Ibid., p. 80.

¹⁶ Ibid., p. 67.

¹⁷ Ibid., p. 59.

¹⁸ Ibid., p. 72.

difference is the representation and the status of women in a decent hierarchical regime, which is incongruent with the liberal ideal of equality of opportunity.¹⁹

Having these features, decent hierarchical societies should not be recognized as equal members of the society of peoples, according to the cosmopolitan critics of Rawls's account. If a decent hierarchical society does not treat its members as free and equal citizens, the critics argue, why should liberal peoples accord equal respect to that society? The Universal Declaration of Human Rights declares equality and freedom of all human beings from the birth and everyone's equal right to take part in the government of his or her country, directly or through freely chosen representatives. All individuals have equal basic rights and liberties. Suppose, says Bruce Ackerman, liberals who believe these ideals are majority in a decent hierarchical society and governed by the representatives of nonliberal oppressive minority. "Given these facts," he goes on to argue, "the west must choose, and why should we choose to betray our own principles and side with the oppressors rather than the oppressed?"²⁰ Human rights do not merely consist of basic rights such as freedom from slavery and security of minorities from mass murder. All democratic rights guaranteed by a liberal government must be guaranteed by any other society in order for liberal societies to count that society as a legitimate member of the society of peoples.

Rawls provides several reasons as to why liberal societies should accord equal respect to decent hierarchical societies. First, to require all societies to be liberal is an indication of a failure to recognize that the idea of political liberalism entails toleration for other acceptable ways of ordering society. A liberal society respects its members' comprehensive doctrines so long as these doctrines are pursued in ways congruent with its political conception of justice. As an example, he provides the Catholic and Congregational churches—unlike the latter, the former has a hierarchical organization.²¹ If a liberal society tolerates such hierarchical organizations in the domestic case, consistency requires that it should also tolerate hierarchical ordering of some nonliberal societies, provided that they fulfill conditions necessary for the protection of "urgent" human rights²² and for a common good idea of justice. Second, decent hierarchical societies do not reject their citizens' right to be consulted; the citizens of a decent hierarchical society might play a significant role in political arrangements because the basic structure of the society is a *decent consultation hierarchy*.²³ That is, even if a decent

¹⁹ Ibid., pp. 75-8.

²⁰ Bruce Ackerman, "Political Liberalisms," *The Journal of Philosophy* 91 (1994), p. 383.

²¹ Rawls, *The Law of Peoples*, p. 69.

²² By "a special class of urgent rights," which are respected by both liberal and decent hierarchical societies, Rawls means 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. Ibid., p. 79.

²³ Rawls describes a fictional decent hierarchical society, Kazanistan, where different

hierarchical society is not fully egalitarian, it has mechanisms that secure a more or less free and equal participation of all citizens in political arrangements concerning themselves. Finally, the facts of history do not confirm the claim that only liberal governments can ensure the protection of human rights, and that decent hierarchical societies are always oppressive and do not protect these rights.²⁴ From the mere possibility of the existence of oppressive hierarchical societies, it does not follow that there cannot be decent hierarchical societies, whose basic structure complies with political values of a liberal conception of justice. It is a mistake to set aside all hierarchical societies and regard them as oppressive without closely inspecting the constitutive principles of these societies and their political arrangements. The congruence of the constitutive principles of a hierarchical regime with the law of peoples is to be decisive as to whether or not liberal peoples should accept nonliberal peoples to the society of peoples. “Without trying to work out a reasonable liberal Law of Peoples,” he notes, “we cannot know that nonliberal societies cannot be acceptable.”²⁵

III

As noted before, the cosmopolitan critics of Rawls’s theory argue that all individuals must be treated equally and impartially for their respective goods and interests, and the recognition of decent hierarchical societies as equal members of the society of peoples amounts to overriding this universal principle. By recognizing decent hierarchical societies as equal members of the society of peoples, liberal peoples would have approved of some illiberal practices incompatible with the equality of all human beings. Political institutions of a society are justified if they protect equal freedom and well being of their members. Since hierarchical societies are based on the principle of inequality among individuals, they are morally unjustified and must be kept outside the society of peoples. The immediate question is what does it mean to leave hierarchical societies aside?

As rights and obligations of members of the society of peoples are determined by the law of peoples, to leave hierarchical societies outside the society of peoples implies that hierarchical societies do not have some rights and obligations that liberal societies have. Accordingly, the members of the society of peoples may apply political sanctions to a decent hierarchical society. They may not ask opinions of the representatives of the decent hierarchical society while taking political decisions about the society, its territory, its natural resources, and so on. They could laterally impose obligations on the society without recognizing any one of its claims. But all such plausible ways of exercising power on a decent

groups are represented by legal bodies in the *consultation hierarchy*. Ibid., pp. 61, 77.

²⁴ Ibid., p. 79.

²⁵ Ibid., p. 83.

hierarchical society are inconsistent with liberal values and principles, including equality of individuals, freedom of expression, and other liberties. Moreover, human rights constitute a serious limitation on intervening decent hierarchical societies by political or economic sanctions or military force.²⁶ Liberal states cannot apply economic or political sanctions to nonliberal societies, even if intervention is, to a certain extent, justified, if applying such sanctions infringes upon nonliberal peoples' right to subsistence, health care, etc., and causes further violation of human rights by endangering their lives. Rawls is certainly aware of the dangerous repercussions of a plausible intervention: "Their [human rights] fulfillment is sufficient to exclude justified and forceful intervention by other peoples, for example, by diplomatic and economic sanctions, or in grave cases by military force."²⁷

A critic of Rawls's law of peoples might argue that excluding from membership does not necessarily involve exercising political sanctions over decent hierarchical societies. If delegates of liberal societies sign a treaty among themselves, parties to the treaty may have some privileges and rights that other societies, including decent hierarchical societies, do not have, but this is justified on the basis of reciprocity and the articles of the treaty. To avoid recognizing decent hierarchical societies as "equal participating members in good standing of the society of peoples" means primarily to accommodate them. Liberal societies are to be in minimal relations with decent hierarchical societies; liberal states could at most accept a *modus vivendi* with the oppressor states. Due to some practical constraints, liberal states might "tolerate" some illiberal practices of decent hierarchical societies but this by no means entails to judge these practices as morally acceptable. Thus, all a liberal state can be required to do is to postpone an action against a decent hierarchical society for a while²⁸, because of some restraints, rather than to respect and recognize the decent hierarchical society as an equally participating member of the society of peoples.

To accommodate a society with its comprehensive doctrine as a whole must, a Rawlsian could point out, be distinguished to accommodate some of its illiberal practices while recognizing the society as a full-fledged member of the society of peoples. The former requires minimal relations with the society and perhaps the application of political sanctions when practical constraints are

²⁶ Recall that to tolerate nonliberal peoples partly means to refrain from applying political sanctions for Rawls. By criticizing his idea of toleration, cosmopolitans indirectly suggests that political sanctions must be applied to nonliberal states because of their illiberal practices, and intervention is justified for the same reason.

²⁷ Rawls, *The Law of Peoples*, p. 80

²⁸ For some cosmopolitans, like Kok-Chor Tan, 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. See Tan, *Toleration, Diversity, and Global Justice* (University Park: The Pennsylvania State University Press, 2000), p. 33.

removed. In the latter case, the society has equal membership and all rights and obligations that other members of the society of people have. This does not mean to accept all practices of the society as legitimate; rather it means to overlook some illiberal practices of the society for a while and perhaps change them in the future through interaction with the members of the society of peoples.²⁹ Rawls rightly holds that a society can be altered by influencing it through interaction, trade, and cooperation. It is thus reasonable to accommodate some illiberal practices in the expectation of a future change.³⁰ Since the citizens of a decent hierarchical society are supposed to be rational, they themselves are to be willing to change their illiberal practices as they see and experience positive outcomes of exercising liberal principles in their interaction with liberal peoples: "If a liberal constitutional democracy," Rawls notes, "is, in fact, superior to other forms of society, as I believe it to be, 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."³¹ By force a society can hardly be changed; political sanctions and coercion encourage violence and violence brings further violence instead of cooperation and peace. Imagine that decent hierarchical societies impose a certain way of dressing for women and men on liberal peoples and threaten them by political sanctions in order to ensure the realization of their imposition. Liberal peoples would certainly find such an imposition on themselves outrageous, and probably react violently if they were forced to adopt the new style of dressing. In a similar fashion, if nonliberal peoples are compelled to espouse a liberal way of life, they might resist and respond violently. In the absence of granting equality and respect from the beginning, there would not be any place for further civil discourse. Furthermore, if the majority of the citizens of a hierarchical society are happy with the regime, it is just illiberal to force them to accept liberal practices in the name of the rights of the minority, provided that basic human rights of minority

²⁹ Will Kymlicka makes a similar distinction by emphasizing liberalization of some practices of a cultural community without jeopardizing the existence of the cultural community in *Liberalism, Community, and Culture* (Oxford: Clarendon Press, 1989), p. 169.

³⁰ The same idea guides Rawls's thought in the domestic case: "... at the first stage of constitutional consensus the liberal principles of justice, initially accepted reluctantly as a modus vivendi and adopted into a constitution, tend to shift citizens' comprehensive doctrines so that they at least accept the principles of liberal constitution. These principles guarantee certain basic political rights and liberties and establish democratic procedures for moderating the political rivalry, and for determining issues of social policy. To this extent citizens' comprehensive views are reasonable if they were not so before: simple pluralism moves toward reasonable pluralism and constitutional consensus is achieved." In *Political Liberalism*, pp. 113-14.

³¹ Rawls, *The Law of Peoples*, p. 62.

groups are secured. To compel majority to accept all precepts of a liberal regime just because minorities believe in these precepts and want to live accordingly is to approve of the tyranny of minority over majority, which is inconsistent with the majority rule of liberal constitutional democracies.

IV

Not to tolerate decent hierarchical societies, a cosmopolitan critic might contend, simply means to disregard the opinions of their representatives or not to invite them to the table to ask their views on international political arrangements. And this is justified on the ground that the representatives hold unreasonable beliefs and exercise immoral practices in their respective societies. One can legitimately disregard opinions of an insane person who does not know what constitutes his best interest or who is unable to articulate rational arguments for his demands. Likewise, a child is not asked to vote in times of elections because she is unable to take political decisions on the ground of her will and intellect; she is immature and not adequately autonomous. So is the case with decent hierarchical societies. The citizens of hierarchical societies do not have freedom of action or thought; their minds are not independent enough of some negative prejudices toward liberal societies and false beliefs. They are, in other words, intellectually too undeveloped to have a right to a say on political arrangements on the global order. Nor do their comprehensive doctrines allow them to think freely and take rational decisions on international affairs. Therefore, it is appropriate to keep them outside the society of peoples.

Nonetheless, the denial of membership of decent hierarchical societies to the society of peoples on the ground of an analogy to an insane or a child is a serious mistake. Decent hierarchical societies are full-fledged societies with their political, legal and other social institutions. They govern themselves on certain rules and regulations. They not only legislate themselves on internal affairs but also make treaties with each other. Their citizens are not immature persons, nor do they lack capacities to think rationally. Like any adult of a liberal society, some citizens may hold false beliefs and have some prejudices that may hinder them to take rational decisions. But this by no means reduces them to the status of an insane or a child. Besides, some citizen's holding unreasonable beliefs can by no means be generalized and attributed to all citizens of a decent hierarchical society.

Perhaps the analogy that is made in refusing to recognize decent hierarchical societies as having equal standing with liberal societies is based on a pretended resemblance of a decent hierarchical society to an immoral person. A person who deceives a friend of hers is criticized for her wrongful deed. If the

person infringes upon another's legal right, she is probably imprisoned. In the same way, decent hierarchical societies, one might say, would count as immoral and indeed as committing a crime unless they applied liberal principles in their respective territories. Like the immoral person, they must be criticized, and punished by political sanctions for their failure to exercise liberal principles. If such a punishment is not possible due to practical constraints, the only liberal solution of the problem is to deny their equal standing as members of the society of peoples and not to respect them.

Nevertheless, a Rawlsian could say, in a liberal society, a person who commits a crime by infringing on others' legal rights is still treated as a person and accepted as a citizen. Her misdeeds are not respected; rather, they are criticized. But however wrong her actions are, she does not thereby lose her right to be treated as a person. She cannot be tortured or left hungry; she receives sufficient health care if she is sick. She cannot be humiliated by others' assault on her personality, and her rational choices are respected within legal limits. Nor does she lose her citizenship due, let us say, to stealing money from a bank. So is the case with the membership of nonliberal societies to the society of peoples. Nonliberal societies can be criticized for their wrongful practices; but they do not lose their right to be respected and treated as equal members of the society of peoples. Moreover, the law of peoples relies on a gradation between totally unreasonable and wholly reasonable. A totally unreasonable society may be subject to the treatment of exclusion from membership of the society of peoples. But it would be both unreasonable and unfair to treat a decent society in the same way. If a person does not lose her citizenship for stealing money from a bank, a society must not lose its membership for its some wrongful practices while honoring basic human rights.³² Recall that decent hierarchical societies "have certain institutional features that deserve respect."³³ As liberals do not approve of every practice in a liberal society and still respect its members, its reasonable and just institutions, they should also respect nonliberal peoples and their reasonably just institutions if they believe in liberal ideals of equality and toleration. Rawls quite correctly emphasizes: "denying respect to other peoples and their members requires strong reasons to be justified."³⁴ To exclude a nonliberal society from the

³² Preston King's remarks on tolerating prisoners in this context is instructive: "To imply in any way (as by depriving the prisoner of his right to vote) that one who violates a law should be deprived of *all* rights under the law, is not only contradictory to an intuitive sense of fairness, but contradictory equally to legal practice.... It is plainly inconsistent, in a system of professing attachment to the equal rights principle, to deprive a whole section of the community (defined minimally by reference to the assumed commission of at least one offence) of that most basic and enduring of rights within the system—the right to vote." In *Toleration* (New York: St. Martin's Press, 1976), pp. 209-10.

³³ Rawls, *The Law of Peoples*, p. 84.

³⁴ *Ibid.*, p. 61.

membership of the society of peoples because of its some illiberal practices might in the end render the society of peoples memberless—as it is hard to find a real society, which thoroughly realizes principles of liberalism—if the strict application of liberal principles is taken as a criterion of membership.³⁵

An advocate of Rawls's account might also point out that the exclusion of nonliberal peoples from the society of peoples must be justified in a coherent manner with the liberal ideal that everyone has equal right to participate in decisions on political arrangements concerning his or her life. As Erin Kelly and Lionel McPherson accurately stressed: "The idea that justification of political arrangements need not be addressed to unreasonable persons should be rejected, for these persons could be due a say in the arrangements of institutions binding them."³⁶ A global order arranged according solely to comprehensive liberal principles would influence lives of nonliberal peoples who share the same order with liberal peoples and the former have a right to a say and to vote on political arrangements concerning themselves as much as liberal peoples. From the fact that decent societies do not accept equal participation of their citizens to the political decisions concerning themselves, it does not follow that equality must be denied to decent peoples at the global level. If it is a mistake to exclude individuals' active participation to political arrangements concerning themselves at the domestic level, it is also a mistake to exclude decent peoples from the society of peoples on the same grounds. A mistake cannot be corrected by repeating it at another level.

V

A liberal state, cosmopolitans insist, cannot be politically tolerant or neutral to religious, philosophical and moral doctrines other than liberalism. The world might have various liberal and nonliberal societies but its order can hardly be organized in a variety of ways. Thomas Pogge, for instance, urges that:

If the Algerians want their society to be organized as a religious state consistent with a just global order and we want ours to be a liberal

³⁵ Germany and Japan, for instance, deny citizenship to some residents on the ground of ancestral birth. In many liberal societies the prevalent religion of the society has some privileges which minorities' religions lack. Lastly, women in liberal societies may have some rights officially that women of hierarchical societies do not have such as the right to vote. But women are unofficially marginalized in most liberal societies by discriminatory policies both at home and at work. In some Scandinavian countries, for instance, women are paid less than men for the same job.

³⁶ Erin Kelly and Lionel McPherson, "On Tolerating the Unreasonable," *The Journal of Political Philosophy* 9 (2001), p. 39.

democracy, we can both have our way. But if the Algerians want the world to be organized according to the Koran, and we want it to accord with liberal principles, then we can *not* both have our way.³⁷

The hierarchical order of a decent society is compatible with the denial of a just constitutional democracy. Tolerating “private” intolerant practices, such as denying the right to vote to everyone equally, ends up with a resolute insistence of hierarchical societies on arranging the world order according to such practices in the political sphere. A global order organized according to authoritative hierarchical principles would deny its members equal opportunity to hold official positions, equal job opportunities, and so on.

Rawls could repel this charge by stressing that the law of peoples states minimal conditions of cooperation among liberal and nonliberal peoples rather than the conditions of a full-fledged global order. It is true, he might say, if we tried to organize the world according to the principles of a comprehensive liberal doctrine or according solely to the principles of a hierarchical regime, one would exclude the other. But if we start with the conditions of a minimal base upon which the world order is to be structured, then conflict can be avoidable at least at the beginning. A decent hierarchical society is accepted to the society of peoples because it satisfies the minimal conditions of a politically just liberal world order. If a decent hierarchical society satisfied none of the conditions that are required by political values of liberalism, it would perhaps be unreasonable to accept that society to the membership of the society of peoples. The global order has accordingly a basis arranged according to the principles of political liberalism rather than to the principles of a hierarchical regime or of liberalism as a comprehensive doctrine.

The liberal commitment to public reason³⁸ and deliberative democracy, moreover, presupposes the denial of the rationality of every practice in a liberal society as much as in a hierarchical society. The existing political culture of a liberal society and the comprehensive doctrines it relies upon must be subject to a dialogical critique in order practices of the liberal society to converge on the precepts of political liberalism. Rawls applies the notions of public reason and deliberation to the society of peoples, as well.³⁹ Public deliberation prepares the ground for dialog between the representatives of various comprehensive doctrines. In addition, it gives way to a platform for the representatives of all

³⁷ Thomas Pogge, “An Egalitarian Law of Peoples,” *Philosophy and Public Affairs* 23 (1994), p. 217.

³⁸ For Rawls, a reason is public in three ways: “as the reason of free and equal citizens, it is the reason of the public; its subject is the public good concerning questions of fundamental political justice ... and its nature and content are public.” Rawls, *The Law of Peoples*, p. 133.

³⁹ *Ibid.*, p. 55.

comprehensive doctrines an opportunity of self-criticism and revision of their foreign policies.⁴⁰ Representatives of peoples are, in other words, to be answerable to one another for pursuing or changing their ongoing relations. Guided by a political conception of justice, representatives of various societies would reach an overlapping consensus⁴¹ as a result of public deliberation and discourse. A world order based on selected truths of various comprehensive doctrines would obviously be much more peaceful and rational than a world order based on a single comprehensive doctrine with all its false premises and wrong practices side by side with its, so to speak, universal truths.

One could maintain that Rawls's attempt to extend the notions of public reason and deliberative democracy to the society of peoples does not guarantee a world order based on principles of political liberalism because given the undemocratic appointment of the delegates of hierarchical societies and their background political culture, it is highly unlikely that these delegates will endorse the kinds of global principles the delegates of liberal peoples will endorse. Pluralism at the international level is significantly disanalogous to reasonable pluralism obtained at the domestic level, which unlike the former, is a sheer outcome of the exercise of reason and dialog. Rawls's treatment of decent hierarchical societies as the international analogue of domestic organizations with their comprehensive doctrines is a false analogy. While it is possible for free citizens of liberal regimes to arrive at a consensus on certain points and to tolerate reasonable disagreements on other issues after public deliberation and discourse, the same cannot be said to hold at the global level. Although decent hierarchical societies are not tyrannical, their members lack equal freedom of expression, conscience, assembly and so on, which are essential conditions of reasonable pluralism.⁴² Accordingly, there are primarily two obstacles to extend the notions of public reason and deliberative democracy to the society of peoples, among whose members are decent hierarchical societies. First, the delegates of hierarchical societies will not allow free discussion of every element of their comprehensive doctrines because they are undemocratically appointed and seriously constrained by their negative prejudices toward liberal peoples. Second, disagreements between delegates of liberal peoples and of nonliberal peoples would be

⁴⁰ Ibid., p. 56.

⁴¹ For the issue of the scope and dept of an overlapping consensus, see *Political Liberalism*, pp. 164-65. Although the dept and the scope of a consensus to be reached after initial accommodation may vary from one society to another, it is highly likely that political interests of peoples would play a significant role in this determination.

⁴² Rawls distinguishes simple pluralism from reasonable pluralism. Simple pluralism represents the original plurality or plurality of individuals before endorsing the principles of a constitution whereas reasonable pluralism represents the idea of pluralism after a consensus is reached on constitutional principles.

unreasonable because the delegates of nonliberal peoples would stick to their comprehensive doctrines, false beliefs and prejudices from the beginning; they would not agree to disagree with their opponents on some points after public deliberation and discussion. They would not, in other words, sincerely subject their comprehensive doctrines to criticism. Even if they pretended to participate in public dialog, their disagreement with liberal delegates would not be a result of a clear comprehension of fundamentally incommensurable values. As a result, it seems improbable that the outcome of public deliberation at the international level would be an overlapping consensus on major issues about the world order and a reasonable disagreement on some other issues.

It might be correct to say that the delegates of hierarchical societies would not allow every element of their comprehensive doctrines to be subject to public criticism such as, for example, their belief in the existence of God. But there is no substantial reason to hold the pessimistic view about their sincerity in participating public dialog and in disputing on some important beliefs and claims of their respective comprehensive doctrines. Recall that decent peoples respect human rights and have a right to express their dissent to wrongful practices of the political authority of their societies, and that their representatives come from a tradition, which not only requires members of decent hierarchical societies to tolerate other comprehensive doctrines within their respective territories but also requires governors to take disapproval of some current political practices into account sincerely.⁴³ Even if they were insincere in participating the public dialog of the society of peoples, however, this would not eliminate the possibility of a rational consensus. After all, decent hierarchical societies are not aggressive, and they probably would be willing to cooperate with liberal societies and to make sacrifices to have the advantage of cooperation. And on the points that any sacrifice is implausible for both liberal and nonliberal delegates, they would accommodate each other. There is no good reason to doubt the plausibility of such a bargaining process among rational and reasonable agents.

VI

The bargaining model mentioned above, according to some cosmopolitans, is pretty un-Rawlsian in that unlike this model, the Rawlsian model is quite one-sided. In the Rawlsian model liberal delegates, who want to build up a world order together with delegates of decent hierarchical societies, design the law of peoples in a manner that surrenders the egalitarian principles and some human rights to accommodate hierarchical societies.⁴⁴ There is no

⁴³ Ibid., p. 72.

⁴⁴ Pogge, "An Egalitarian Law of Peoples," p. 216.

bargaining process in the Rawlsian model; rather, liberal delegates one-sidedly sacrifice their equal standing with the delegates of hierarchical societies by giving up their egalitarian claims. There is no corresponding sacrifice on the part of the delegates of hierarchical societies. The illiberal practices of hierarchical societies are silently accepted by liberal delegates in order not to leave hierarchical societies outside the society of peoples.

There are several problems with this objection, however. First, what characterizes the relationship between liberal and hierarchical societies in the case of disagreement is some sort of accommodation⁴⁵ rather than surrender. Accommodation of illiberal practices should not be conflated with surrender, which implies giving up all egalitarian claims not only at the international level but also at the domestic level. Accommodation implies the denial of declining egalitarian principles and a suspension of struggling for them—which need not necessarily be a struggle by appeal to force; the struggle might be in the form of subjecting certain practices to rational criticism and discourse—for a while due to practical constraints. Besides, liberal delegates are free to apply egalitarian principles to their societies. If liberal delegates sacrificed their equal standing with nonliberal delegates at the international level and adopted illiberal practices of hierarchical societies at the domestic level, a talk of surrender of egalitarian principles would be appropriate. But this is not the case. Furthermore, it is dubious that the Rawlsian model is one-sided because Rawls defines the boundary conditions of the recognition of decent hierarchical societies as members of the society of peoples. Decent hierarchical societies should respect human rights and satisfy other terms of the law of peoples. Finally, it is correct to say that bargaining model mentioned in the previous section is not what Rawls describes in *The Law of Peoples*. But there is no internal barrier for Rawls to incorporate such a bargaining schema into his account, which can be developed after the recognition of the law of peoples by each party as a platform or background conditions of further bargains.

Simon Caney propounds that by calling his model utopia, Rawls undercuts the possibility of such a development. A utopia is an ideal that cannot be bettered further, and Rawls's presentation of the law of peoples as a utopia undermines the plausibility of its revision and/or elaboration in further detail. Though for Rawls too, the articles of the law of peoples state "minimum standards" or a "moral threshold," the utopist character of these conditions constitutes an inner obstacle to the idea of their further development and

⁴⁵ Rawls's distinction between public life and private life on the one hand, and between political liberalism and comprehensive doctrines on the other leads us to think that he associates the idea of overlapping consensus on the basic structure of the world order with his conception of public life and political liberalism and the idea of accommodation on the points of disagreement with issues concerning private life and comprehensive doctrines of peoples.

betterment by a bargaining process.⁴⁶

Nonetheless, the Rawlsian notion of utopia need not be identical with Caney's conception of utopia. Rawls could introduce the idea of degrees of being utopist by claiming that what makes his model utopist is its commitment to some ideal moral principles rather than its unalterable perfectness⁴⁷, which seems to be the notion of utopia Caney has in mind. In fact, the list of principles of the law of peoples is provisional and incomplete, according to Rawls. New principles need to be added to the list and some principles such as the fourth must be qualified for him.⁴⁸ Besides, his model is realistic, which implies that his notion of utopia does not exactly match Caney's. To be able to fit the imperfect nature and variability of social reality, a realistic model would presumably lack the characteristics of a perfect and absolute ideal model. Even if Rawls's idea of utopia were compatible with Caney's, however, this would not hinder the development of Rawls's model further. As minimal conditions of an unfinished project, the terms of the law of peoples can be conceived as complete and ideal in themselves. The betterment of the model in this case would be adding new and detailed articles to the law of peoples rather than revising or changing the minimal conditions stated as ideal.

VII

Behind the criticisms of cosmopolitans are two main assumptions and false attributions to Rawls's account. First, it is claimed that practices of a hierarchical society are quite compatible with practices of a despotic regime, and to tolerate hierarchical societies amounts to tolerating illiberal practices of a tyrannical regime. A regime based on hierarchical relations among social groups, it is alleged, squares with intolerance. The rulers of a hierarchical society may consult their citizens and still disregard their opinions. The governors may listen the objections made against their policies and yet continue to apply their oppressive policies.⁴⁹

But this argument does not touch upon Rawls's account, which presupposes that political dissent in a hierarchical society is to be taken into account seriously and to be given a conscientious reply. The plausibility of the presence of hierarchical societies where political dissent has no influence on governmental policies does not indicate that Rawlsian theory, which denies the legitimacy of such a practice, is mistaken. Rawls does not explicitly state whether or not a regime, which does not take political dissent of its members into account

⁴⁶ Simon Caney, "Cosmopolitanism and the Law of Peoples," *The Journal of Political Philosophy* 10 (2002), p. 111.

⁴⁷ Rawls, *The Law of Peoples*, pp. 17-8.

⁴⁸ *Ibid.*, pp. 38-7. For a similar interpretation of the law of peoples, see also Beitz, "Rawls's Law of Peoples," p. 672.

⁴⁹ See Caney, "Cosmopolitanism and the Law of Peoples," p. 104.

seriously, will be accepted to the society of peoples but his emphasis on this point suggests that he thinks it as one of the preconditions of a hierarchical society's recognition as a member of the society of peoples. Even if most hierarchical societies were oppressive, this would barely create the difficulty the critics worry about for Rawls's law of peoples. In that case, one could at most argue that Rawls's theory relies on rather unrealistic assumptions about hierarchical societies. It is, however, one thing to say that Rawlsian account is unrealistic, and as such it is far from the actual practices of hierarchical regimes, it is quite another thing to say that Rawls's model tolerates some illiberal practices, which it obviously refutes.

Second false attribution to Rawls's account is that it accedes cultural relativism. Accordingly, Rawls thinks that each society has its own conception of the good, and there can be no universal truths of moral theory. Each society's values backed up by historical, political and cultural practices are radically different from others and incommensurable; moral principles and values, on Rawls's view, vary from one society to another, according to the critics. The Rawlsian model, in short, entails the irreducibility of a conception of the good adopted by a society to universal moral principles. By committing to cultural relativism, the critics go on to argue, Rawls simply approves of false beliefs and wrong practices of nonliberal societies in the name of respecting them.⁵⁰

The attribution of cultural relativism to Rawls is simply wrong, however, because Rawls does not say that comprehensive doctrines of hierarchical societies are as correct as tenets of liberalism. His view is that if a liberal constitutional democracy is the correct regime to advocate, and he believes that it is, it will be a good example for the members of a hierarchical society, who will appreciate rational principles of liberalism as more advantageous for themselves over time by interacting with liberal peoples. For Rawls, the particularistic preferences and conceptions of the good life are justified not as being good or right in themselves; rather they are justified as means to the universal moral principles such as advancing overall equality. Such a universalistic justification of particularism is incongruent with contentions of particularism according to which each society has its own conception of the good in itself as an end.⁵¹

The law of peoples that liberals would favor might not exactly be the same as the Rawls's law of peoples. Yet, liberals' commitment to tolerance, equality of opportunity and human rights make it highly plausible that they would endorse Rawls's law of peoples as minimal conditions of cooperation and interaction with nonliberal peoples. Nonliberal peoples who appreciate the value and importance of a peaceful cooperation with liberal peoples would also accept the law of peoples, whose conditions are already realized to a great extent in their

⁵⁰ Ibid., p. 108.

⁵¹ See Alan Gewirth, "Ethical Universalism and Particularism," *The Journal of Philosophy* 85 (1988), p. 289.

political culture. They are respectful to basic human rights and diversity of opinions. They take political dissent seriously and not only allow its expression but also feel encumbered to give conscientious reply to dissenters. A world order based on the law of peoples does not amount to giving up liberal principles; nor does the recognition of hierarchical societies as members of the society of peoples.

In conclusion, Rawls has quite consistently articulated his commitment to individual liberty with his notion of toleration. Individuals are not atomic entities isolated from the rest of society without any cultural identity and a comprehensive doctrine. The recognition of differences among individuals, along with their diverse cultural backgrounds, does not necessarily involve a commitment to relativism; nor does respecting individuals having different comprehensive doctrines amount to acceding all their beliefs and actions, including wrong ones. So is the case with societies having diverse comprehensive doctrines. The recognition of differences among societies, like that of diversity among individuals, is rather compatible with the liberal idea of reasonable pluralism. The law of peoples states the preliminary conditions to obtain such a pluralism within the framework of political liberalism at the international level successfully.