The Global Person

A Political Liberal Approach to International Justice Theory

Giving Moral Primacy to the Individual

by

Margaret Helen Jenkins

A thesis submitted in conformity with the requirements

for the degree of Doctor of Philosophy

Graduate Department of Political Science

University of Toronto

© Copyright by Margaret Helen Jenkins (2010)
The Global Person:
A Political Liberal Approach to International Justice Theory
Giving Moral Primacy to the Individual

Margaret Helen Jenkins, Doctor of Philosophy
Political Science, University of Toronto, 2010

Abstract

John Rawls’s *The Law of Peoples* has been criticized for focusing on the interests of peoples rather than individuals and for compromising individuals’ fundamental human rights in order to tolerate nonliberal ideas of justice. This dissertation develops a new political liberal approach to international justice theory that responds to these concerns. This approach gives explicit moral primacy to the individual while also upholding the political liberal commitment to toleration. I do this by developing a political conception of the person specifically for international justice theory and a global original position of persons for working out principles of international justice. This involves the specification of an idea of freedom that is not parochially liberal and the development of a new political liberal human rights framework. This dissertation does not offer a defense of political liberalism as the right account of justice; the aim of this work is to consider whether a political liberal theory of international justice is able to give the individual moral primacy and to explore how it might do so.
Table of Contents

1 Introduction 1
  1.1 The problem: building a conception of the person given global pluralism 1
  1.2 Chapter outline .................................................. 5
  1.3 Relationship to Rawls ................................................. 12
  1.4 Scope ......................................................................... 14

2 Toleration & Rawls’s Conception of the Person 22
  2.1 The political conception of the person in Rawls’s domestic theory ... 24
    2.1.1 Freedom and equality ............................................. 27
    2.1.2 The veil of ignorance ............................................. 32
    2.1.3 Primary goods ..................................................... 34
  2.2 Dropping the (domestic) political conception of the person and original
    position in international justice theory ................................. 36
    2.2.1 Rawls’s rationale .................................................... 36
    2.2.2 Peoples as the moral actors in LoP ............................. 37
    2.2.3 An individualist argument for dropping Rawls’s original posi-
    tion of persons ............................................................. 40
  2.3 Political liberal justification for the toleration of nonliberal politics ... 43
    2.3.1 Toleration of nonliberal politics in Rawls’s domestic theory ... 48
    2.3.2 Developing principles of justice that individuals can endorse 53
2.4 Summary ................................................................. 56

3 A Political Conception of the Person ................................. 59
  3.1 Political liberal priorities and constraints for theorizing ........ 60
    3.1.1 The central importance of facts for political liberalism .... 61
    3.1.2 Resolving the tension between reciprocity and liberal respect
       for the person ......................................................... 65
  3.2 Rawls’s ideas of the person in LoP ................................ 67
    3.2.1 Moral learning .................................................. 68
    3.2.2 Common sympathies ............................................. 69
    3.2.3 Self-respect ...................................................... 70
    3.2.4 Social belonging as a “good” ................................ 70
  3.3 Equality and the two moral powers in international justice theory .. 72
    3.3.1 Liberal parochialism, equality, and the two moral powers ... 73

4 Freedom and the Conception of the Person ......................... 79
  4.1 A political idea of freedom for international justice theory .... 83
    4.1.1 Individuals as constituted and the consequences for freedom . 85
    4.1.2 The capacity to question the state ............................. 89
    4.1.3 Freedom as reconciliation of the particular with public values . 91
    4.1.4 Too deferent to unjust particularity? .......................... 97
  4.2 A political conception of the person for international justice theory . 102

5 Global Original Position and Veil of Ignorance .................... 105
  5.1 Reasonableness in the global original position .................. 109
    5.1.1 Are the constraints of the global original position too liberal? 112
5.1.2 Rational and moral reasons for the equality of reasonable liberal
and nonliberal political doctrines ............................ 114
5.1.3 Veil of ignorance ............................................ 124

6 Human Rights in *The Law of Peoples* ............................ 128

6.1 Human rights and the political conception of the person .......... 128
6.2 What is considered a human right in *LoP* .......................... 134
   6.2.1 The “short list” of rights in *LoP* ............................. 134
   6.2.2 Additional rights in *LoP* .................................. 135
   6.2.3 Political and liberty rights, including the right to democracy . 138
   6.2.4 Exclusions ..................................................... 144
6.3 Rawls’s justification for basic human rights ........................ 150
   6.3.1 Ideas of human nature ........................................ 150
   6.3.2 The ‘political consensus’ of human rights ..................... 151
   6.3.3 The liberal bounds of decency ................................ 154
6.4 Is Rawls’s conception of human rights too minimal? ............... 158
   6.4.1 Liberal parochialism .......................................... 160
   6.4.2 Are decent peoples possible? ................................ 171
   6.4.3 Liberal democratic rights as necessary for knowing if a society
        is decent ......................................................... 177
   6.4.4 Rights as necessary conditions for social cooperation .......... 179

7 Specifying Global Primary Goods ................................. 182

7.1 Primary goods and the political conception of the person .......... 182
   7.1.1 The meaning and purpose of global primary goods ............ 182
   7.1.2 Advantages of this approach over *LoP* ....................... 184
7.2 A list of (global) primary goods .................................. 186
7.3 Running the thought experiment ............................ 193

8 Conclusion .................................................. 196

Bibliography .................................................. 208
Acknowledgements

This dissertation has been with me across different universities, continents, and countries. I am writing now, as this project draws to a close, on a cold night in Hanoi, Vietnam, as my one-year-old daughter Ruthie sleeps in the bed beside my desk.

I began my doctoral studies in September 2002 at McGill University and I would like to thank Alan Patten for his comments on my early work on Rawls, and for meeting with me every week during the summer of 2003 to discuss Hegel. During that same summer, I worked at the Canadian International Development Agency (CIDA), and I am very grateful to Bill Singleton at CIDA for his support of my academic pursuits, and for his continued interest in this work.

From 2003 to 2005, I was a Visiting Fellow in Harvard’s Department of Government. I thank Nancy Rosenblum for her comments on a paper that was foundational for this dissertation and for giving me the opportunity to present this paper at the Harvard Political Theory Colloquium in 2004. I would also like to thank Joshua Cohen, Mathias Risse, Amartya Sen, and Richard Tuck for their advice related to my work on toleration and Rawls.

I moved to New York during the summer of 2004 to work at UNIFEM, the United Nations Development Fund for Women, helping develop strategy for their Arab States program. My thanks go to Kunzang Chungyalpa, Aileen Allen, and Soyoung Chon for a fruitful time at UNIFEM. This experience, like my time at CIDA, was very helpful for working through my thoughts concerning toleration and foreign aid.

In the fall of 2005, I transferred to the University of Toronto and I could not have found a more supportive place to pursue my doctoral research. Thank you to my supervisor, Nancy Bertoldi, for her support and enthusiasm about my work and for her many important substantive comments. I am especially grateful to her for
shepherding the dissertation through the final stages towards the defense while I was living in Hanoi. I am also very thankful to Joe Carens for his insightful comments on this dissertation. He was a tremendous help in clarifying how my work relates to Rawls and for thinking through how toleration might problematically delimit global obligations. I also want to thank Simone Chambers for her attention to issues that were critical to address, such as the institutional requirements needed for the political endorsement of principles of justice. I lived in Washington, DC, and Hanoi Vietnam while writing many of the chapters of this work, and I thank my committee for supporting me wherever I happened to be and for always making time for me whenever I was back in Toronto. I am also grateful to Kok-Chor Tan for the important comments he offered to this dissertation as my external examiner, and I thank Rebecca Kingston for her careful review of my work as my internal reader.

I also wish to thank my family for the many ways they have supported this project. I have fond memories of driving to the University of Toronto with my mother, south down Highway 400 with baby Eden and then baby Ruthie banging a toy or munching on a cracker in the back seat. My mom would kindly look after my children all day while I was meeting with my committee and working at the university. Throughout this project, my mother has offered me loving support, and has flown across countries to do so. She has been willing, at any time, to drop everything to help me and I thank her immensely for that. I thank her also for her strong interest in my work and ideas. I recall her many times sitting at the kitchen table with a mug of tea, looking over my drafts and papers, making notes in the margins. My thanks also go to my father for all of his support, care and encouragement. I remember one rainy day he entertained Eden, who was just a baby, for hours in downtown Toronto so that I could meet with professors. I am especially grateful for the time my parents spent in Hanoi in February 2010. They arrived just as I was submitting the draft I was to
defend, and they made it their priority to help me in any way they could. They have been with me at many important moments of my PhD, have felt tired when I have felt tired, and elated when things have gone well. Throughout, it has been comforting to know they are there.

I would also like to thank Richard and Susan Diamond who have given a tremendous amount to this project. They spent many weekends driving from New Jersey to DC to visit us, taking the girls to the Smithsonian museums, local playgrounds, swimming pools and libraries in order to give me time to work. When we have been together, Susan has gone out of her way to free up my time, handling everything that needs to be done so that I could concentrate on my dissertation and not have to worry about anything else. Richard too has helped in countless ways, has spent hours reading my work and I thank him for his many helpful suggestions.

Finally, I wish to thank Alexis Diamond. I have discussed every part of this dissertation with him and he has carefully read every word I have written, draft after draft, night after night. While writing this dissertation, we have taken refuge with Sandy West on Ossabaw Island, sublet a house in Guanajuato Mexico, and have travelled by Greyhound bus over and over again to see each other at our respective universities. We moved to Washington DC when I was seven months pregnant with our first daughter, Eden, and to Hanoi when our second daughter, Ruthie, was 9 months old. Life with Alexis is a wonderful adventure and I thank him for his loving, attentive and careful challenging of my ideas. I dedicate this work to our daughters, Eden and Ruth. During the course of writing this, and often late at night when the girls were fast asleep, I would open up a book or a hard copy of my draft to find a Winnie-the-Pooh sticker hastily planted or a fuzzy rainbow drawn in crayon across the page. I thank them for bringing such joy to me while completing this work. My hope is that somehow they will benefit from their mother having done this.
For Eden and Ruth
Chapter 1

Introduction

Those who insist, when fundamental political questions are at stake, on what they take as true but others do not, seem to others simply to insist on their own beliefs when they have the political power to do so. Of course, those who do insist on their beliefs also insist that their beliefs alone are true: they impose their beliefs because, they say, their beliefs are true and not because they are their beliefs. But this is a claim that all equally could make.

John Rawls, Political Liberalism, p. 61

1.1 The problem: building a conception of the person given global pluralism

When developing principles that are to guide international law and practice for a pluralist world, it is unclear who precisely the person is that principles should be accountable to. Around the world, diverse laws are passed and challenged, and different constitutions are interpreted, amended and re-written. Individuals are socialized by divergent political institutions and endorse different political values. As such, it is
difficult to generalize, globally, about who the individual is and what she believes, needs, and requires from public life.

One of the central aims of this dissertation is to consider the assumptions that should be made about the individual when developing liberal international justice theory given global pluralism. This dissertation is rooted in the idea that there are hopes and expectations for political life that are common to human beings and transcend countries and communities. This is an uncontroversial assumption, though there is widespread disagreement about what these commonalities might be and how extensive they are.

Cosmopolitanism\(^1\) is premised on the idea that all individuals are entitled to the same rights and freedoms, and should have equal access to similar if not the same opportunities irrespective of pluralism.\(^2\) For cosmopolitans, pluralism is relevant for questions concerning how to go about promoting a more liberal democratic world, but pluralism should not shape foundational cosmopolitan principles.\(^3\) Most cosmopolitans do not want to see liberal democracy forced on those who do not subscribe to its core values;\(^4\) however, the fact that liberal democracy is not universally endorsed does not mean that liberal theory should be premised on (what cosmopolitans consider) compromised or watered-down liberal principles.\(^5\)

The fact of pluralism leads political liberals, most notably John Rawls, to decide against basing international justice theory on the premise that all individuals are to enjoy the same or equal rights, freedoms and access to opportunities. In Rawls’s view, basing international law and practice on these values would result in coercion of

---

\(^1\)This work focuses on contemporary political theory. There is a rich scholarly tradition of cosmopolitanism and historical precursors to political liberalism that I do not engage in this dissertation. The exception to this is in chapter four which discusses Hegel in relation to an idea of freedom I consider relevant for political liberal international justice theory.

\(^2\)Beitz, 1999b; Tan, 2004; Moellendorf, 2002; Pogge, 2002; Barry, 1999.

\(^3\)Tan, 2006; Beitz, 2000.

\(^4\)Brian Barry may be an exception in this regard, see for example Barry, 1995.

\(^5\)For example, see Tan, 2004; Tan, 2006; Tan, 1998; Pogge, 1988; Beitz, 2000.
CHAPTER 1. INTRODUCTION

societies that do not endorse liberal democratic values,\(^6\) would engender international hostility and bitterness\(^7\) that could frustrate progress in a liberal direction,\(^8\) and could even lead to violence and war between diverse societies.\(^9\) Irrespective of any possible harmful consequences, however, these values are inappropriate for international justice theory from a political liberal perspective because they cannot be accepted by diverse points of view: principles of international justice must be expressed in terms that can satisfy the constraints of international public reason, which in the case of LoP means terms “that can be shared by different peoples.”\(^10\) Rawls believes the assurance that principles can be endorsed from different perspectives is required by liberal principles.\(^11\) To tolerate, for Rawls, means not only to refrain from coercive economic, military, and diplomatic sanctions, but to also abide by the constraints of public reason—to justify one’s actions in a way that can be accepted from the perspective of others.\(^12\)

Rawls’s concern with developing international justice theory from a liberal democratic idea of the individual leads him to shift away from focusing on individuals altogether in his theorizing on international justice. “Peoples” have the “status of the (moral) actors” in LoP rather than persons and Rawls describes the primary concern of LoP to be “the justice of societies” rather than the “well-being of individuals” which he considers the priority of cosmopolitan theory.\(^13\) Other scholars, some that identify as liberals and others not, express similar concerns with cosmopolitan starting-points for international justice theory and argue for a more statist approach

---

\(^7\)Ibid., 62.
\(^8\)Ibid.
\(^9\)Ibid., 123.
\(^10\)Ibid., 55.
\(^11\)Ibid., 10.
\(^12\)Ibid., 59.
\(^13\)Ibid., 21.
CHAPTER 1. INTRODUCTION

to international justice. These scholars stress the importance of self-determination and are skeptical of any project that seeks to uphold or support certain values internationally beyond basic human rights.

A strength of cosmopolitanism is its unequivocal commitment to the individual. Yet, the individual at the foundation of its approach appears to be one who endorses liberal democratic values. The ideals embedded in cosmopolitanism’s individualism can therefore come across as parochially liberal, and the theory’s capacity to accommodate and tolerate individuals who endorse nonliberal or nondemocratic politics is ambiguous at best. Yet Rawls’s approach in LoP problematically concedes core liberal values and the moral primacy of the individual in order to tolerate potentially unjust societies that may not even exist. This dissertation works to bridge these approaches by developing a theoretical framework for international justice theory that gives moral primacy to the individual without forfeiting the political liberal commitments to toleration and reciprocity. I do this by building a political conception of the person for international justice theory that specifies the assumptions about the individual in a way that respects the constraints of political liberalism. I also design an individualist thought experiment for working out principles of international justice that places persons rather than peoples in a global original position behind a veil of ignorance.

The implicit assumption of many statist approaches, including Rawls’s, is that international pluralism is too deep and diverse for any conception of the person to handle. Moreover, an individualist focus is often itself considered parochially liberal or is thought to neglect values such as nationalism and patriotism. Yet ironically, ideas of the person often underlie the rationale for statist approaches. The self-determination of communities is deemed morally significant in large part because

14See for example Walzer, 1995; Walzer, 2006; Miller, 2000; Miller, 1995.
individuals often want their societies to be self-determining. A polity is thought to have so-called intrinsic significance because it is comprised of individuals who feel attached to it or believe it benefits them in some way. The rationale for a statist approach rarely employs an argument that is detached from individuals or that serves a purpose independent from their rights and interests.\textsuperscript{15} Although it is obscured by Rawls’s focus on peoples, in \textit{LoP}, ideas concerning the person are apparent and do substantial work in shaping its principles of justice. This dissertation suggests that different values associated with the individual are generally prioritized in statist approaches to international justice theory, such as the freedom to be governed by institutions that one endorses. This work also challenges the idea that a reluctance to endorse cosmopolitan assumptions in light of global pluralism necessitates a statist approach to international justice, and encourages a rethinking of how the contours of a central debate in international justice theory have been drawn. A central question is not whether liberal theory should focus on peoples or persons but rather concerns who the person is that liberal theory is ultimately accountable to. What should we assume this abstract, global person believes in and wants for public life?

\section*{1.2 Chapter outline}

This dissertation answers these questions by developing a political liberal approach to international justice theory that gives the individual moral primacy. In contrast to Rawls, I argue that liberal theory should not (and does not need to) compromise its fundamental moral commitment to the individual when working out principles of international justice for a diverse political world. However, I suggest that any theory that gives the individual moral primacy must consider who the individual

\textsuperscript{15}In chapter four, I argue that even with Hegel’s metaphysics, the freedom of \textit{Geist} depends on the freedom of individuals.
CHAPTER 1. INTRODUCTION

should be assumed to be for the purpose of theorizing on justice, especially in light of the fact that many individuals around the world do not endorse liberal democratic values. This work accepts the moral primacy of individual—a central commitment of cosmopolitan liberals—but also believes that pluralism, however arbitrary, has consequences for foundational assumptions of international justice theory.

I develop this individualist political liberal framework for international justice theory in three main stages. I begin in chapter two by explaining why Rawls’s political conception of the person (in his domestic theory) and its accompanying original position cannot be reapplied to international justice theory as some cosmopolitans have suggested. My central claim is that Rawls’s domestic conception of the person is inappropriate because it does not model political values that many around the world endorse. The argument is political liberal but individualist and therefore departs from Rawls’s own justification for dropping his conception of the person in LoP. As part of this argument, I explain why the values that individuals hold have theoretical significance for justice theory even if they are considered unjust from a liberal perspective. To put another way, if certain values are at odds with Rawls’s political conception of the person and the original position, why shouldn’t this be taken as a sign that the values are problematic (rather than the theoretical tools)? I answer this question by explaining what Rawls’s political conception of the person and the original position were designed to do, what they reflect and what their limitations are. I also explain why nonliberal and nondemocratic political doctrines are not considered a priori oppressive and intolerable by political liberal theory. At the same time, I draw a sharp distinction between political liberalism and cultural relativism, and I emphasize that principles of justice do not need to be acceptable to everyone from a political liberal perspective.

---

16 See for example Pogge, 1989; Beitz, 1999b.
CHAPTER 1. INTRODUCTION

Chapter two also addresses another question raised by my individualist argument for dropping Rawls’s (domestic) political conception of the person: why should the fact that some individuals endorse nonliberal politics have different theoretical significance for domestic and international theory? Indeed, there are minorities within liberal democracies who do not accept the values underlying Rawls’s political conception of the person. Yet this fact of (domestic) pluralism does not render this conception and its related original position inapplicable to domestic justice theory. I argue that by responding differently to nonliberal politics in domestic and international theories of justice, political liberalism works to construct principles of justice that individuals can endorse. At the international level, there are nonliberal and nondemocratic societies that individuals support, and liberal democratic values are not as embedded within public culture as they are within any single liberal democracy. Basing international justice theory on a liberal democratic conception of the person is therefore inappropriate. That said, I recognize that there are members of nonliberal societies who will not endorse the public doctrine of their society as well as members of liberal democracies who do not support liberal democratic values. From a political liberal perspective any disconnect between one’s public life and the values one espouses for it (liberal or nonliberal) is regrettable but unavoidable. Every step of political liberal theory works towards the objective of constructing principles of justice that individuals can understand and endorse.

The second section of the dissertation (chapters three and four) develops a political conception of the person for international justice theory. In order to keep this conception within the realm of the political, I try to substantiate its content from ideas that are “familiar and basic”\(^\text{17}\) and “natural and plausible”\(^\text{18}\) rather than controversial. With this end in mind, to develop this conception, I consult two main

\(^{17}\text{Rawls, Political Liberalism, 43.}\)

\(^{18}\text{Rawls, A Theory of Justice, 16.}\)
sources: (1) the implicit ideas of the person in LoP; and (2) the political conception of the person in Rawls’s theory of domestic justice which is largely comprised of an idea of individual freedom and of equality as well as two moral powers of the person (which Rawls specifies). In contrast to Rawls, I argue in chapter three that there is nothing especially parochial about the two moral powers of individuals (the capacity to be reasonable and rational) specified by Rawls’s domestic theory and his related idea of equality that would make these ideas inapplicable to a global political conception of the person. However, I agree with Rawls that the idea of freedom in his domestic theory reflects liberal democratic norms and is therefore inappropriate for international justice theory.

The objective of chapter four is to substantiate a political conception of freedom suitable for international justice theory. I propose that there is a less contextual, overarching understanding of freedom implicit in Rawls’s political liberal thought that can fulfill this purpose. Central to this idea of freedom is the need for individuals’ values and interests for public life (including their ideas of freedom) to be reflected in the public institutions that govern their lives.\textsuperscript{19} To substantiate this conception, I draw upon Hegel who I believe gives the most developed account of core principles related to the idea of freedom that I put forward, and I show the resonance of Hegel’s idea of freedom in Rawls’s political liberalism. The final section of chapter four lists in summarized form the twelve ideas that make up the political conception of the person developed by this dissertation. Individuals are conceived as significantly constituted by pluralist institutions, as belonging or wanting to belong to a public life they can endorse, and as possessing the two moral powers (the capacity to be reasonable and rational) specified by Rawls’s theory of domestic justice. As long as individuals can

\textsuperscript{19}I am not making the bolder claim that the acceptability of political institutions (to individuals governed by them) is a sufficient condition for freedom, but I do suggest that this is a necessary condition.
CHAPTER 1. INTRODUCTION

act reasonably and rationally (in the way specified by political liberal theory), I argue that they should have an equal role in constructing principles of international justice regardless of whether they subscribe to liberal or nonliberal politics. The conception of the person also specifies three respects in which individuals are considered free in this framework: (1) they endorse the public values and institutions that govern their lives; (2) this endorsement is not the result of indoctrination or force and assumes a certain capacity for reflection and deliberation; and (3) they have the capacity and opportunity to influence their government and public life.

The third section of the dissertation (chapters five, six and seven) develops an individualist thought experiment for working out principles of international justice based on the political conception of the person developed in the previous chapters. In the global original position, individuals are situated symmetrically and are behind a veil of ignorance that blocks out knowledge of social position, race, sex, ethnicity and religion in the same manner as the thought experiment in Rawls’s theory of domestic justice. However, more variables are behind the veil in the global original position I propose, including political doctrine and country of citizenship. The thought experiment is designed to give representation to those who feel disenfranchised by their states, disagree with their society’s politics or feel unattached to any particular state or political doctrine, as well as refugees and the internally displaced. Those who have been socialized by the religious laws and institutions of Saudi Arabia and Israel, the communist politics of China and Vietnam and those who have grown up with the liberal democratic institutions of France and the US are all represented in the global original position as long as they are reasonable in the political liberal sense—they are prepared to be in a relationship of equality with those who endorse nonliberal and liberal political views (as long as they too are acting reasonably) and are willing to propose terms for international cooperation that these others are able to accept.
Chapter six offers a new interpretation of Rawls’s treatment of human rights in *LoP* and is the most exegetical part of the dissertation. My aim in this chapter is in part to clarify misunderstanding of the human rights framework in *LoP*. I argue that *LoP* includes more rights than is often thought and I highlight the ways the decent nonliberal peoples Rawls describes in *LoP* are democratic. The main reason I spend considerable time on the human rights framework of *LoP* is because it is the part of Rawls’s international justice theory that is most explicitly individualist and therefore most revealing of the generally implicit idea of the person in *LoP*.20 Understanding what Rawls did with respect to human rights in *LoP* is also helpful for working out my own political liberal human rights framework.

Chapter seven specifies a set of primary goods, including human rights. These goods play the same role as they did in Rawls’s theory of domestic justice; they are what individuals are assumed to care about given what we know about them—given the “conception of the person worked out in advance.”21 Rawls introduces primary goods into his (domestic) thought experiment because of his concern that representatives behind a veil of ignorance will have too little guidance for proposing principles of justice. Primary goods are “the considerations that move the parties in the original position.”22 Rawls describes primary goods as specifying what we might understand as the “social requirements and the normal circumstances of human life within a democratic society.”23 My aim is similar though seeks to include goods of all persons irrespective of the society they are in or the political doctrines that they hold, provided they are rational and reasonable in the manner specified as part of the conception of the person. In line with the constructivist approach of

---

20 “Rawls does not emphasize it, [but] his human rights doctrine answers to, or at least appears intended to answer to, the fundamental moral status and basic needs of all human beings as moral agents and social beings” (Reidy, 175–6).
22 Ibid., 307.
23 Ibid.
political liberalism, these goods are derived by considering what is necessary for the full development and exercise of the two moral powers (discussed in chapter three), as well as for individual freedom (as specified in chapter four) of all persons irrespective of the political doctrines that they may hold.\footnote{This is similar to how Rawls develops his primary goods in his theory of domestic justice.} I argue that my conceptualization of human rights has three advantages over Rawls’s in LoP: (1) I include rights and freedoms that Rawls does not include as basic human rights; (2) my framework for human rights gives clear moral primacy to the individual as the fundamental unit for political liberal theorizing; and (3) I offer a complete list of human rights for political liberal international justice theory. Rawls suggests in LoP that he provides a partial list of all the rights that would be included in the Law of Peoples.\footnote{Rawls, The Law of Peoples, 65.}

I close chapter seven by discussing the main objective of the thought experiment. The purpose of the thought experiment is to specify the “ideals, principles, and standards”\footnote{Ibid., 40.} that are to apply to the relations among states, peoples or societies, including the main political, social, and economic institutions of the international system. The individualist approach I have developed does not have a conception of peoples in Rawls’s sense. Instead, representatives in the original position may be representing members of societies that could meet Rawls’s standards for liberal and decent peoples, or they may not. They may be representing someone who is displaced or is a political prisoner. By restricting this information, the idea is to come up with principles that can be acceptable given the individuals’ vast and diverse needs, interests and political doctrines as long as these are rational and reasonable (in the manner specified).

One might ask, why are the individuals in the global original position seeking to develop principles for relations between peoples or societies and not individuals?
CHAPTER 1. INTRODUCTION

Critics may wonder whether I am incorporating the current problematic state-centric system into my model instead of allowing individuals to decide whether this is how they would structure the world to best serve their rights and interests. My response to these concerns is that the focus on relations between states or societies is deduced from the political conception of the person and how these interests have been specified. Those in the original position are representing individuals who are either connected to their societies or states or that wish to be part of a public life that they can endorse. This does not mean however that the current state-centric international system would be justified by this approach. Individuals as conceived could potentially call for stronger global institutions or extensive challenges to state sovereignty.

I conclude the dissertation in chapter eight by summarizing its contributions and argument. The main path for future research is to run the thought experiment, construct new political liberal principles of international justice, and examine whether this individualist approach generates substantially different principles from LoP. I test the waters of this by considering the constraints on foreign policy suggested by my approach. Rawls argues in LoP that peoples should not employ military, diplomatic, or economic sanctions towards other well-ordered peoples to make them change their ways, and implies that if foreign policy cannot be grounded in the public reason shared by the Society of Peoples, it is illegitimate. I suggest that individuals in the global original position I have developed would not accept the level of foreign policy restraint required by LoP.

1.3 Relationship to Rawls

Although this work takes inspiration from the cosmopolitan commitment to the individual, the approach developed here is political liberal in the sense that it uses
political liberal tools and methodology to develop the theory, and it is consistent with political liberal principles and constraints for theorizing. I interpret political liberalism as fundamentally concerned that individuals are governed by public ideas of justice and institutions that they endorse. I show how this value permeates Rawls’s political liberal theories of both domestic and international justice, and is evident in the restraint he exercises when working out principles of justice. Rawls drops certain ideals, including liberal values that he himself endorses, in order to construct principles that can be endorsed from diverse points of view.

Defending an interpretation of political liberalism however is not the main aim of this work. I recognize that there are many interpretations and that my reading of Rawls will not be acceptable to all. However, regardless of whether I interpret Rawls correctly, I offer a new approach to international justice theory that has its own defined parameters, specification, and justification and can be judged on its own terms. In my view, this approach is consistent with political liberalism, but departs sharply from LoP. Yet I accept that readers may see this differently, especially if they have a different interpretation of political liberalism or of LoP. The contribution of this project however does not depend upon seeing it as consistent with political liberal ideals and constraints, nor does it rely upon agreeing with my interpretation of Rawls.

This project uses the same political liberal tools and (in my view) draws upon the same rationale that Rawls used to develop principles of justice for a liberal democracy in his original theory of justice. There, Rawls develops a “political conception of the person” that specifies assumptions concerning individuals’ basic capacities (“moral powers” in Rawls’s language) and what makes them free (or how freedom is understood). This conception of the person is the basic building block of Rawls’s theory of domestic justice; virtually all of his well-known tools and concepts are derived
CHAPTER 1. INTRODUCTION

from a “conception of the person given in advance” including the original position, veil of ignorance, primary goods (including human rights) and ultimately his principles of (domestic) justice. The individualist framework I develop is political because it abides by political liberal constraints for constructing principles of justice, but I apply these constraints differently than Rawls did in his theorizing on international justice. I build a “political conception of the person” specifically for international justice theory and I suggest that principles of international justice be worked out by placing persons in a global original position behind a veil of ignorance. It is possible that Rawls would support such an endeavour, however much it departs from LoP. Although Rawls saw LoP as adhering to the fundamentals of political liberalism, he did not see his approach as the only way of developing a Law of Peoples. As he explains: “I cannot be sure in advance that this approach to the Law of Peoples will work out, nor do I maintain that other ways of arriving at the Law of Peoples are incorrect.”

1.4 Scope

In some respects this work is ambitious in its scope. I offer a new approach for theorizing on international justice that develops its own political conception of the person and thought experiment for working out principles of international justice. As part of this individualist approach, I present a definition of freedom that is not parochially liberal and that can serve as a foundation for political liberal international justice theory. I also develop a new political liberal human rights framework.

In other ways, however, this project is limited in its objective. My interest is to show how political liberalism can accommodate concerns with giving the individual

---

27 Rawls, Political Liberalism, 308.
moral primacy while maintaining its commitments to toleration and reciprocity.\(^{29}\) My aim is not to defend political liberalism against critics or to offer new arguments in support of a political liberal account of justice. Furthermore, I am not making the claim that all liberals should be political liberals or that a political liberal theory of international justice is the most true or just liberal theory. I expect that there are other ways of developing a political liberal (or other) approach to international justice theory that gives the individual moral primacy. By developing this political liberal individualist approach, I clarify the boundaries of the demands of political liberalism, and hope to provide an innovative and clearer way of understanding the political liberal position and what it can offer to international justice theory. For this project to be more persuasive as the right account of justice, I would need to delve further into the critical literature on Rawls and defend the political liberal approach that I develop here step by step. There is extensive literature relevant to many of the key ideas addressed in this work—from the assumptions underlying the original position, to the specification of primary goods. For now, I pursue the more modest aim of considering whether a political liberal theory of international justice can give the individual moral primacy and explore how it might do so.\(^{30}\)

This project, like \textit{LoP}, aims to develop a theoretical approach that tolerates certain nonliberal and nondemocratic political doctrines. Toleration in this project refers to the political liberal interest in justifying principles with a public reason shared by diverse perspectives. In this work, certain nonliberal and nondemocratic political doctrines are tolerated in the sense that this approach works to develop principles of justice that will be accepted from the perspective of these doctrines. This is similar to Rawls’s interest basing the Law of Peoples on a “public political conception of

\(^{29}\)This project’s aim is similar, but from the perspective of political liberalism, to Kok-Chor Tan’s aim in \textit{Justice Without Borders} to show that cosmopolitanism can accommodate certain forms of nationalism and patriotic concerns. This work owes much to his account.

\(^{30}\)I thank Joe Carens for raising this issue.
CHAPTER 1. INTRODUCTION

justice” that can be “endorsed by well-ordered societies, both liberal and decent.”

In other ways, however, this project departs from Rawls’s argument for toleration in LoP. This dissertation does not assume that the nonliberal peoples described in LoP should be tolerated, nor does it argue that principles of international justice should tolerate any nonliberal or nondemocratic society. Instead, questions concerning the limits of toleration in international law and practice would be worked out in the global original position I have described. What is assumed by this work is the following: (1) that nonliberal and nondemocratic political doctrines are not a priori oppressive and intolerable; (2) that individuals who endorse nonliberal political doctrines can be rational and reasonable; and (3) there are individuals around the world that endorse nonliberal and nondemocratic political doctrines. Individuals who endorse nonliberal and nondemocratic politics are represented in the global original position as long as they are rational and reasonable in the manner specified. Those who wish to impose certain political beliefs on others in either domestic or international politics are not modeled in the original position, and will not consider the principles of international justice that would be constructed from my approach as acceptable from their point of view. Whether certain diplomatic, economic or military sanctions should be employed to coerce other societies, and under what conditions these would be justified are questions related to the limits of toleration that would (and should) be determined by individuals in the global original position and are not specified by this work.

In this dissertation, I use the term “nonliberal” to refer to those beliefs that reject the liberal democratic ideas of freedom and equality (as these are specified in Rawls’s broader political liberal thought). To illustrate, with respect to equality, nonliberal

---

32 In *LoP*, Rawls makes the assumption that peoples would endorse the level of foreign policy constraint he suggests—he does not thoroughly explore whether peoples in the original position he describes would endorse the the constraints on foreign policy he puts forward.
33 The full meaning of liberal and nonliberal understood by this work is substantiated in greater
political doctrines may argue that certain families or religions are more entitled to
political office than others or that women and men should have different public roles
or responsibilities. In Bhutan, for example, certain political offices are reserved for
Buddhist monks, and in Iran, the Supreme Leader has both the highest political
and religious authority. By the definition used in this dissertation, the monarchies
that are still in place within liberal democracies (and elsewhere) would be considered
nonliberal though their actual political power is often limited.

With respect to freedom, nonliberal political doctrines may argue that religious
practices and beliefs, dress, and other aspects of life that liberals generally argue
should be outside of government interference should be firmly within the public do-
main, or may restrict religious freedoms and practice altogether (especially of minori-
ties). In Saudi Arabia, for example, all Saudi citizens must be Muslims and observe
Sharia Law and in many countries it is illegal to convert to another religion. In Turkey,
on the other hand, concerns with maintaining secularism have led to restrictions on
freedom of religious expression (especially for conservative Muslims), particularly in
government offices and state-run institutions including universities.

In this dissertation, I draw most heavily on political Islam in my examples of
nonliberal political doctrines. Islamic societies were also the most common example
in Rawls’s LoP. Of course religious politics are not limited to the Islamic world
and some readers may object to my focus on Islamic politics. There are two reasons
why I primarily refer to political Islam in my examples. First, the current climate of
sensitivity, prejudice, and phobia towards Islamism and Islam more generally makes
me more rather than less inclined to focus on political Islam. This work makes a

---

34 The example Rawls gives to illustrate his decency criteria is of a hypothetical Islamic state.
Footnotes in LoP indicate Rawls’s interest in understanding Islamist politics. He cites Mottahedeh’s
article “Toward an Islamic Theory of Toleration” in Islamic Law Reform and Human Rights (1993),
and Bernard Lewis’s The Middle East (1995). Both texts at 76n. Leila Ahmed’s Women and Gender
in Islam (1992) is cited at 110n. See also his footnote at p. 72n.
sharp distinction between political Islam and Islamic terrorism (one that is often not made) and argues against the view that political Islam, and religious politics in general, are inherently (politically) unreasonable, oppressive, or unjust. Second, Islamist politics are raising some of the most pressing questions for foreign policy, given ongoing wars in Afghanistan and Iraq, instability in Pakistan, hostility with Iran and protracted conflict and tension in the Middle East. Terrorist attacks also continue to be committed in the name of Islam, however distorted these references are and distasteful this is for Muslims (who are by far the majority affected by this terrorism) as well as others. While the approach developed here is primarily abstract, by drawing on some examples from Islamic politics I hope to offer some reflection into the current debates on proper foreign policy responses to political Islam, Islamic states, Islamic extremism, and Islamic terrorism and to provide some reflection on how to navigate these messy, problematic and politically charged categories.

This individualist approach, like political liberalism more generally, aims to base theory on values that are widely held and accepted in order to construct principles that accord with what individuals are prepared to endorse. By doing so, it is important to emphasize that political liberalism does not seek to affirm the status quo or simply leave everyone with the beliefs and values they hold. Instead, it aims to stretch what we think is possible and make vivid to us what is required by our deepest convictions and principles.

By placing significant theoretical weight on what individuals are prepared to endorse, however, political liberalism is vulnerable to the criticism that it grants too much moral significance to public culture and widely held values, and neglects minority and outlying views. I respond to this concern in the dissertation as a whole by working to show that every step of this approach is designed to ensure accountability to the individual, and not just an individual that is comfortable with widely shared
CHAPTER 1. INTRODUCTION

public values. Political liberalism does give moral import to public culture; principles of justice are to be in synergy with the values that individuals are prepared to endorse. Yet like Rawls, I accept that no matter how inclusive principles of justice aim to be, they will not be acceptable to all. However, political liberal sensitivity to public culture and the values that individuals are prepared to accept increases rather than decreases the capacity of political liberalism to construct principles of justice that individuals can endorse. The political liberal commitment to freestanding foundations, to public reason, and to reciprocity all work to construct principles of justice that can be accepted by those governed by them. Other theoretical approaches that are premised on certain philosophical values, including liberal democratic ones, often give moral weight to these values irrespective of the extent to which they are endorsed by individuals. These approaches conceivably could therefore justify principles of justice that are more disconnected from individuals than the principles suggested by a political liberal approach to international justice. Nevertheless, all theories of justice will generate or defend principles of justice that are unacceptable to some; the legitimacy of principles does not depend on their unanimous endorsement. A theory should be judged in part by the extent to which it minimizes the dissonance between individuals and the principles of justice that will govern them (towards this end, I believe political liberalism is better equipped than most), and on the measures it provides to protect the rights, freedoms and interests of those who are excluded. With respect to protections for the excluded, I discuss the provisions afforded by my theoretical approach when discussing human rights and primary goods (chapters six, seven, and eight).

This dissertation also does not give any theoretically privileged position to the state. Representatives in the global original position do not know if they are representing a person that feels a deep sense of connection to their society, or someone who
CHAPTER 1. INTRODUCTION

is a political prisoner, a member of a disenfranchised minority, or someone fighting for secession. The thought experiment works to construct principles of international justice that enable all individuals, regardless of where they find themselves, citizenship in a public life that they can support.\textsuperscript{35}

My emphasis on acceptability raises the question of whether it is possible to know the public values individuals are prepared to endorse without liberal democratic institutions. The puzzle as I see it is this: it is reasonable to assume that individuals may want their public life, or certain aspects of it, to be nonliberal or nondemocratic. Yet how can we know this without institutions being in place that they may not accept? While I recognize that the challenges to understanding political endorsement within nonliberal and nondemocratic contexts are formidable, potentially coercing liberal democratic institutions on certain polities in order to know (possibly) they do not in fact want them is a puzzling and deficient solution. I suggest in chapter six that the question should not be whether we can know what people endorse without liberal democratic institutions, but rather: (1) which liberal democratic institutions are necessary for acquiring an understanding of endorsement; and (2) whether a political liberal approach can accommodate these measures without forfeiting its commitment to reciprocity.\textsuperscript{36} In the list of primary goods put forward in this dissertation (chapter seven) I include various press freedoms and other measures to facilitate the understanding of other societies, without calling for more extensive liberal democratic rights that may conflict with the political liberal commitment to toleration.\textsuperscript{37} I also sug-

\textsuperscript{35}Although it is beyond the scope of this work, I believe that the political liberal approach developed here would generate principles and guidelines with respect to intractable conflicts and factionalism as well as requests for autonomy and separation within societies that focused on finding suitable political arrangements to ensure individuals are governed by institutions they accept.

\textsuperscript{36}Rawls’s decent nonliberal societies are liberal and democratic in some ways and not in others. Those who believe we would not be able to know what is happening within nonliberal peoples Rawls describes need to make the case that the rights and institutions Rawls excludes are necessary to understand whether members of decent peoples support their governments.

\textsuperscript{37}My specification of primary goods also includes rights and freedoms that can be considered pre-
CHAPTER 1. INTRODUCTION

gest that opportunities for cross-cultural and cross-doctrinal understanding are often untapped and untried. Arguments for more robust liberal democratic institutions on grounds that we need to be able to understand diverse others need to show that less ideologically divisive measures are insufficient.

conditions for endorsing anything, such as having a certain capacity to do so (secured by a certain standard of education, health, etc.), as well as external/government factors that protect freedom of thought and expression, ensure information is available about government policies and practices, and provide checks against propaganda and misinformation.
Chapter 2

Toleration and the Inapplicability of Rawls’s
Political Conception of the Person to International
Justice Theory

This dissertation presents a political conception of the person for international justice theory. An obvious first question is why we should not reuse Rawls’s conception of the person from his domestic theory. This is the approach suggested by many cosmopolitan critics of *LoP* who have argued that the original position of persons from Rawls’s domestic theory should be extended globally to work out principles of international justice for all individuals.¹

I begin this chapter with a counterargument on individualist grounds: that Rawls’s (domestic) conception of the person is inappropriate due to the fact of pluralism at the global level, because this conception fails to model the political norms held by many individuals around the world. I delve into the political conception of the person in Rawls’s domestic theory, discussing its ideas regarding freedom, equality, and individuals’ primary goods,² and I show that this conception was designed to model

¹For example, see Pogge, 2002; Beitz, 2000.
²I devote significant attention to these issues in this chapter because later in the dissertation I explain how the conception of the person for international justice theory presented requires a
values that are widely shared in the context of a liberal democracy. I also explain how Rawls’s original position of persons models this particular conception of the person.

To complete the individualist argument for dropping the conception of the person in Rawls’s domestic theory (as well as the original position of persons that models this conception), one must explain why it is more important to tolerate nonliberal political doctrines endorsed around the world that liberals may find objectionable than to uphold fundamental liberal values modeled in the original position. Why are individuals’ values important if they would be deemed oppressive from a liberal perspective? To answer this question, I offer an interpretation of the fundamental values of political liberalism and explain why nonliberal and nondemocratic political doctrines are not considered a priori oppressive and intolerable by political liberal theory.3

My analysis points to one additional issue that has also arisen in cosmopolitan critiques of LoP: how to explain why pluralism has very different consequences for domestic-level versus international-level political liberal theory.4 As mentioned above, the fact of global pluralism requires dropping Rawls’s political conception of the person and original position, but the fact of domestic-level pluralism does not. Why shouldn’t opposition to liberal values in the domestic context of a liberal democracy lead to the same problem of inapplicability? I argue that the fact of pluralism should have different consequences for domestic and international theory, but unlike Rawls I defend this position on individualist grounds. I show that in both domestic and international political theory, political liberalism works to develop principles of justice

3I use the term ‘oppressive’ throughout this dissertation to refer to unjust or cruel force or authority. Nonliberal and nondemocratic regimes are not considered to be oppressive by definition by this work (or by Rawls’s political liberal theory) because I assume that individuals can endorse certain nonliberal and nondemocratic political doctrines, and in a sense freely (depending on how this freedom is defined). I do not assume that nonliberal and nondemocratic institutions are always imposed or maintained by force.

4See especially, Tan, 1998; Pogge, 2006.
that individuals can endorse.

2.1 The political conception of the person in Rawls’s domestic theory

The objective of this section is to understand the political liberal justification for the values modeled by Rawls’s original position of persons in order to consider its applicability to the international context. By examining how Rawls derives his political conception of the person (for domestic theory) and the way he uses this conception to build principles of justice, I also hope to enrich the understanding and expertise I can bring to the project of developing a political conception of the person for international justice theory.

One of Rawls’s first steps in constructing principles of justice for a liberal democracy is to identify the central values of this society: to consider what individuals believe and how they see themselves. From a political liberal perspective, values are deemed central not because they are philosophically justified but because they are widely held by individual members of this society. “A political conception of justice is built up from political (moral) ideas available in the public political culture of a liberal constitutional regime. The idea of a free citizen is determined by a liberal political conception and not by any comprehensive doctrine, which always extends beyond the category of the political.”

---

5Rawls, The Law of Peoples, 15. There is a subtle but important distinction between values considered to be part of a public culture and those that individuals hold. Presumably a public culture, depending on how this is defined, could have certain values “available” but that are not held by individuals. Rawls does not make this distinction between the values of public culture and those that are held by individuals. Implicit in his work is the assumption that these are much the same thing. This is especially evident in his discussion of moral learning. Rawls sees individuals as embedded within and socialized by public culture and institutions. Rawls mentions: “In a democratic society there is a tradition of democratic thought, the content of which is at least familiar and intelligible to the educated common sense of citizens generally. Society’s main
CHAPTER 2. TOLERATION & RAWLS’S CONCEPTION OF THE PERSON

The second step is to generate a thought experiment, the original position, to model these central and simple values in order to develop more complex principles of justice to govern the society. “The idea here is simply to make vivid to ourselves the restrictions that it seems reasonable to impose on arguments for principles of justice, and therefore on these principles themselves.” These “reasonable” restrictions are not established by metaphysical or epistemological argument but are instead specified by a political conception of the person which draws upon how individuals see themselves in a liberal democracy. The constraints of the original position reflect fundamental values that citizens of liberal democracies hold. The main reason why a political conception of justice can gain this support is because it is not itself defended on philosophical or metaphysical grounds (on which Rawls believes citizens in a pluralistic society will be long divided).

“To rebut claims” that the original position rests on a metaphysical foundation, Rawls sketches “an account of a political conception of the person drawn on in setting up the original position” which is based on how individuals “conceive of themselves as free” in the “public political culture of a constitutional democratic regime.” The original position models citizens as

...free and equal because that is how they conceive of themselves as citizens in a democratic society. Thus, they think of themselves as having the moral power to have a conception of the good, and to affirm or revise that conception if they so decide. They also see themselves as self-

---

6Rawls, A Theory of Justice, 16.
7According to Rawls, “the idea of the original position and the description of the parties may tempt us to think that a metaphysical doctrine of the person in presupposed...this interpretation is mistaken...Justice as fairness starts from within a certain political tradition” and offers a political conception of justice that can gain the support of individuals who endorse a wide range of “reasonable opposing religious, philosophical and moral doctrines” (Rawls, Political Liberalism, 29).
8Ibid.
9Ibid., 34.
authenticating sources of claims, and capable of taking responsibility for their ends.\textsuperscript{10}

From a political liberal perspective, abstract ideas such as “freedom” and “equality” need to be specified by theory. Their content is given not by any argument concerning what freedom or equality truly mean, but rather by how they are understood by individuals rooted in a particular context.

An important question raised by this argument is whether it gives primacy to the political status of citizenship in a way that distorts the liberal tradition.\textsuperscript{11} The idea here is that my argument and (my interpretation of) political liberalism more generally derives freedom and equality from how individuals see themselves as citizens, but it is more accurate to say that the fundamental value of the liberal tradition (and I suppose of liberal democratic public culture that individuals share) is that of the moral equality and freedom of all human beings. These values are behind how individuals see themselves as citizens and are irrespective of citizenship, and so conceivably, the moral equality and freedom of all human beings should also be the bedrock of liberal international justice theory. This is an important question that I believe can be asked of the project of political liberalism as a whole—in a sense, when do its political commitments conflict with its liberal ones?—and it needs more attention than I give it in this work. I will say that I see this dissertation as well as political liberalism as still part of this liberal tradition and valuing the same things. Although I am not sure \textit{LoP} seeks to do this or that Rawls would characterize \textit{LoP} in this way, the individualist approach that I develop here aims to retain a core commitment to the equal moral worth and freedom of all human beings. By giving individuals that support nonliberal doctrines (though ones that are reasonable etc.)

\textsuperscript{10}Rawls, \textit{Political Liberalism}, 33.

\textsuperscript{11}This was a question raised by Joe Carens, and I am grateful for his insightful comments on this issue.
representation in the global original position developed here, I do drop a certain idea of public equality, but roughly speaking, I gain another which is the equality of all human beings regardless of the political doctrines that they endorse (as long as they too are willing to recognize this equality of diverse others as well). The idea is not to compromise the fundamental liberal commitment to the equal moral worth of all human beings. Instead, this dissertation asks: what does valuing this commitment mean in the context of pluralism? Similarly, with respect to freedom, I prioritize the freedom of individuals to be governed by (political) values they endorse.

2.1.1 Freedom and equality

Rawls’s political conception of the person focuses on what he describes as the “three respects” in which citizens of a liberal democracy think of “themselves as free.” Common to all of these respects are the ideas of limited government and political autonomy. The first idea of freedom—“the moral power to have a conception of the good... to form, revise, and rationally pursue a conception of the good”—refers to the space afforded to citizens to pursue and change their conception of the good without fear of political consequence. The conception of the good is an umbrella term referring to the values and beliefs an individual might hold about how to live that, from a liberal perspective, should not fall within the domain of government. “For example, when citizens convert from one religion to another... they do not cease...
to be, for questions of political justice, the same persons they were before.” Of course, citizens of liberal democracies have many “deeper aims and commitments” which are an important part of how they see themselves. “They may regard it as simply unthinkable to view themselves apart from certain religious, philosophical, and moral convictions, or from enduring attachments and loyalties.” Still—although it may be difficult to do and, although the principle of limited government is routinely challenged—in a liberal democracy “citizens must adjust and reconcile” what Rawls refers to as their “noninstitutional or moral identity” with their “public, or institutional identity, or their identity as a matter of basic law.” Citizens of liberal democracies generally consider this reconciliation of their “moral” and “political” identities as serving rather than compromising their freedom. “They affirm the values of political justice and want to see them embodied in political institutions and social policies.” Through moral learning, citizens come to believe that their freedom is enhanced rather than diminished by the lack of opportunity to advance a particularistic conception of the good (even of their good) in political life.

Foreshadowing what he will later write in *LoP*, in *Political Liberalism*, Rawls asks his readers to “imagine a society” where this idea of freedom is not widely held and “basic rights and recognized claims depend on religious affiliation and social class. Such a society has a different political conception of the person.” Individuals who endorse nonliberal politics may believe they enjoy more freedom (or a richer idea of freedom) if their government does not practice limited government and instead

---

16 Ibid.
17 Ibid., 31.
18 Ibid., 30.
19 Ibid., 30–31.
20 (Ibid., 30). Note the society described here would not be considered decent under the *LoP* framework. A decent people respects the basic rights and freedoms of all its members irrespective of religion, social standing or other variables. However, basic rights do not encompass all liberal democratic rights.
reflects “deeper aims and commitments”\textsuperscript{21} and rewards those who act morally or justly according to a certain philosophical or religious doctrine. Those who believe in nonliberal politics may also consider freedom to be a secondary political priority to other values, such as having a just society (according to a particular philosophical conception) or one that is favourable to God.

The second respect in which Rawls believes citizens “view themselves as free” in liberal democracies is also not as common in nonliberal societies. Instead of seeing themselves as “self-authenticating sources of valid claims” and regarding “themselves as being entitled to make claims on their institutions so as to advance their conceptions of the good (provided these conceptions fall within the range permitted by the public conception of justice),”\textsuperscript{22} members of nonliberal societies may consider the validity of a claim to be conditional on whether it is considered correct in substance (as decided by expert’ opinion, such as by government sponsored imams in Islamic societies). Members of nonliberal societies may also consider their claims to “have no weight except insofar as they can be derived from the duties and obligations owed to society, or from their ascribed roles in a social hierarchy justified by religious or aristocratic values.”\textsuperscript{23}

This second idea of freedom also reflects the liberal principle of limited government and political autonomy as well as the equality that underlies Rawls’s political conception of the person. The role of liberal democratic government is not to weigh in on which claims are true or morally good; from the perspective of government (and their citizens), claims should be treated equally irrespective of who individuals are (wealthy or poor, Christian or Muslim, etc.,) or what they believe. As far as possible, government is to provide a neutral, safe, and fair environment for individuals to

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{21}Rawls, \emph{Political Liberalism}, 30.
\item \textsuperscript{22}Ibid., 32.
\item \textsuperscript{23}Ibid., 33.
\end{itemize}
\end{footnotesize}
pursue their own ends and conceptions of the good, and is not to shape individuals into being better people or citizens (beyond what is required for a workable political idea of justice).

The third way in which citizens of liberal democracies are conceived as free in Rawls’s domestic theory is that they are considered “capable of taking responsibility for their ends.”

“They can adjust their ends so that those ends can be pursued by the means they can reasonably expect to acquire in return for what they can reasonably expect to contribute.”

“Moreover, they are viewed as capable of restricting their claims in matters of justice to the kinds of things the principles of justice allow.” This idea of freedom is less intuitive than the two ideas discussed above, as it pertains to how citizens perceive the constraints that arise from being an equal member of society. The freedom to pursue any ends, such as unlimited wealth free of taxation or religious government, is restricted, but citizens recognize these restrictions as warranted and willingly adjust their claims accordingly. Citizens feel free within a context of “just background institutions” that shapes their sense of what is fair to ask and to reasonably expect.

The distinction here (of liberal versus nonliberal ideas of freedom) is not as evident with respect to this third type of freedom as it was with the other two. Those who endorse nonliberal politics may consider themselves free to pursue their ends in a way similar to citizens of liberal democracies, although nonliberal and liberal societies would certainly have different background conditions. Nonliberal societies may pursue more aggressive economic redistribution or other equalization measures based on religious or philosophical doctrines, or distribute resources based on religious or social hierarchies. However, members may still regard these background conditions

\[24\text{Rawls, Political Liberalism, 34.}\]
\[25\text{Ibid., 32.}\]
\[26\text{Ibid., 34.}\]
\[27\text{Ibid., 33.}\]
as just or fair, or more precisely perhaps, whether or not they are just or fair (in a liberal sense) is not of primary importance. Instead, the overarching concern may be to ensure these conditions are in compliance with nonliberal doctrines. Members of these societies can conceivably adjust their claims based on these conditions and may still regard themselves as free in doing so (or perhaps as more free because they are doing so) due to their endorsement of their society’s nonliberal values. The idea that government’s role is to establish background conditions in which individuals then acquire certain ends as they see fit (within constraints) is also not as prevalent within nonliberal societies whose members may consider ends such as career choice or religious preference as within government purview.

The idea of equality, which is also fundamental to Rawls’s conception of the person in his domestic theory, is not as well-specified as the idea of freedom. Citizens of liberal democracies see themselves and their fellow citizens as having the same entitlement to make claims, pursue their ends and affirm and revise their conceptions of the good. The principles of justice are not to privilege certain claims or ends over others. They need to be acceptable from the perspective of all (reasonable) individuals in society, not just to those who subscribe to a particular religion, for example, or those who are educated or wealthy.

Why go to the trouble of specifying the meaning of freedom and equality? The purpose is to build principles of justice from this starting-point. “The parties are thought of as adopting these criteria to regulate their common institutions and their conduct toward one another; and the descriptions of their nature enters into the reasoning by which these principles are selected.”28 The meaning of freedom and of equality translate into constraints on the procedure for developing principles of justice and therefore on the principles themselves. All parties in the original position “have

---

the same rights in the procedure for choosing principles; each can make proposals, submit reasons for their acceptance and so on.”\textsuperscript{29} The original position “models what we regard—you and I, here and now—as fair and reasonable conditions for the parties, who are rational representatives of free and equal, reasonable and rational citizens, to specify fair terms of cooperation for regulating the basic structure of this society.”\textsuperscript{30} Two other components of the thought experiment are important to mention and both arise from the fact that individuals in the original position are free (in the ways specified above) and in a relationship of equality. The first is the veil of ignorance and the second is the idea of primary goods.

2.1.2 The veil of ignorance

The veil of ignorance in Rawls’s theory of domestic justice blocks personal characteristics such as social position, conception of the good (particular religious or ideological attachments), “abilities and psychological propensities, and much else”\textsuperscript{31} from influencing the construction of the principles of justice. Individuals in the original position are posited to have no knowledge of these characteristics for the people they represent. “One excludes the knowledge of these contingencies which sets men at odds and allows them to be guided by their prejudices.”\textsuperscript{32} The idea is that if a person knew she was educated (or religious etc.) she might find it rational to advance different principles than a person who knew he was illiterate (or atheist, etc.). What is doing the work in terms of developing principles of justice is the veil of ignorance coupled with rational risk aversion. With respect to religion, for example:

\begin{quote}
\ldots the veil of ignorance implies that the parties do not know whether
\end{quote}

\textsuperscript{29}Rawls, \textit{A Theory of Justice}, 17.
\textsuperscript{31}Rawls, \textit{Political Liberalism}, 305.
\textsuperscript{32}Rawls, \textit{A Theory of Justice}, 17.
the beliefs espoused by the persons they represent espouse a majority or minority view. They cannot take chances by permitting a lesser liberty of conscience to minority religions, say, on the possibility that those they represent espouse a majority or dominant religion and will therefore have an even greater liberty. For it may also happen that these persons belong to a minority faith and may suffer accordingly.\footnote{Rawls, \textit{Political Liberalism}, 110.}

Why are variables such as religion considered “contingencies” rather than morally relevant facts? Since individuals in the original position are in a relationship of freedom and equality with each other, they must put forward principles that can be accepted from the perspective of their fellow citizens. Principles of justice cannot be proposed based on reasons that are only relevant to some members of the society.

In my view, Rawls does not fully explain why the veil of ignorance is required, given that parties in the original position are already constrained by being in a relationship of freedom and equality with each other. As mentioned above, parties within the original position subscribe to an idea of freedom that ensures conceptions of the good are kept out of public life. The hypothetical individuals in the original position conceivably have little interest in pushing their own religious or philosophical conceptions into politics because they (by definition) endorse the idea of limited government. The veil of ignorance simply duplicates this theoretical constraint. Moreover, the equality of individuals in the original position would conceivably negate the possibility that individuals, even if they knew they were religious or atheist, or of high social standing or not, would propose principles of justice that would privilege themselves.

Even though the veil of ignorance is not required for shaping principles of justice, however, it is a useful construction as it makes the constraints on theorizing that arise from individuals’ commitments to freedom and equality, especially in a pluralist liberal democracy, vivid and concrete. “The parties decide” upon principles of justice
“for appropriate reasons, because the veil of ignorance prevents the parties from invoking inappropriate reasons, given the aim of representing citizens as free and equal persons.”

2.1.3 Primary goods

Rawls introduces a list of primary goods because he is concerned that individuals constrained by a veil of ignorance have too little information for coming up with principles of justice. What are representatives in the original position to assume that individuals care about? The answer is given by Rawls’s list of primary goods which, in brief, encompass: (a) basic liberties, such as freedom of thought and liberty of conscience and all other freedoms deemed necessary to enable individuals to pursue their definite conception of the good (within the limits of justice) and to develop and exercise their “capacity for a sense of justice”; (b) freedom of movement and choice of occupation against a background of diverse opportunities; (c) “powers and prerogatives of offices and positions of responsibility: these give scope to various self-governing and social capacity of the self”; (d) income and wealth; and (e) the “social bases of self-respect.” By social bases of self-respect, Rawls refers to the institutional protection of basic liberties mentioned in (a) which give citizens confidence and security, and also the public recognition that all individuals in society should be recognized as fully cooperating members “capable of pursuing a worthwhile conception of the good.”

“Our sense of our own value, as well as our self-confidence, depends on the respect and mutuality shown us by others.” These social bases are critical because “without self-respect nothing may seem worth doing, and if some things have

---

36 Ibid., 318.
37 Ibid., 319.
value for us, we lack the will to pursue them.”\textsuperscript{38}

Although in Rawls’s earlier work the primary goods come across as metaphysically grounded—they are “things that every rational man is presumed to want”\textsuperscript{39}—as Rawls elaborates upon his idea of political liberalism in his later writings, metaphysical references are removed in line with his commitment to presenting freestanding political justification for his theory. As he explains in \textit{Political Liberalism}:

What are to count as primary goods is not decided by asking what general means are essential for achieving the final ends which a comprehensive empirical or historical survey might show that people usually or normally have in common... The characterization of primary goods does not rest on such historical or social facts. While the determination of primary goods invokes a knowledge of the general circumstances and requirements of social life, it does so only in the light of a conception of the person given in advance.\textsuperscript{40}

Rawls believes that people who see themselves as free and equal in the way he describes would count these goods as primary. The justification for the list of primary goods, and indeed, for Rawls’s principles of justice, can all be traced to the conception of the person. The “original position connects the conception of the person and its companion conception of social cooperation with certain specific principles of justice.”\textsuperscript{41} This dissertation does not assess the robustness of this connection as Rawls sketches it step by step. My interest is instead to understand the link between the principles of justice, the original position of persons, and the way individuals see themselves within liberal democracies (as Rawls understands it) in order to figure out how we might develop an individualist (though still political liberal) approach to developing principles of justice for the international context where individuals do not necessarily see themselves in the same way.

\textsuperscript{38} Rawls, \textit{Political Liberalism}, 318.
\textsuperscript{39} Rawls, \textit{A Theory of Justice}, 54.
\textsuperscript{40} Rawls, \textit{Political Liberalism}, 308.
\textsuperscript{41} Ibid., 304.
CHAPTER 2. TOLERATION & RAWLS’S CONCEPTION OF THE PERSON 36

2.2 Dropping the (domestic) political conception of the person and original position in international justice theory

One way to solve the missing-conception-of-the-person problem in political liberal international justice theory is to use the political conception of the person Rawls has already developed (for his theory of domestic justice) as well as the original position which it models and build a theory of international justice from this foundation. In this section, I discuss Rawls’s rationale for dropping his political conception of the person. I then give my own individualist defense of Rawls’s decision.

2.2.1 Rawls’s rationale

The clearest and most explicit reason Rawls gives for dropping the original position of persons in LoP is the need to tolerate nonliberal and nondemocratic regimes. Rawls argues that proceeding with a global original position of persons “would straightaway ground human rights in a political (moral) conception of liberal cosmopolitan justice” and would simply assume that “all persons are to have the equal liberal rights of citizens in a constitutional democracy.” 42 The problem with this assumption, Rawls explains in the same passage, is that the overarching aim of liberal foreign policy then becomes to “act gradually to shape all not yet liberal societies in a liberal direction, until eventually (in the ideal case) all societies are liberal. But this foreign policy simply assumes that only a liberal democratic society can be acceptable. Without trying to work out a reasonable liberal Law of Peoples, we cannot know that nonliberal societies cannot be acceptable.” 43

42 Rawls, The Law of Peoples, 82.
43 Ibid., 82–83.
CHAPTER 2. TOLERATION & RAWLS'S CONCEPTION OF THE PERSON

At other points in *LoP*, Rawls suggests that the original position of persons of his domestic theory cannot be used due to the political liberal commitment to public reason and the principle of reciprocity. While still related to toleration, in these passages Rawls's decision appears to be less motivated by his concern with coercive foreign policy and more by his interest in offering principles of justice that are acceptable to both liberal and nonliberal peoples. As he explains: the Law of Peoples cannot be “expressed in terms of comprehensive doctrines of truth or of right, which may hold sway in this or that society, but in terms that can be shared by different peoples.”

The principles of the Law of Peoples must “satisfy the criterion of reciprocity... in proposing a principle... a people or their representatives must think not only that it is reasonable for them to propose it, but also that it is reasonable for other peoples to accept it.”

2.2.2  Peoples as the moral actors in *LoP*

Rawls’s decision in *LoP* to drop his conception of the person and discard the original position of persons that models this conception has been interpreted as evidence that *LoP* is concerned with the interests of peoples rather than the rights and freedoms of individuals. Clearly Rawls’s rationale for dropping his domestic political conception of the person and the original position reflects his concern with tolerating nonliberal peoples. Whether this method of developing theory, or indeed the principles of the Law of Peoples themselves, are fair to individuals is a question that Rawls does not address, and he admits that peoples are given the “status of the (moral) actors in

---

45Ibid., 57.
46When I refer to the original position of persons, I am referring to the thought experiment as Rawls develops it in *A Theory of Justice, Political Liberalism* and his other works based on a particular political conception of the person.
47See for example Tan, 1998; Kuper, 2000; Nussbaum, 2002; Beitz, 2000; Pogge, 2006.
the Law of Peoples.” Rawls describes the “the ultimate concern of a cosmopolitan view” as “the well-being of individuals” while LoP, he explains, is concerned with “the justice of societies.” At the end of this passage, Rawls depicts cosmopolitans as concerned with “whether the well-being of the globally worst-off person can be improved.” On the other hand, “what is important to the Law of Peoples is the justice and stability for the right reasons of liberal and decent societies, living as members of a Society of well-ordered Peoples.”

From passages such as these, one can understand why critics such as Thomas Pogge have interpreted Rawls as disregarding “the interests of persons by focusing exclusively on the interest” of peoples. “While Rawls’s domestic theory gives weight only to individuals and their interests,” Pogge argues, “his international theory gives no weight to individuals and their interests.” However, this all-or-nothing interpretation of LoP—that it focuses completely on peoples and not at all on persons—is not fair to the text. The contrast Rawls makes between a theory that is concerned with the “well-being of individuals” (cosmopolitanism) and one occupied with the “justice of societies” (LoP) belies the fact that in Rawls’s framework, peoples are only considered just or decent if the human rights and freedoms of their individual members are protected (though not in the way common in liberal democracies). Moreover, there are provisions in LoP to help the “globally worst-off person” such as the basic human right “to the means of subsistence and security,” a provision which is difficult to square with Pogge’s criticism that LoP would allow individuals to suffer “severe poverty...even if their people as a whole has a sufficient economic

49Ibid., 119.
50Ibid., 120.
51Ibid.
52Pogge, Do Rawls’s Two Theories of Justice Fit Together?, 211.
53(Ibid., 222) [emphasis in the original].
base for maintaining itself as a liberal or decent society.”

In LoP, societies with severe poverty would not qualify for people status and would not enjoy protected sovereignty.

Nevertheless, the way Rawls often describes his general approach to international justice theory obscures the ways LoP protects and promotes the interest of individuals. In his discussion of the “contrast with cosmopolitan view” referred to above, Rawls may be perceived as rather indifferent to the violence, starvation and other problems that the world’s people face every day—problems to which cosmopolitan theory has appeared more sensitive and attuned. Yet, other passages of LoP as well as Rawls’s political liberal writings more generally, clearly show the strong connecting thread between Rawls’s preponderant interest in political institutions and individual suffering. Rawls believes the majority of human rights abuse (“unjust war and oppression, religious persecution and the denial of liberty of conscience, starvation and poverty...genocide and mass murder”) results from misguided public policy and weak governance. Creating a more liberal world is not the primary objective of LoP; instead, Rawls is motivated by the need to address these severe human plights. As he explains in the introduction to LoP, “Once the gravest forms of political injustice are eliminated by following just (or at least decent) social policies and establishing just (or at least decent) basic institutions, these great evils will eventually disappear.”

Perhaps Rawls’s assertion is flawed (both in terms of his diagnosis and proposed treatment of the world’s problems), but his interest does appear to be the protection of individual rights and well-being. Rawls implies that grave injustices are in fact more

55 Pogge, Do Rawls’s Two Theories of Justice Fit Together?, 222.
56 My point here is further substantiated by Nancy Kokaz who argues that LoP does include the “moral grounds of the obligation to eradicate absolute poverty on a global scale” through its principles of honoring human rights and assisting burdened societies” (Kokaz, Ethics & International Affairs 21 [2007], 318).
58 Ibid.
likely to be addressed if liberal peoples do not become preoccupied with achieving greater liberal reforms throughout the political world. These strong individualist elements of LoP have not only been overshadowed by passages such as those mentioned above, they have been downplayed in the book as a whole by Rawls’s consistent reference to the way peoples in LoP play the same theoretical role as persons in his theory of domestic justice. Rawls does not begin LoP by constructing a political conception of the person and construct his theory from there, instead he describes his project as follows:

This account of the Law of Peoples conceives of liberal democratic peoples (and decent peoples) as the actors in the Society of Peoples, just as citizens are the actors in domestic society. Starting from a political conception of society, political liberalism describes both citizens and peoples by political conceptions that specify their nature, a conception of citizens in one case, of peoples acting through their governments in the other.59

Some of the sharpest criticism of LoP since its publication has concerned its treatment (or neglect) of individuals because of its overwhelming focus on the interests of peoples,60 an interpretation that Rawls invited with his persons/peoples analogy. As the individualist project pursued in this dissertation suggests, I consider Rawls’s focus on peoples to be a methodological decision that is not necessitated by the logic of political liberalism.

2.2.3 An individualist argument for dropping Rawls’s original position of persons

As discussed above, one of the most explicit reasons Rawls gives for dropping his (domestic) political conception of the person and its original position is the need

---

60 For example, see Pogge, 2006; Pogge, 2002.
to tolerate nonliberal peoples. However, there is also an individualist rationale for dropping this conception and original position. In this section, I argue that these tools should not be used to construct principles of international justice because their underlying values do not accurately model individuals at the international level. Although Rawls does not give an individualist justification for dropping the original position in *LoP*, it is supported by many passages in the text\(^{61}\) as well as by Rawls’s broader political liberal thought.

For political liberals, developing principles of justice from an appropriate conception of the person is necessary to ensure the resulting principles of justice make sense and can be endorsed by those that are to abide by them. Rawls’s concern with acceptability is woven into every step of this theorizing, as is clear from the phrases I have set in italics in the following passages: “We start with “generally shared and weak conditions” and try to “yield a significant set of principles.”\(^{62}\) The conditions are the values modeled by the original position that “express what we are prepared to regard as limits on fair terms of social cooperation.”\(^{63}\) “Conceptions of justice are to be ranked by their acceptability to persons so circumstanced.”\(^{64}\)

Beginning with an appropriate conception of the person is also important for ensuring principles of justice are “workable”\(^{65}\) and will actually be followed. A realistic theory of justice relies “on the actual laws of nature and [achieves] the kind of stability those laws allow, that is... stability brought about by citizens acting correctly according to the appropriate principles of their sense of justice, which they have acquired by growing up under and participating in just institutions.”\(^{66}\)

At the international level, individuals have been socialized by more diverse social

---

\(^{61}\) These passages are outlined in the discussion that follows.


\(^{63}\) Ibid., 19.

\(^{64}\) Ibid., 16.


\(^{66}\) Ibid., 12–13, 13n.
institutions and are members of nonliberal and religious states. Although Rawls is sensitive to pluralism, he does not make the connection between global pluralism and his notion of “moral learning” of individuals explicit nor does he link his argument for toleration of certain nonliberal peoples to the fact that individuals around the world hold wide-ranging expectations for public life. Instead, he consistently invokes the peoples/persons analogy as evident in the passage below:

What can be the basis for a society of peoples given the reasonable and expected differences of peoples from one another, with their distinctive institutions and languages, religions and cultures, as well as their different histories, variously situated as they are in different regions and territories of the world and experiencing different events? (These differences parallel the fact of reasonable pluralism in a domestic regime.)

The individual in this passage appears to be inconsequential to the development of principles of international justice. What matters is the pluralism of peoples internationally which is analogous to the pluralism of individuals domestically.

Other passages in LoP however highlight the obvious: individuals in a pluralistic world endorse a wide range of political ideologies, including both liberal and nonliberal politics. In Rawls’s discussion of what a decent nonliberal peoples might look like, for example, he mentions that members of decent peoples generally do not endorse the idea of freedom prevalent in the “public political culture of a constitutional democratic regime” which (they might believe) “mistakenly expresses an individualistic idea” of a person as an “atomistic unit.” They recognize their “duties and obligations as fitting with their common good idea of justice” and not as “mere commands imposed by force. They have the capacity for moral learning and know the difference between right and wrong as understood in their society.” However, Rawls does not use

---

68Rawls, *Political Liberalism*, 34.
70Ibid., 66.
this description of individuals to explain why he drops the political conception of
the person and the accompanying original position. It is also not invoked as part of
his argument for toleration of nonliberal peoples. The premises for an individualist
defense for toleration of decent nonliberal peoples are in LoP but the argument is
not made. The rationale for dropping the global original position of persons can
therefore be individualist. Whether the original position of persons is an appropriate
theoretical tool depends upon assumptions made about individuals. The original
position should only be used to develop principles of justice if its values are part
of the public culture for which it is employed. Individuals can only be expected to
endorse principles of justice “in the light of principles and ideals acceptable to their
common human reason.”

The “common human reason” at the international level, however, is not permeated
with liberal democratic values. Individuals have been constituted by many political
systems, liberal and nonliberal, and have come to hold far more wide-ranging aspira-
tions for their public life. The original position of persons is therefore inappropriate
for theorizing on international justice because it fails to correctly model the politi-
cal norms held by many around the world and would therefore develop principles of
justice that many would be unable to accept.

2.3 Political liberal justification for the toleration
of nonliberal politics

Even if we accept that the “political conception of the person drawn on in setting up
the original position” does not accurately model the political values that individuals

---

71 Rawls, Political Liberalism, 137.
72 Ibid., 29.
CHAPTER 2. TOLERATION & RAWLS’S CONCEPTION OF THE PERSON

around the world endorse, it must be asked: why do the norms and values that individuals hold matter if they are oppressive (from a liberal perspective)? All of the reasons offered above for dropping the original position of persons are motivated by the need to tolerate nonliberal political doctrines. This begs the question of why, from a political liberal perspective, it is more important to tolerate regimes that many liberals consider to be unjust rather than to retain an original position of persons that is committed to equal liberal rights. To put another way, is not the inapplicability of the original position to nonliberal or nondemocratic contexts a sign that these contexts are unjust? These questions get to the heart of the cosmopolitan concern that Rawls offers “no principled reason” other than “the diversity of political cultures” for his decision to tolerate certain nonliberal peoples. Charles Beitz, for example, characterizes Rawls’s toleration of nonliberal peoples as “pre-theoretical” and suggests that the original position be used to lend “independent weight to the argument for toleration of non-liberal cultures.”

The problem with using the original position to determine the limits of toleration is that the original position methodology, by design, would find nonliberal ideas of justice unacceptable. Individuals in the original position behind a veil of ignorance blocking out religious and ideological affiliations and comprehensive philosophical beliefs, could not (by construction) endorse a public idea of justice that would justify certain inequalities based on religious or philosophical doctrine. Similarly, one could imagine a constructivist approach based on a particular religion or nonliberal ideology that would reject liberal democratic principles. The toleration of nonliberal societies needs to be decided without using the original position of persons, which is “a liberal

---

73 Tan, Ethics 108 [1998], 284.
74 Pogge, Do Rawls’s Two Theories of Justice Fit Together?, 680.
75 I use the phrase 'by design' above because the ideals that are modeled by the original position of persons contradict the very definition of nonliberal societies. A nonliberal society in Rawls’s theory is one where persons are not free and equal judged by the principles of a liberal democratic society.
 CHAPTER 2. TOLERATION & RAWLS’S CONCEPTION OF THE PERSON

Of course, not every society or political doctrine is tolerable from a political liberal perspective. However, political liberalism does not consider nonliberal or nondemocratic societies and doctrines to be a priori oppressive or intolerable. There are no fundamental principles within political liberalism that can be drawn upon to make the case that nonliberal political doctrines are oppressive by definition. Liberal democracy is not metaphysically or epistemologically justified and there is no philosophical (or religious) grounding for the view that all human beings are entitled to equal liberal rights.77

The Law of Peoples does not say, for example, that human beings are moral persons and have equal worth in the eyes of God; or that they have certain moral and intellectual powers that entitle them to these rights. To argue in these ways would involve religious or philosophical doctrines that many... might reject as liberal or democratic, or as in some way distinctive of Western political tradition and prejudicial to other cultures.78

However, it appears that this may be the sort of argument that may be needed to justify the use of the original position of persons in a context where many individuals and societies do not endorse liberal democracy.

In a striking passage, Rawls suggests that a philosophical argument for liberal democracy that will persuade those who hold alternative political doctrines cannot be made. “It is often thought that the task of philosophy is to uncover a form of argument that will always prove convincing against all other arguments. There is, however, no such argument.”79 Convinced that the task of political philosophy should not be to uncover a truth that will be universally endorsed (it either does not exist or

76Rawls, The Law of Peoples, 70.
77I am grateful for helpful discussion with Nancy Kokaz on this point and for her related ideas in Kokaz, 2006, especially p. 62.
78Ibid., 68.
79Ibid., 123.
CHAPTER 2. TOLERATION & RAWLS’S CONCEPTION OF THE PERSON

if it does, it will not be recognized as such from the perspective of diverse doctrines), Rawls instead focuses on “preparing the way for peoples to develop a basic structure that supports a reasonably just or decent regime and makes possible a reasonable Law of Peoples.”

It is important to note that if Rawls’s determination of the limits of toleration is “pre-theoretical” in his international political theory (as it is characterized by Beitz), it is also the case for Rawls’s domestic theory of justice. When specifying the limits of toleration, political liberalism does not “invoke the standpoint of some wider view to say that it draws the limit at the right place.”

“The category of the political must contain within itself all the essential elements for a political conception of justice.” Rawls does not draw upon a metaphysical or epistemological argument to stipulate the bounds of toleration but instead draws upon values that are widely held by citizens of liberal democracies. “Political philosophy does not, as some have thought, withdraw from society and the world. Nor does it claim to discover what is true by its own distinctive methods of reason apart from any tradition of political thought and practice.”

Principles of domestic justice must be acceptable from the perspective of all reasonable comprehensive doctrines that people hold within this society, and the reasonableness of these doctrines is determined without using the original position. It is more appropriate to see the original position as modeling the reasonableness conception than determining what it can be. “The idea of the reasonable itself is given in part... by the two aspects of persons’ being reasonable: their willingness to propose and abide by fair terms of social cooperation among equals and their recognition of

---

81 Pogge, *Do Rawls’s Two Theories of Justice Fit Together?*, 680.
CHAPTER 2. TOLERATION & RAWLS’S CONCEPTION OF THE PERSON

and willingness to accept the consequences of the burdens of judgment.” Both of these components relate to the conception of the person as it is specified and are not defended by appealing to any deeper philosophical argument. In a similar way,

…[the] account of decency, like that of reasonableness, is developed by setting out various criteria and explaining their meaning. The reader has to judge whether a decent people...is to be tolerated and accepted as a member in good standing of the Society of Peoples. It is my conjecture that most reasonable citizens of a liberal society will find peoples who meet these...criteria acceptable as peoples in good standing. Not all reasonable persons will, certainly, yet most will.

Some may find the notion that the criteria for decency (for nonliberal and non-democratic regimes) are specified by liberal public culture rather odd. But it is important to keep in mind that a main objective of LoP is to conceptualize the limits of toleration for liberal foreign policy. LoP is an exposition of what individuals living within a liberal democratic society should endorse for their foreign policy and for regulating international law and practice. “Liberal societies ask how they are to conduct themselves toward other societies from the point of view of their own political conceptions. We must always start from where we now are.” The criteria for decency do draw upon different conceptions of human rights and political norms but only as a means to the end of determining the limits of toleration for liberal foreign policy and a liberal theory of international justice. “The need for...assurance” that the Law of Peoples is acceptable to decent nonliberal peoples “is a feature inherent in the liberal conception.” LoP considers “the point of view of decent peoples...not to prescribe principles of justice for them, but to assure ourselves that the ideals and principles of the foreign policy of a liberal people are also reasonable from a decent

---

85 Rawls, Political Liberalism, 94.
87 Ibid., 121.
88 Ibid., 10.
nonliberal point of view.”

2.3.1 Tolerance of nonliberal politics in Rawls’s domestic theory

Above, I suggested that the conception of the person that Rawls draws upon for the original position of persons cannot be used in international justice theory because it is based on values that are not as prevalent internationally as they are in the context of a liberal democracy. However, it is important to note that an original position of persons also does not model all citizens of a liberal democracy. Rawls’s principles of domestic justice will therefore also be unacceptable for some members of a liberal people.90

The inconsistency in Rawls’s domestic and international theories of justice with respect to nonliberal political projects (deemed tolerable in LoP but not in Rawls’s domestic theory) has been criticized. Thomas Pogge asks: “Why must we [accommodate] the opponents of liberalism in Rawls’s international theory... but not in his domestic theory and the design of our national institutional order?”91 Kok-Chor Tan has also drawn attention to this aspect of Rawls’s political theory:

Liberal toleration in the domestic context does not require toleration of nonliberal politics; indeed it must demand otherwise. Absent a good justification, it appears that Rawls has simply relaxed the limits of toleration in order to accommodate representatives of WHSs [well-ordered hierarchical societies] to ensure that his law of peoples can be endorsed by some nonliberal states as well.92

---

90 Those who believe that the values of a liberal democratic society, such as tolerance and respect for religious and other differences, are creating a moral vacuum in political life are not modeled by the original position. They can be understood as dropping out of Rawls’s constructivist exercise. This also explains why the resulting principles of justice are unacceptable to them.
91 Pogge, Do Rawls’s Two Theories of Justice Fit Together?, 208.
92 Tan, Ethics 108 [1998], 284.
The stark contrast that Rawls’s critics draw between his domestic and international theory with respect to toleration of nonliberal politics overlooks the level of toleration that is extended to nonliberal politics in Rawls’s domestic theory. Tan’s comment that “liberal toleration in the domestic context does not require toleration of nonliberal politics; indeed it must demand otherwise” is somewhat misleading and fails to capture Rawls’s view that intolerance is more of an inevitable and regrettable consequence of any political system than something that is required for reasons of justice.

In many respects, Rawls’s theory of domestic justice offers a significant degree of toleration for nonliberal politics. With respect to the freedoms that could legitimately be limited or challenged, Rawls mentions: “the encouraging or discouraging of comprehensive doctrines comes about for at least two reasons: their associated ways of life may be in direct conflict with the principles of justice; or else they may be admissible but fail to gain adherents under the political and social conditions of a just constitutional regime.” Understanding the threshold of toleration in Rawls’s domestic theory depends on how abstract passages of Rawls such as these are applied to more specific cases of nonliberal politics. However, in general the text suggests that nonliberal doctrines, including those that may be considered politically subversive, are to be tolerated unless they are deemed to be threatening to the basic structure of a liberal democracy or to clearly violate the liberties of others. With respect to freedom of speech, for example, Rawls argues that “to restrict or suppress free political speech, including subversive advocacy, always implies at least a partial suspension of
democracy. A constitutional doctrine which gives priority to free political speech and other basic liberties must hold that to impose such a suspension requires the existence of a constitutional crisis in which free political institutions cannot effectively operate or take the required measures to preserve themselves.”  

The toleration of nonliberal politics, while more extensive than some critics of Rawls has suggested, has its limits. “Basic liberties can be restricted only for the sake of liberty.” Rawls’s willingness to compromise liberty when “a less extensive liberty...[strengthens] the total system of liberties shared by all...[or] a less than equal liberty...[is] acceptable to those with the lesser liberty” suggests that his theory would not tolerate many nonliberal political doctrines on grounds that they lead to lesser liberty. This aspect of Rawls’s theory lead Samuel Freeman to suggest that, “while Rawls never addressed issues such as hate speech, or obscenity and the regulation of pornography, the tendency of his...account would seem to permit certain restrictions or at least greater regulations on each than are now permitted in constitutional law.”

With respect to nonliberal political views that destabilize a healthy and (otherwise) endorsed political order or that violate the basic liberties of others, the toleration Rawls affords in his domestic and international justice theory is similar. In LoP, governments that coerce others or expound the virtues of harming or exterminating certain religious or ethnic groups (such as Nazism or other supremacist ideologies) would not be considered decent or equal peoples and would be legitimately subject to coercion by the Law of Peoples. However, with respect to those nonliberal doctrines that might be considered decent, LoP offers greater toleration; Rawls’s domestic theory does not offer political equality (or respect) to these nonliberal political doctrines.

---

99 Ibid.
100 Freeman, 72.
CHAPTER 2. TOLERATION & RAWLS’S CONCEPTION OF THE PERSON 51

in the manner of LoP. Indeed, some decent nonliberal doctrines (as described in LoP), that may argue against full voting rights for women could be considered to be in “di-
rect conflict with principles of [liberal democratic] justice” (and therefore curtailed) or they may simply die out given their dissonance with public principles of justice.

Rawls spends considerable time reflecting upon whether it is acceptable that cer-
tain conceptions of justice will inevitably be diminished or even die out in a liberal democratic society guided by the principles of justice he develops. “Is the political conception arbitrarily biased against these views, or better, is it just or unjust to the persons whose conceptions they are, or might be?”101 In the end, Rawls does not admit that a liberal democratic conception of justice is unfair to those excluded or perhaps even repressed (if we can call it that) by its public idea of justice though his conclusion is not wholly convincing. “Without further explanation, it would not appear to be unfair to them, for social influences favoring some doctrines over others cannot be avoided by any view of political justice.”102 “We may indeed lament the limited space, as it were, of social worlds, and of ours in particular; and we may regret some of the inevitable effects of our culture and social structure... but these social necessities are not to be taken for arbitrary bias or injustice.”103

Rawls suggests that a liberal democracy is not unfair,104 even to those it excludes, because every effort is made to specify “fair background conditions” for nonliberal doctrines, even those opposed to constitutional democracy, “to be affirmed and pur-

---

101 Rawls, Political Liberalism, 197.
102 Ibid.
103 Ibid.
104 I think it is noteworthy that Rawls does not make the stronger claim that a liberal democracy is fair to those doctrines that cannot coexist with its public life; he mentions only that they are not “unfair to them.” I suspect that Rawls’s choice of words here is intentional. Rawls likely sees space between being fair and unfair in the sense that a political order may not be completely fair to a doctrine but not completely unfair either. I infer this from how Rawls understands reasonableness. Decent nonliberal societies for example, are not considered reasonable but rather “not fully unreasonable; one should allow, I think, a space between the fully unreasonable and the fully reasonable. The latter requires full and equal liberty of conscience, and the former denies it entirely” (Pogge, Do Rawls’s Two Theories of Justice Fit Together?, 67).
I believe Rawls’s grappling discussion of the intolerance inevitable in liberal democracies and his not-entirely-convincing explanation for why liberal democracy is not unfair to doctrines it deems unreasonable reflects the inability of political liberalism (for reasons that relate to the theory’s commitment to the political) to argue that nonliberal political doctrines are intrinsically unjust. More accurately, those who endorse nonliberal politics and who live within liberal democracies are simply in the wrong place at the wrong time. They are out of sync with their public life.

Their existence sets a limit to the aim of fully realizing a reasonable democratic society with its ideal of public reason and the idea of legitimate law. This fact is not defect or failure of the idea of public reason, but rather it indicates that there are limits to what public reason can accomplish. It does not diminish the great value and importance of attempting to realize that ideal to the fullest extent possible.

Although the lack of toleration of nonliberal politics in Rawls’s theory of domestic justice has been overstated by some of Rawls’s critics, as mentioned above, Rawls does treat nonliberal politics differently in his domestic and international political theory. Rawls’s theory of domestic justice tolerates nonliberal politics to a significant degree but importantly, does not permit nonliberal political doctrines to shape the content of public reason or to influence principles of domestic justice. The ideals and aspirations of individuals who want public policy to be justified on religious grounds, to give an example, are not represented in the original position of Rawls’s domestic work; the veil of ignorance blocks religion from being used as a justification for principles of justice. In his international political theory, however, decent nonliberal peoples are equal to liberal peoples and the international political conception of justice needs to be accepted from a decent nonliberal point of view. Rawls reworks his approach to theorizing on justice in the international case—he drops his political conception

---

of the person and the original position of persons—in order to tolerate nonliberal politics. At the domestic level, however, he accepts that the principles of justice will be unacceptable from the perspective of nonliberal political doctrines (which are considered unreasonable in this framework) and may lead to them being discouraged or extinguished.

2.3.2 Developing principles of justice that individuals can endorse

Rawls does not explicitly justify his different treatment of nonliberal politics in his domestic and international political theory. I believe however that this inconsistency is warranted because of differences in the “principles and ideals that can be similarly endorsed”\textsuperscript{107} by individuals in the two contexts. The nonliberal societies that Rawls deems worthy of toleration (decent nonliberal peoples) do not have “free institutions” in the liberal sense, nor do their members exhibit the doctrinal pluralism that is the “inevitable outcome” of these free institutions.\textsuperscript{108} Instead, their members share a philosophical or religious idea of justice (what Rawls terms “a common good idea of justice”) that “can serve as a basis of public reason and justification.”\textsuperscript{109}

Nonliberal political doctrines cannot be tolerated in the same way by a theory of justice for a liberal democracy because nonliberal political aspirations and rationale for public policy would be unacceptable for the majority of citizens. This is for two interrelated reasons: first, most members of liberal democracies subscribe to liberal democratic norms. “There is a tradition of democratic thought, the content of which is...familiar and intelligible” and “implicitly shared” by citizens of these...
CHAPTER 2. TOLERATION & RAWLS’S CONCEPTION OF THE PERSON 54

societies. Second, the pluralism evident in liberal democracies necessitates that no one religious or philosophical doctrine can guide political life. Rawls considers pluralism to be a natural and beneficial “outcome of the free exercise of free human reason under conditions of liberty.” “The political culture of a democratic society is always marked by a diversity of opposing and irreconcilable religious, philosophical, and moral doctrines.”

From a political liberal perspective, the fact of pluralism necessitates a political conception of justice; there is no underlying argument within political liberalism to suggest that a society based on a religious or philosophical doctrine is unjust when the fact of pluralism does not hold. Rawls mentions that the possibility of a legitimate political society united in affirming the same comprehensive doctrine is “excluded by the fact of reasonable pluralism together with the rejection of the oppressive use of the state power to overcome it.” Whether or not a public idea of justice is politically legitimate therefore relies on contextual factors. The degree of pluralism and the public culture of a society influence the proper theoretical conception of the person and the legitimate principles of justice for this people; there must be a synergy between public culture (which has socialized individuals) and principles of justice.

One assumption that is made by LoP is that such a people could in fact exist. Depending on how one interprets Rawls’s criteria, there may be no current (liberal or decent) society that would qualify as a people in the sense of LoP. Rawls’s aim was

---

110 Rawls, Political Liberalism, 14.
111 Even though liberal democracies are more pluralistic than nonliberal societies, nonliberal societies that have less pluralism within their borders increase pluralism in the Society of Peoples as a whole. “The fact of reasonable pluralism is more evident within a society of well-ordered peoples than it is within one society alone” Rawls, The Law of Peoples, 67.
112 Rawls, Political Liberalism, 144.
113 Ibid., 3–4.
114 The fundamental question that Rawls sought to answer in developing his political liberal framework was: “How is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable religious, philosophical and moral doctrines?” (Ibid., xxvii).
115 Ibid., 146.
to consider the limits of toleration for liberal international justice theory (and liberal foreign policy) given what we know about pluralism and the international social and political world. Rawls admits, however, that if he overlooked a pertinent fact, and no decent peoples could possibly exist, then the limits to toleration (and standards for decency) would need to be adjusted. Although Rawls does not consider decent peoples just, he does believe they are worthy of toleration. In line with the individualist political liberal perspective I develop in this paper, these societies would not be considered more just if they were more liberal unless it was evident that a liberal idea of justice would be more acceptable to members of these societies (which is clearly not the case in the decent nonliberal peoples Rawls describes). Far from relaxing standards when turning to international justice, therefore, political liberal theory tolerates decent nonliberal peoples because a “common good” rather than liberal conception of justice more readily satisfies what political liberalism considers to be the “liberal principles of legitimacy” in a decent nonliberal context.

---

116 I take up the question of whether decent nonliberal peoples could exist in chapter six (primarily section 6.3.2) as part of a broader discussion on human rights in LoP. This question is addressed there because one of the central issues pertaining to whether decent peoples can exist is whether societies need a more robust set of liberal democratic rights in order to meet the more minimal standards of decency. Chapter 6 explores whether decent peoples cannot exist due to interconnections between liberal democratic rights and Rawls’s basic rights.


118 The text of *Political Liberalism* is important to examine here. Rawls states: “our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason. This is the liberal principle of legitimacy... Only a political conception of justice that all citizens might be reasonably expected to endorse can serve as a basis of public reason and justification” (137). In this paper, I argue that acceptability plays a greater role than freedom and equality in Rawls’s conception of political legitimacy.
2.4 Summary

The discussion above suggests that by treating nonliberal politics differently in domestic and international theories of justice, political liberalism works to develop principles of justice that individuals can endorse. As suggested above, Rawls is resigned to the fact that there will always be individuals who do not subscribe to their society’s public idea of justice. There will be intolerance in most, if not all, politically legitimate peoples, including liberal ones; while “a just liberal society may have far more space than other social worlds... it can never be without loss.”\(^{119}\) “No society can include within itself all forms of life.”\(^{120}\) For political liberals, any disconnect between one’s public life and the values one espouses for it (both liberal and nonliberal) is regrettable but unavoidable. The most that can be hoped for is that most individuals of the world will be part of a public life that they understand and endorse. This may explain at least in part why Rawls sees the toleration of decent peoples as required from the perspective of a (political) liberal idea of justice.

In this chapter, I explained why Rawls’s political conception of the person developed for his domestic theory should not be reapplied to the international context. I support Rawls’s decision to drop this conception and its accompanying original position when turning to the subject of international justice. Rawls’s justification for this move however operates at the level of societies, expressing his concern with coercive foreign policy and his commitment to public reason and reciprocity between peoples with ideological differences.

I offer an individualist defense for dropping the original position, focusing on the fact that there are nonliberal states and political doctrines that individuals around the world endorse. From a political liberal perspective, these doctrines are not considered

\(^{119}\) Rawls, *Political Liberalism*, 197n.
\(^{120}\) Ibid., 200.
CHAPTER 2. TOLERATION & RAWLS’S CONCEPTION OF THE PERSON

*a priori* oppressive or intolerable. Developing principles of justice from a conception of the person and original position that fails to appropriately model these individuals neglects the contextual nature of these theoretical tools and the purpose they were designed to serve. Every step of political liberal theory is designed to generate acceptable principles of justice. This does not mean that political liberalism affirms the status quo. Political liberalism can be understood as reconciling us to what our “firm considered convictions”¹²¹ require us to do for reasons of justice. At the same time, it seeks to illuminate what precisely these convictions are based upon and to open up the possibility for their reform. As Rawls explains, if there are discrepancies between the principles and the starting values, “we have a choice. We can either modify the account of the initial situation or we can revise our existing judgments... I assume that eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted.”¹²² From a political liberal perspective, the need for principles of justice that individuals can endorse trumps any attachment to particular political ideology including liberal democracy. This is why, even in Rawls’s domestic theory, the inevitable exclusion of some nonliberal doctrines is treated more as an inevitable consequence of the theory than as something demanded for reasons of justice.

The next two chapters develop a political conception of the person for international justice theory. Building upon the argument presented here, this conception aims to be sensitive to pluralism, to acknowledge the deep connection that individuals often have to their states or other political communities and to recognize that individuals’ expectations for public life have been socialized by diverse institutions around the


¹²² Rawls is describing here the process of establishing what he terms “reflective equilibrium” (Rawls, *A Theory of Justice*, 18).
world.
Chapter 3

Developing a Political Conception of the Person for International Justice Theory: Constraints and Opportunities

The objective of this chapter and chapter four is to develop a political conception of the person for international justice theory by working within political liberal constraints but applying them in a different way than Rawls did in LoP. This chapter provides the background analysis for the development of a global political conception of the person and outlines some of its central ideas: the two moral powers, an idea of equality, and aspects of the person implicit in LoP. Chapter four then specifies an idea of individual freedom for political liberal international justice theory. I begin this chapter by discussing what is involved in developing a conception of the person that is within the realm of the political: I clarify political liberal constraints on theorizing and I explain the important role that facts play in political liberal theory. This conception is developed by drawing upon two main sources: the implicit ideas of the person in LoP and the political conception of the person in Rawls’s theory of domestic justice (largely comprised of an idea of individual freedom and of equality, as well as “two moral powers” of the person which Rawls specifies). The second part of this
chapter discusses Rawls’s mostly implicit ideas of the person in LoP. The third and final section explores Rawls’s idea of equality and its relationship to the two moral powers in his theory of domestic justice. I challenge Rawls’s view that equality and the moral powers, as he specifies them, reflect parochially liberal ideas. In contrast to LoP, I argue that persons within international justice theory can be considered to have the two moral powers and can be considered equals in the political liberal sense.

3.1 Political liberal priorities and constraints for theorizing

In Political Liberalism, Rawls sums up the meaning of a political conception of justice as follows: (1) “it is framed to apply solely to the basic structure of society, its main political, social, and economic institutions as a unified scheme of social cooperation”; (2) “it is presented independently of any wider comprehensive religious or philosophical doctrine”; and (3) “it is elaborated in terms of fundamental political ideas viewed as implicit in the public political culture of a democratic society.”1 I consider the conception of the person developed in this chapter to be political because it abides by Rawls’s constraints for developing political theory. However, I apply these constraints to international justice theory differently from Rawls.2 In doing so, one of the critical tasks is to examine what political liberal constraints might require when we move from domestic to international theorizing on justice.

---

1Rawls, Political Liberalism, 223.
2Although Rawls clearly saw LoP as adhering to the fundamentals of political liberalism, he did not see his approach as the only way of developing a Law of Peoples. As he explains: “I cannot be sure in advance that this approach to the Law of Peoples will work out, nor do I maintain that other ways of arriving at the Law of Peoples are incorrect” (Rawls, The Law of Peoples, 10).
3.1.1 The central importance of facts for political liberalism

Rawls mentions on several occasions that the Law of Peoples aims to be practicable and realistic. His objective is to develop a theory that depends “on social facts as historical knowledge and reflection establish them.” Rawls notes that political philosophy is realistically utopian when it extends what are ordinarily thought to be the limits of practicable political possibility and, in so doing, reconciles us to our political and social condition. For Rawls, goals and ideals for a future world order should be possible and appropriate given what we know about our social world. The most important fact or “historical condition” in terms of the influence it has on Rawls’s political theory and his ideas of the person (in his domestic and international political theories) is the fact of pluralism. At the international level, Rawls defines pluralism as “the diversity among reasonable peoples with different cultures and traditions of thought, both religious and nonreligious...A (reasonable) Law of Peoples must be acceptable to reasonable peoples who are thus diverse; and it must be fair between them and effective in shaping the larger schemes of their cooperation.”

In general, Rawls does not substantiate the empirical assumptions that underlie his political conception of the person (in his domestic theory) and his looser, implicit ideas of the person in LoP. This may be due in part because his method for developing political liberal theory involves arguing “…from widely accepted but weak premises to more specific conclusions. Each of the presumptions should by itself be natural and plausible; some of them may seem innocuous or even trivial. The aim of the contract approach is to establish that taken together they impose significant bounds on acceptable principles of justice.” Political liberalism uses a constructivist

---

4Ibid., 11.
5Ibid., 12.
6Rawls, A Theory of Justice, 16.
method for developing principles of justice that begins with the specification of basic terms and conditions “according to a conception of those objects” given by the theory, not according to an assertion of “knowledge of given objects.”

“Political constructivism... uses a rather complex conception of person and society to give form and structure to its construction.”

It also specifies an idea of the reasonable (and decent in LoP). In doing so, it “does not... use (or deny) the concept of truth; nor does it question that concept, nor could it say that the concept of truth and its idea of the reasonable are the same.”

Its core starting-points are “fundamental ideas of the public political culture;”

our “widely accepted” values. Rawls does not engage the question of whether these values are ones we should have; in many respects he takes values as they are (not as they might or should be), and builds theory from what he considers to be generally held norms.

Rawls’s constructivist methodology is puzzling as it rests upon concepts often considered to be contradictory. For example, he does not want his theory to rely on knowledge or truth claims regarding the objects in the theory (such as the person or society)—yet, he requires that the specification of these objects be informed by real-world facts which are assertions of knowledge or truth (at least for a specific context.). By design, Rawls’s core ideas of political liberalism are widely held and

---

8 Ibid., 95.
9 Ibid., 94.
10 Ibid., 97.
11 Here I am speaking about the beginning of Rawls’s constructivist approach in which he specifies the foundational building-blocks for the theory. Political liberal theorizing does call for and facilitate reflection on these values through a process Rawls refers to as reflective equilibrium. However, this involves a going back and forth between principles generated by the theory and the starting assumptions. See the following chapter where I discuss this in more detail.
12 Rawls’s realism juxtaposes (oddly) with a very abstract approach to political theory. As explained in the opening sentence of a discussion in *Political Liberalism* he entitles, *On the Use of Abstract Conceptions*: “In order to state what I have called political liberalism, I have started with a number of familiar and basic ideas implicit in the public political culture of a democratic society” (Ibid., 43).
understood by citizens of a liberal democracy. At all points in the theory, any abstraction can be traced to real-world characteristics and values. In fact, these values derive their significance from the fact that real people endorse them, not from any justification by abstract philosophical argument. Rawls aims to develop a theory that is practicable and workable—one that can be endorsed in the real world. In doing so, he relies on certain empirics (social facts) that he hopes are basic and uncontroversial and thus they often are not defended with comprehensive empirical data. He specifies these “facts” at the outset of his theory (though often not as clearly as he should, and not always at the outset) as assumptions. For example, in *LoP* Rawls explains:

> Should the facts of history, supported by the reasoning of political and social thought, show that hierarchical regimes are always, or nearly always, oppressive and deny human rights, the case for liberal democracy is made. The Law of Peoples assumes, however, that decent hierarchical peoples exist, or could exist, and considers why they should be tolerated and accepted by liberal peoples as peoples in good standing.

One difficulty with applying political liberal methodology to the development of international justice theory is that it is unclear whether or not there is an international public culture that can be drawn upon to construct principles of international justice, akin to the liberal democratic public culture in Rawls’s theory of domestic justice.  

---

13In this sense his use of the word “abstract” (which denotes being apart from any particular case or external reality) can be misleading. But his work is often criticized for being precisely this and for what Rawls has termed the “unwordly” nature of the text. Unwordly is not a word, driving home the point that Rawls finds it often necessary to develop his own lexicon as he specifies the concepts used in his theory. Rawls mentions on several occasions that many “protest the use of so many abstract conceptions” Rawls, *Political Liberalism*, 44 in his theory, as well as the use of terminology for concepts that he develops (which build on each other and thus often require prior understanding of Rawls’s language and specifications). But he believes these often cumbersome abstractions are necessary and does not “apologize” for the nature of his text (ibid., lxii).


15Leif Wenar suggests that the lack of global public political culture is behind Rawls’s decision in *LoP* to focus on peoples rather than persons. Wenar explains, “there is no conceptual focal point comparable, that is, to the ideas within the public political culture of a liberal democracy that
CHAPTER 3. A POLITICAL CONCEPTION OF THE PERSON

What are the relevant facts, when working within an international context? Are there values in international public culture that influence individuals? Do these values influence individuals directly or via mediation vis-à-vis local and national institutions and values? I do not dispute the possibility that there is an international public culture and that it influences how individuals see themselves and their political life, but I do think it is reasonable to assume that public culture is strongest (in terms of its socializing power for individuals) in the institutions that individuals interact with day-to-day, from their schools, to where they apply for their driver’s licenses, register their businesses and if necessary, have disputes resolved. This is an underlying assumption of the political conception of the person I develop here, and it is an assumption that is also in LoP. As Rawls says, “The moral learning of political concepts and principles works most effectively in the context of society-wide political and social institutions that are part of their shared daily life.” “Taking part in shared institutions every day, members of the same society should be able to resolve political conflicts and problems within the society on a common basis in terms of public reason.”

individuals ought to relate fairly to one another as free and equal, regardless of their more particular characteristics. It is peoples, not individuals, that international political institutions regard as free and equal, and this is why Rawls makes peoples the subject of his global political theory.” (Wenar, 103)

Some of these institutions are state institutions, others are at a more local, decentralized level. As mentioned in the introduction, this dissertation does not, as far as I can tell, give a privileged position to the state within the theory. Individuals within the global original position may endorse their state or not, may feel connected to it, or may be fighting for separation or more devolution of state power. As discussed in chapter seven, representatives in the global original position need to think as though they could be any one of these individuals when coming up with international principles of justice.


17 Ibid.

18 Ibid.
3.1.2 Resolving the tension between reciprocity and liberal respect for the person

In undertaking the exercise of developing a political conception of the person for international justice theory, I challenge the view that political liberals face an inevitable choice between basing their theory on the individual or tolerating nonliberal, non-democratic societies.\(^1\) As discussed in the preceding chapter, cosmopolitan critics have generally interpreted Rawls as making this decision in favour of toleration at the expense of individual rights and freedoms. Yet even readers more sympathetic to \textit{LoP} have felt the choice still needs to be made. There is thought to be a “tragic element to the use of reciprocity in the international realm” for it “cannot produce the respect for persons it produces in the domestic realm.”\(^2\) The cost of the political liberal commitment to reciprocity in international justice theory, according to this view, is the erosion of individual rights and freedoms which nonliberal societies are considered to violate categorically. As Michael Blake explains:

The use of reciprocity, thus, produces quite startlingly different results in the international and domestic contexts. In the domestic context, it reflects a belief in individual moral agency, by bracketing differences about controversial matters such as religious truth, and seeking principles acceptable to all individual moral agents. In the international context, however, what is to be bracketed (what is controversial) is not religious truth, but the premise of individual moral primacy itself. What is sought is a set of principles which constrains international action, but which does not rely upon any set of premises so controversial as the liberal respect for the person.\(^3\)

\(^1\)This inevitable choice is the subject of Blake, 2002. As discussed in the introduction to this dissertation, this choice between toleration and individualism is also assumed in much of the literature on international justice, by scholars on both sides of the debate, e.g. Nussbaum, 2002; Walzer, 2006; Pogge, 2002; Miller, 2000. An example of a more nuanced discussion that has more room for toleration of nonliberal politics while also defending the individualist principles of cosmopolitanism is apparent in Tan, 2006.

\(^2\)Blake, 328.

\(^3\)Ibid.
There are two ways to resolve what Blake considers the incommensurability of the political liberal commitment to reciprocity and “the liberal respect for the person” in international justice theory. Solution one is to deny reciprocity to societies that violate the moral primacy of the individual. Liberal foreign policy would then remain committed to the principle of reciprocity, but only towards peoples that respect liberal democratic rights and uphold an idea of liberal respect for the person. The second solution is to retain Rawls’s extension of the principle of reciprocity to nonliberal peoples, but to argue that this does necessarily trump or overpower liberal respect for the person. Such an argument would hinge upon whether a theory can give moral primacy to the person and at the same time not endorse liberal democratic rights for all (which would violate the principle of reciprocity with nonliberal peoples.)

The first solution—changing the criteria for decency in order to reflect what cosmopolitans generally see as more fundamental liberal commitments—can be rejected for reasons offered in the preceding chapter. There I argued that the political liberal commitment to political rather than metaphysical or epistemological justification for its premises eliminates the option of basing international justice principles on (what political liberalism considers to be) particularistic liberal values. For the same reason, nonliberal societies cannot be considered oppressive (and therefore intolerable) a priori.

This dissertation probes the possibility of a second solution to the tension between toleration and liberal respect of the person by developing a conception of the person that enables political liberal international justice theory to tolerate certain nonliberal political doctrines while also satisfying liberal respect for the person.

---

22This should not be understood however as a defense of Rawls’s decency standards. There is ample room to adjust these standards without losing a theory’s ability to tolerate certain nonliberal and nondemocratic peoples. For example, certain provisions can be tightened to safeguard even basic rights or the ability of a society to be self-determining, depending on how self-determination is understood. In my approach, these standards (which encapsulate the limits of toleration in foreign policy) would be worked out by individuals in the global original position.
3.2 Rawls’s ideas of the person in LoP

In the previous chapter, I argued that the conception of the person Rawls develops in his domestic theory which is modeled by the original position (of persons) is inappropriate for international justice theory because liberal democratic public culture is not as pervasive at the international level. There is also no philosophical argument to justify a liberal conception of the person in the absence of these values being widely held, which begs the question: if we believe that developing a conception of the person for international justice theory is useful, what can a political conception of the person for international justice theory be, given global pluralism? In a similar way, Rawls wonders what a public conception of international justice can be based upon “given the reasonable and expected differences of peoples from one another, with their distinctive institutions and languages, religions and cultures, as well as their different histories, variously situated as they are in different regions and territories of the world and experiencing different events.”

Rawls’s answer is to extend a liberal conception of justice for a domestic regime to the Society of Peoples by making “free and equal peoples... analogous” to the role of “free and equal citizens” in his domestic theory. Especially given the misunderstanding and criticism of LoP since its publication, I consider this framing of the political liberal extension to the international context to be unfortunate and unnecessary.

As discussed in the preceding chapter, there is no explicit conception of the person in LoP and Rawls decides against building the Law of Peoples from an individualist foundation. However, Rawls does describe several characteristics of the person he has in mind in LoP, and he mentions briefly in the introduction that it is developed with an understanding of “persons’ moral and psychological natures and how that nature

---

24 Ibid., 55.
works within a framework of political and social institutions.” In the following paragraphs, I discuss these implicit ideas of the person in LoP as a first step towards building a political conception of the person for international justice theory.

### 3.2.1 Moral learning

One central idea of political liberalism is that social institutions significantly constitute individuals. In Rawls’s work, the term “moral learning” refers to a psychological process in which individuals learn and relearn values, develop their identities and shape their expectations for public life from the institutions they interact with, generally every day.

This assumption regarding the person is overshadowed in LoP by Rawls’s decision to make peoples analogous to the role of free and equal citizens. Rawls’s idea of “moral learning” in the domestic case refers to the way “citizens develop a sense of justice as they grow up and take part in their just social world.” In LoP, he refers to a “parallel process” that socializes peoples rather than persons “to act upon the legal norms embodied in a just Law of Peoples.” When “the Law of Peoples is honored by peoples over a certain period of time... these peoples tend to develop mutual trust and confidence in each other.”

In spite of Rawls’s application of the idea of “moral learning” to peoples and not persons in LoP, his assumption of moral learning (of individuals) appears, at least in part, to underlie his concern with toleration (of peoples). Rawls sees individuals around the world as having been socialized to endorse a wide range of public ideas of

---

26By social institutions, I am referring to any sphere of social life that meets (or seeks to meet) human needs, such as government, religion, family, marriage, legal systems, schools and even languages.
27Ibid., 44.
28Ibid.
29Ibid.
justice, both liberal and nonliberal. Individual members of a decent people in *LoP*, for example, recognize their “duties and obligations as fitting with their common good idea of justice” and not as “mere commands imposed by force. They have the capacity for moral learning and know the difference between right and wrong as understood in their society.”

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

Decent nonliberal peoples are well-ordered not from a liberal perspective but in terms of “their own ideas of justice” to which members largely subscribe. In order to qualify as a decent people in Rawls’s framework, a society’s public idea of justice must resonate with the values that individuals have come to hold for public life through moral learning and not be instituted by force.

### 3.2.2 Common sympathies

A second characteristic of individuals evident in *LoP* is that people tend to feel more kinship with those who have been socialized in a similar way to themselves, that is, those with whom they share history or who have grown up with the same public values. Individuals who have been similarly socialized tend to share “common sympathies... which make them cooperate with each other more willingly than with other people, desire to be under the same government, and desire that it should be gov-

---

31 Ibid.
32 Ibid., 68.
33 Ibid., 66–69.
CHAPTER 3. A POLITICAL CONCEPTION OF THE PERSON

Government by themselves or a portion of themselves, exclusively.” Rawls believes these sympathies can be generated by a number of factors, such as language, religion, or geography. However, even in liberal democracies and other societies where “historical conquests and immigration have caused the intermingling of groups with different cultures and historical memories,” Rawls believes there can still be a sense of belonging and connection to a shared public life. In fact, to enjoy the benefits of “peoples” status in the Society of Peoples, a society must be bonded by these common sympathies. “The Law of Peoples starts with the need for common sympathies, no matter what their source may be.”

3.2.3 Self-respect

Related to the idea of common sympathies, Rawls also alludes to a strong relationship between individuals’ self-respect and public life. The peoples who are treated as equal members of the Society of Peoples in LoP have “certain proper pride and sense of honor” and are “proud of their history and achievements.” Pressuring these peoples to adopt liberal reforms, Rawls mentions, “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.”

3.2.4 Social belonging as a “good”

Finally, Rawls considers the attachment of people to political communities to be beneficial to individuals. Although he does not elaborate upon this idea, he suggests that individuals’ connection to their political communities, history, and public culture and

---

36 Ibid.
37 Ibid., 44.
38 Ibid., 61.
values gives life meaning. People without this sense of belonging can be understood as not living as fully as those who enjoy a rich and deeply felt relationship with public life. “It is surely a good,” Rawls explains, “for individuals and associations to be attached to their particular culture and to take part in its common public and civic life. In this way belonging to a particular political society, and being at home in its civic and social world, gains expression and fulfillment.”\footnote{Rawls, The Law of Peoples, 111.} It is important to note that for Rawls, this “good” exists irrespective of whether individuals are attached to liberal or nonliberal values and political projects—the attachment itself is the good.

This attribute of individuals is mentioned only once in LoP and its influence on Rawls’s theory should not be overstated. Moreover, it is a rather strange departure from Rawls’s usual political justification for the values underlying his theory. More than any other aspect of LoP, the idea that the connection of individuals to society is a “good” seems to rely on assumptions about human nature, precisely what political justification seeks to detach itself from in its theory. The main reason why this idea is more difficult than the other characteristics of the person described above to politically justify is because it is more abstract. Evidence can be found to corroborate Rawls’s ideas concerning moral learning, common sympathies and the pride of individuals for their states or political projects; with respect to these characteristics Rawls appears to be putting a name to what he considers to be rather apparent social facts. The idea that belonging to a society is a good for individuals however is more intangible and comes across as a metaphysical claim about human nature.\footnote{I do not have a satisfactory explanation for why Rawls felt he could include this idea of social belonging as a “good”. Perhaps Rawls believed that this idea would not be controversial something implied by his “it is surely a good” phrasing and therefore considered himself to be specifying an intuitive and common sense notion. He may have considered the “good” of community it to be an obvious though important social fact similar to the ideas of “moral learning” and “common sympathies,” as well as the claim that individual self-respect is connected to the respect one’s political community is receiving (or is perceived to be receiving) in the world.} Regardless, the idea that one’s connection to her society is a good is one of Rawls’s
3.3 Equality and the two moral powers in international justice theory

As discussed in chapter two, the idea of citizens as free and equal is jettisoned when Rawls shifts from domestic to international political liberal justice theory because he considers it to be parochially liberal. If all persons are considered to have the two moral powers which is the basis of political equality in liberal thought (in Rawls’s view), this amounts to saying that all persons are to have the equal liberal rights of citizens in a constitutional democracy. Rawls rejects this starting point as he feels it could lead to coercive foreign policy towards nonliberal societies, bitterness and resentment (or even conflict) among peoples, and a Law of Peoples that fails to express the shared public reason of all well-ordered peoples, both liberal and nonliberal.

Rawls developed the political conception of the person in his theory of domestic justice by drawing upon what he considered to be “implicitly shared ideas and principles” within a liberal democratic society. “Since we start within the tradition of democratic thought,” Rawls explains, “we also think of citizens as free and equal persons.” With respect to equality, Rawls suggests that “we appeal to the fundamental idea of equality as found in the public political culture of a democratic society just as we did with the three ways in which citizens regard themselves as free persons.”

It is important to note that there are aspects of Rawls’s (domestic) political conception of the person that he does not associate as closely with liberal democracy.

---

43Ibid., 18–19.
44Ibid., 79.
“Beginning with the ancient world,” Rawls explains, “the concept of the person has been understood, in both philosophy and law, as the concept of someone who can take part in, or who can play a role in, social life, and hence exercise and respect its various rights and duties.” Individuals in Rawls’s theory of domestic justice are conceived as capable of participating in public life and as being active participants in understanding and exercising their rights and obligations as members of a political society. A similar idea is apparent in *LoP* and is associated with any form of social cooperation, not just liberal democracy. Rawls explains: “Since the members of the people are viewed as decent and rational, as well as responsible and able to play a part in social life, they recognize these duties and obligations as fitting with their common good idea of justice and do not see their duties and obligations as mere commands imposed by force.”

In this section, I challenge Rawls’s view that the two moral powers and its related idea of equality are parochially liberal and therefore ill-suited for a global political conception of the person. I also show how these moral powers are generally assumed in *LoP*.47

### 3.3.1 Liberal parochialism, equality, and the two moral powers

When applying his justice as fairness conception to the subject of international justice, Rawls suggests that peoples rather than persons48 are endowed with the two moral

---

47 In the next chapter, I focus on how individual freedom might be understood in a political liberal international justice theory as part of the development of a political conception of the person. I argue that an idea of individual freedom does not need to be dropped when turning to international justice theory (in the manner of *LoP*), but that it does require revision in order to meet the constraints of political liberal theory in light of international pluralism.
48 As I discuss later in this section, in my view, Rawls makes the implicit assumption that individual members of peoples also have the two moral powers.
powers. “It is... part of a people’s being reasonable and rational that they are ready to offer to other peoples fair terms of political and social cooperation,” which are terms that “a people sincerely believes other equal peoples might accept also.” Rawls goes on to explain, “the criterion of reciprocity applies to the Law of Peoples in the same way it does to the principles of justice for a constitutional regime.”

...in describing peoples as free and equal, and so as fairly and reasonably represented, it may appear that we have proceeded differently than in the domestic case. There we counted citizens as free and equal because that is how they conceive of themselves in a democratic society... In the Law of Peoples we do somewhat the same: we view peoples as conceiving of themselves as free and equal peoples in the Society of Peoples (according to the political conception of that society).

Rawls does not adequately explain why the two moral powers must be associated with, or how they can even be appropriately attributed to, peoples rather than persons in the way he suggests. It is also not evident that these powers cannot be applied to individuals due to concerns with liberal parochialism.

To begin with the easier case of the second moral power, there is nothing especially liberal or democratic about a capacity for a “conception of the ends and purposes worthy of our devoted pursuit, together with an ordering of those elements to guide us over a complete life.” The specification of this power does not place any restrictions on which ends and purposes one might deem worthy to pursue and therefore it can accommodate a wide range of conceptions of the good.

I also do not see anything especially liberal or democratic about the first moral power, a “capacity for a sense of justice” that might make it inappropriate for an international political conception of the person. Individuals can be conceived as

---

50 Ibid.
51 Ibid., 33–34, emphasis in original.
52 Rawls, *Political Liberalism*, 104.
CHAPTER 3. A POLITICAL CONCEPTION OF THE PERSON

willing and able “to understand, to apply, and to act from the public conception of justice which characterizes fair terms of social cooperation”\textsuperscript{53} when fairness is understood in the political liberal sense as referring to the willingness of individuals to “act in relation to others on terms that they also can publicly endorse.”\textsuperscript{54} Individuals who endorse a nonliberal idea of public justice are willing to act in accordance to it and can be conceived as willing to offer terms of cooperation that other members of their nonliberal society can accept. If individuals endorse, for example, a public conception of justice based on religious doctrine that does not treat all members of this society as free and equal in the liberal sense, this can still serve as a public conception of justice and be publicly appealed to in order to develop principles of justice that are acceptable from the perspective of fellow members. Liberal democracy therefore is not a precondition for satisfying the principle of reciprocity and the political liberal idea of fairness.

Although Rawls does not associate the two moral powers with a conception of the person in \textit{LoP}, these powers are generally assumed and are implicitly attributed to individuals. Members of decent nonliberal societies have a capacity for a sense of justice and propose terms of cooperation that are fair—they are terms that are generally acceptable to other members of their society. In Rawls’s example of Kazanistan, for example, “both Muslims and non-Muslims...understand and regard” the “priorities” of the society “as significant” and “these special priorities...fit into an overall scheme of cooperation.”\textsuperscript{55} The nonliberal (in this case Islamic) public idea of justice is not implemented through force, coercion or fear. Within decent nonliberal societies, terms of cooperation are not proposed because they satisfy a fairness requirement nor are they deemed just because of their acceptability; they are considered just or right.

\textsuperscript{53}Rawls, \textit{Political Liberalism}, 19.
\textsuperscript{54}Ibid.
\textsuperscript{55}Rawls, \textit{The Law of Peoples}, 77.
by their members because they are perceived to be in line with religious or philosophical doctrine that serves as the public basis of reason. “Although all persons in a decent hierarchical society are not regarded as free and equal citizens, nor as separate individuals deserving equal representation (according to the maxim: one citizen, one vote), they...can recognize when their moral duties and obligations accord with the people’s common good idea of justice.”\textsuperscript{56} Members of decent nonliberal peoples largely endorse the common good doctrine as a public conception of justice and justify public policy based on this doctrine. The principle of reciprocity is therefore satisfied in these societies even if it does not motivate the terms of cooperation that members propose and endorse.

At the close of \textit{LoP} when Rawls is discussing the limits of reconciliation to the Law of Peoples, he mentions, “many persons—call them fundamentalists of various religions or secular doctrines...could not be reconciled to a social world such as I have described.”\textsuperscript{57} This passage makes clear that Rawls is assuming that members of nonliberal peoples are generally reasonable rather than (in his words) “fundamentalist.” The Law of Peoples is acceptable only from the perspective of \textit{individuals} who are reasonable, and individuals can be conceived of as reasonable even if they do not endorse liberal democracy. “Reconciliation,” Rawls states, “requires acknowledging the fact of reasonable pluralism both within liberal and decent societies and in their relations with one another. Moreover, one must also recognize this pluralism as consistent with reasonable comprehensive doctrines, both religious and secular. Yet this last idea is precisely what fundamentalism denies and political liberalism asserts.”\textsuperscript{58}

Despite his focus on peoples, Rawls posits that \textit{individuals} in both liberal and decent nonliberal societies can be thought of as reasonable.

\textsuperscript{56}Rawls, \textit{Political Liberalism}, 71.
\textsuperscript{57}Rawls, \textit{The Law of Peoples}, 126.
\textsuperscript{58}Ibid., 127.
Rawls’s framework suggests that individuals in both liberal and nonliberal societies are also capable of proposing and accepting fair terms of cooperation between peoples. Liberal peoples do not insist on a fully liberal Law of Peoples, and nonliberal societies also do not require the Law of Peoples to reflect their own idea of justice. “As reasonable citizens in domestic society offer to cooperate on fair terms with other citizens, so (reasonable) liberal (or decent) peoples offer fair terms of cooperation to other peoples.”

The Law of Peoples “asks of other societies only what they can reasonably grant without submitting to a position of inferiority or domination.”

The aspirations of peoples for their own domestic institutions differ in substance from the principles they are prepared to endorse internationally due to their commitment to the principle of reciprocity in a pluralist political world. “How peoples treat each other and how they treat their own members are, it is important to recognize, two different things. A decent hierarchical society honors a reasonable and just Law of Peoples even though it does not treat its own members reasonably or justly as free and equal citizens, since it lacks the liberal idea of citizenship.”

Both liberal and decent nonliberal peoples are modeled as reasonable. “A people sincerely affirming a nonliberal idea of justice may still think its society should be treated equally in a reasonably just Law of Peoples. Although full equality may be lacking within a society, equality may be reasonably put forward in making claims against other societies.”

Although Rawls does not make this argument, what is implied by his description of decent nonliberal peoples is that members of these societies, including their leaders, are not interested in coercing other peoples to be (internally) governed by the same “common good idea of justice” as their societies, nor do they insist on this idea of justice guiding their social cooperation with other peoples. In the individualist approach

---

60 Ibid., 121.
61 Ibid., 83.
62 Ibid., 70.
I develop here, I build on this implicit idea within *LoP* and argue that individuals, regardless of whether they endorse liberal or nonliberal political doctrines, can be conceived as reasonable. Although individuals may support nonliberal political ideas for their domestic order, these are fair terms for cooperation in this context because they are terms that can be widely accepted. These same individuals can be conceived as willing, even from the perspective of their own ideas of justice, to abide by different constraints of public reason for working out principles of international justice that can be acceptable from the perspective of a wide array of ideas of justice.

Given that there is nothing prohibitively parochial about Rawls’s two moral powers and that Rawls considers individuals who possess these powers to be equal, Rawls’s idea of equality should also not be considered inapplicable to a global political conception of the person for reasons related to liberal parochialism. Including this idea of equality as part of a global political conception of the person does not necessitate that all individuals be treated as public equals in a liberal or democratic sense. On the contrary, it suggests that individuals who endorse a nonliberal idea of justice should not be assumed to be irrational or unreasonable. These individuals instead can be understood as willing and able to propose terms of cooperation that other reasonable individuals can accept.\(^63\) As long as they can act reasonably and rationally in this respect, they can (and should) be situated symmetrically in the thought experiment and have an equal role in constructing principles of international justice.

\(^63\) The reasonable individuals referred to here include those who endorse a liberal idea of justice but are willing to find terms of social cooperation that others, including those who endorse nonliberal politics, might accept (provided they too are reasonable).
Chapter 4

Freedom and the Global Political Conception of the Person

This chapter explores what individual freedom should mean in a political liberal theory of international justice. Freedom is central to Rawls’s conception of the person in his theory of domestic justice. In chapter two, I suggest that the essence of freedom in Rawls’s domestic theory is the idea of limited government and political autonomy. Rawls describes citizens as seeing themselves and others as having the power to pursue a conception of the good, and their public identity as “free persons is not affected by changes over time in their determinate conception of it.”1 For example, citizens are free to convert from one religion to another in the sense that this conversion has no bearing on their rights, privileges, and obligations as citizens.2

Rawls considers the “three respects” in which citizens of a liberal democracy think of “themselves as free”3 (which he outlines as part of his conception of the person) to be specific to the context of a liberal democracy—this is why they are considered appropriate foundations for developing his domestic theory of justice. What I propose

---

2For an elaboration of the idea of freedom associated with Rawls’s political conception of the person in his theory of domestic justice, see chapter two, especially section 2.1.1.
3Ibid., 29.
in this chapter is that there is a less contextual, overarching understanding of freedom implicit in Rawls’s political liberalism that may in fact motivate his concern with context. There is an idea of what individuals need to be free that holds irrespective of pluralist political doctrines.

Central to this political liberal idea of freedom is the need for individuals’ values and interests for public life (including their ideas of freedom), to be reflected in the public institutions that govern their lives.

The tension between positive and negative liberty discussed by Isaiah Berlin is one that international justice theory wrestles with, and that I try to navigate and overcome in the idea of freedom presented here. The tension results from our need “to be our own master” (relates to the idea of positive freedom) and to not be obstructed by others in trying to do what we wish (negative freedom). The tension arises when we may need things, and in particular things that we cannot necessarily recognize or accept that we need, in order to be the master of ourselves, to be moved by conscious purposes that are our own [Berlin, 16]. Berlin illustrates the tension this way,

...we recognize that it is possible, and at times justifiable, to coerce men in the name of some goal (let us say, justice or public health) which they would, if they were more enlightened, themselves pursue, but do not, because they are blind or ignorant or corrupt. This renders it easy for me to conceive of myself as coercing others for their own sake, in their, not my, interest. I am then claiming that I know what they truly need better

---

4This is not a new idea, but an old one that features prominently in the idea of freedom outlined in this chapter. The literature on freedom is rich and expansive, and unfortunately (as the concept presented here would be better for it), I do not explore how the idea of freedom discussed here relates to insightful works on freedom presented by philosophers from the ancients to the present day, and in virtually all traditions of thought. This is simply due to limitations in scope of this project and what it hopes to accomplish. I put forward this idea of freedom to give a sense of what it looks like, and to show how it differs from the notion of freedom specified in Rawls’s domestic theory. I consider the idea of freedom focused on here to be Hegelian, and therefore I do focus on the affinity of Hegel’s idea of freedom with political liberal thought.

5Berlin, 1958.

6Domestic theories of justice have this tension as well but the pluralism involved in international justice theory makes this tension more acute.

7Berlin, 16.
CHAPTER 4. FREEDOM AND THE CONCEPTION OF THE PERSON

than they know it themselves. What, at most, this entails is that they would not resist me if they were rational, and as wise as I, and understood their interests as I do.\(^8\)

The idea of freedom discussed below tries to reconcile negative and positive liberty by suggesting that individuals, to be free, need to endorse the actions or interventions being done on their behalf.\(^9\) One’s positive liberty should not be (if possible) furthered at the expense of negative liberty; if circumstances warrant the coercion of person Y on behalf of person Y,\(^10\) then it should be recognized that on the road to greater freedom, freedom is being curtailed along the way.\(^11\)

As the quotation cited at the beginning of this dissertation suggests, Rawls was deeply concerned by the prospect of coercion (and especially liberal coercion) on grounds that people do not know their true interests or that they are oppressed; this concern is in part behind his interest in developing principles of justice (that often guide such actions) that can be accepted from diverse perspectives. Coercion aside, however, the political liberal idea of freedom discussed here emphasizes the importance of developing principles that individuals can accept from their perspectives. So, this idea of freedom is compromised whenever individuals do not accept principles of justice that shape the institutions that govern their lives. I am not making the

---

\(^8\)Berlin, 17–18.

\(^9\)Leif Wenar’s interpretation of the idea of freedom underlying political liberalism—and especially evident in *LoP*—is similar to the one discussed here. He writes, “Rawls doubtless believes as much as anyone that all humans should be regarded as free and equal. Yet he believes more deeply that humans should be coerced only according to a self-image that is acceptable to them.” (Wenar, 103) I am not sure one should be considered coerced if the ‘coercion’ accords with one’s ‘self-image’.

\(^10\)The ethics of intervention to protect those whose basic rights are being violated by others is not the issue being discussed here. I am focusing instead on coercing others who are not living as well or as freely as they should according to certain perspectives and values that they don’t share.

\(^11\)This discussion, which again emphasizes the significant role that acceptance and endorsability play in my argument, raises the question of the conditions that need to be met in order to ascertain whether individuals are indeed accepting institutions, principles and policies. I discussed my efforts to respond to this problem in chapter one. The primary goods outlined in chapter seven also aim to address these concerns by including measures that help with understanding levels of (domestic or local) acceptance of government and policies while at the same time balancing this with the need for these measures themselves to not be implemented without domestic support or solely because of the epistemic constraints (which may be self-induced) of liberals abroad.
bolder claim that the acceptability of political institutions (to individuals governed by them) is a sufficient condition for freedom, but I do suggest that this is a necessary condition. Consistent with political liberalism, my interest is focused only on a conception of freedom that is relevant for “basic structure of society.” In the case of international justice, the basic structure encompasses the institutions and content of foreign policy, as well as international relations and governance. Moreover, I am not making the claim that everyone is equally free as long as they live with public institutions they endorse. For example, perhaps a person that supports her liberal democratic government can be considered freer than one who endorses his nonliberal or nondemocratic public order. Although Rawls does not make this argument, he does suggest that liberal and decent nonliberal peoples do not need to be considered equally just in order for decent nonliberal peoples to be deemed worthy of toleration. “I am not saying, Rawls states, “that a decent hierarchical society is as reasonable and just as a liberal society. For judged by the principles of a liberal democratic society, a decent hierarchical society clearly does not treat its members equally.” Decent peoples are not considered to be reasonable or just but rather “not fully unreasonable” and although Kazanistan is not “perfectly just” it is “is the best we can realistically—and coherently—hope for.”

Even if we believe individuals could be freer with liberal democratic institutions, if

---

12 People require more than a reconciliation with public life to be truly free. One might, for example, require meaningful social relationships, or a certain personal attitude, or level of confidence. These characteristics may influence individual freedom but are not the responsibility of government. Rawls, *Political Liberalism*, 223.

13 For example, private individuals and civil society groups, such as evangelical groups or ideologically motivated organizations, may make different and wide-ranging assumptions regarding individual freedom that may influence and motivate their work (to the degree afforded by the laws of their host and home countries).


15 Ibid., 74.

16 Rawls uses the hypothetical case of Kazanistan, a decent Islamic people, to illustrate his decency criteria.

17 Ibid., 78.
members of Kazanistan are to be free at all, they must be governed by institutions they are prepared to endorse. Most of the members of Kazanistan believe in the nonliberal public idea of justice that is the foundation of its political system. As long as this is the case, liberal democratic reforms within Kazanistan, and a more liberal Law of Peoples cannot be assumed to enhance freedom.

4.1 A political idea of freedom for international justice theory

When working out a political conception of the person (which, as noted earlier, is shaped primarily by an idea of freedom in Rawls's domestic theory), Rawls draws upon “fundamental ideas of a democratic society” and presupposes “no particular wider doctrine. We put no doctrinal obstacles to its winning allegiance itself, so that it can be supported by a reasonable and enduring overlapping consensus.”

Although in the international case, I do not have “fundamental ideas” associated with a specific political doctrine to draw upon, I too seek an idea of freedom that is freestanding and poses no doctrinal obstacles in terms of being accepted as an idea of freedom for international justice theory. What I seek is an idea of freedom that can be acceptable from the perspective of a wide range of political doctrines of public justice that individuals endorse. At the same time, this exercise should not be interpreted as requiring us to look beyond or compromise our liberal principles. As Rawls explains, “In developing the Law of Peoples I said that liberal societies ask how they are to conduct themselves toward other societies from the point of view of their own political conceptions. We must always start from where we now

---

19 By free here, I am referring to the perspective of freedom discussed in this dissertation.
20 Rawls, Political Liberalism, 40.
are.”\(^{21}\) The interest in the acceptability of an idea of freedom for international justice theory is driven by a liberal interest in toleration and in individuals being governed by institutions they endorse.

For those familiar with Hegel’s political theory and in particular his idea that individuals must be reconciled with public institutions (and most importantly, the state) to be free, the conception of freedom I associate in this dissertation with political liberalism will seem rather Hegelian. In this section, I discuss Hegel’s idea of freedom and show its resonance in Rawls’s political thought.\(^{22}\) Nevertheless, my goal is not mainly exegetical. Although there are important differences between Rawls and Hegel, I believe Hegel’s political thought gives the most developed account of core principles relating to the idea of freedom that I wish to put forward.\(^{23}\) By referencing Hegel, I hope this political liberal idea of freedom will be more understandable and further substantiated.

Hegel is referenced on many occasions in Rawls’s writings, including in *LoP*, and Rawls had deep respect for Hegel’s contributions to political theory. As Rawls explains: “I interpret Hegel as a moderately progressive reform-minded liberal, and I see his liberalism as an important exemplar in the history of modern and political philosophy of the *liberalism of freedom.*”\(^{24}\) Rawls saw his own work as part of the same tradition and as strongly influenced by Hegel’s thought.\(^{25}\)

\(^{21}\)Rawls, *Political Liberalism*, 121.

\(^{22}\)Others that have explored the philosophical affinity between Hegel and Rawls include Schwarzenbach, 1991; Schwarzenbach, 1994; Hoy, 1981. Cohen, 1993 has been especially instructive.

\(^{23}\)I am especially indebted to Patten, 1999; Avineri, 1972; Hardimon, 1994; Pippin, 1989 as well as Jones, 203–227


4.1.1 Individuals as constituted and the consequences for freedom

Both Hegel and Rawls see individuals as significantly constituted by the public institutions in which they live and have lived over time (for both, socialization occurs with time). Individuals’ interests and values for public life are formed by the social context in which they live, and political institutions (especially the state) exert a significant socializing influence. In Hegel’s words:

Each individual is the son of his own nation at a specific stage in this nation’s development. No one can escape from the spirit of his nation, any more than he can escape from the earth itself... By his very nature, the individual must accord with his own substance; he must become conscious within himself of the will which his nation demands, and give expression to it. The individual does not invent his content, but merely activates the substantial content which is already present within him.26

The fact that “no one can escape from the spirit of his nation” is not (despite Hegel’s wording) a problem for freedom (at least in Hegel’s view). People have no choice but to be molded by their social and political context, but it is precisely this context that enables them to be free. Without it, people would not know who they are or what is important in their lives. Hegel does not believe individuals can strip away all influences and socializing elements and act only according to a pure, universal moral law or reason. Such an idea is ludicrous in Hegel’s view, because it is precisely our social context that gives us our moral compass.

As Rawls explains:

Hegel wants to show that people can and do act freely when conducting themselves on the basis of habit and custom (assuming them to be reasonable on reflection). This condition is met in the modern world (in

26Hegel, Lectures on the Philosophy of World History, § 81.
contrast to the ancient or medieval world), in which social institutions must promote subjectivity, individuality, and particularity.\(^{27}\)

Instead of becoming enlightened to pure reason through the rejection of inclination and particularity, in Hegel’s theory it is more appropriate to see reason as achieved in the unity of particularity and universality. Hegel believes individuals are crude and immature in the absence of education via state institutions, which develop and maintain human capacities for freedom and reason. The idea of a social contract\(^{28}\) is therefore flawed because it is based on the false assumption that individuals can make thoughtful decisions prior to entering a social world. “As if the individual could on its own be what it presently is, and the universal did not make it that which it is in truth.”\(^{29}\)

Hegel believes, similar to Kant, that human beings have the capacity to reason; for Hegel, however, this reason is shaped and (in a rational state)\(^{30}\) distinctively fostered by an individual’s social context. Rational state institutions cultivate a citizenry that is capable of reflecting upon its particular interests and needs.

The individual agents pursue finite ends and particular interests in their activity; but they are also knowing and thinking beings. For this reason, the content of their ends is interwoven with universal and essential determinations of justice, goodness, duty and the like. For mere desires and barbarous or uncultivated forms of volition fall outside the sphere of world history and play no part in it.\(^{31}\)

\(^{27}\)Rawls, *Hegel I: His Rechtsphilosophie*, 333.

\(^{28}\)Here I am referring to the social contract as Hegel saw it given his contemporaries such as Kant, not the social contract developed by Rawls’s work which can incorporate the idea of a more encumbered self.


\(^{30}\)A rational state is an ideal-type state in Hegel’s theory that is part of what is generally referred to as “ethical life”which consists of a system of social institutions (of which the state is of primary importance) that actualize one’s fullest freedom (and in doing so, progress the freedom of the state and of Geist.)

\(^{31}\)Hegel, *Lectures on the Philosophy of World History*, § 81.
CHAPTER 4. FREEDOM AND THE CONCEPTION OF THE PERSON

A rational state is one in which individuals effectively question and assess authority, opinion, “grandiose claims”, “despotism” and challenge their own blind “faith” in religion and institutions more generally.\(^{32}\) Free individuals must be able to reflect upon, analyze, and be aware of the “reason” in “reality which the whole of world history has worked to achieve.”\(^{33}\) A rational state therefore educates its citizens to reflect and to use their reason to correctly understand and will the right institutions. “This very substantiality is the spirit which knows and wills itself as having passed through the form of education. The state therefore knows what is wills, and knows it in its universality as something thought.”\(^{34}\) The right institutions are only right if they resonate with individual particularity, which however is educated and in a sense refined by the institutions of the state.\(^{35}\)

Rawls too sees individuals as significantly socialized by institutions, and this embeddedness shapes how he develops political theory.\(^{36}\) He does not accept the criticism that liberalism fails to see “what Hegel certainly saw, the deep social rootedness of people within an established framework of their political and social institutions.”\(^{37}\)

\(^{32}\) Hegel, *Elements of the Philosophy of Right*, § 270.

\(^{33}\) Ibid.

\(^{34}\) Ibid. Emphasis in original text.

\(^{35}\) Hegel’s metaphysics somewhat fills in the blanks, addressing the circularity problem posed by embeddedness. Individuals and the state mutually influence and constitute each other but the freedom of individuals, the state, and Geist progresses. Progress is an assumption that saves the theory from circularity problems. Minus the metaphysics (as is the case with Rawls), this circularity poses more of a problem. I suggest below that Rawls does not see moral learning in either decent or liberal peoples as problematic in this regard. Again, the question is: if individuals are constituted by the state, how are they at the same time also constituting it? I suggest that Rawls’s way out of this circularity is apparent in his idea of reflective equilibrium in how principles themselves are developed, and what they, at the same time, enlighten about or firmest convictions. This relates to broader questions concerning the role of realism in Rawls’s political liberalism, and whether by anchoring some of its foundations, realism weighs down the exercise of constructing the correct principles of justice. On this topic, especially helpful is Cohen, 2008 on more of the critical side and Cohen, 1993 which is more supportive of the realism underscoring political liberalism and political philosophy more generally. I thank Joe Carens for raising this issue.

\(^{36}\) See Kokaz, *Beyond Power and Plenty: The Law of Peoples and Global Justice*, chapter two for helpful related discussion of the way Rawls sees political community shaping who we are.

\(^{37}\) Rawls, *Hegel I: His Rechtsphilosophie*, 266.
In this we learn from him, as it is one of his great contributions... I don’t think that a liberalism of freedom is at fault here. *A Theory of Justice* follows Hegel in this respect when it takes the basic structure as the first subject of justice. People start as rooted in society and the first principles of justice they select are to apply to the basic structure.\(^{38}\)

As discussed earlier in this chapter, in Rawls’s work, individuals come to understand the public values of their societies by being part of institutions every day, thereby undergoing a psychological process that Rawls refers to as “moral learning.” Like Hegel, Rawls believes that individuals in well-ordered societies are able to reflect upon and question these socialized public values and to actively endorse them; these values have not become indoctrinated to the point of passive adherence. It is impossible to step outside of one’s social context and use reason distinct from one’s socialization, but individuals can reflect upon what they endorse and change their minds. This capacity is evident even in Rawls’s description of decent nonliberal peoples: Members of a decent people “have the capacity for moral learning and know the difference between right and wrong as understood in their society.”\(^{39}\) At the same time, they are capable of forming dissenting views in spite of (or perhaps because of) the nonliberal socialization they have experienced and their dissent provokes change. In Kazanistan, for example, dissent “has led to important reforms in the rights and role of women, with the judiciary agreeing that existing norms could not be squared with society’s common good idea of justice.”\(^{40}\) “All societies undergo gradual changes, and this is no less true of decent societies than of others. Liberal peoples should not suppose that decent societies are unable to reform themselves in their own way.”\(^{41}\)

Rawls’s notion of reflective equilibrium shows that he believes deeply-felt beliefs can be reflected upon and changed, even though reflection does not happen from an

\(^{38}\)Rawls, *Hegel I: His Rechtsphilosophie*, 266.


\(^{40}\)Ibid., 78.

\(^{41}\)Ibid., 61.
un- or pre-socialized position. Rawls’s reflective equilibrium approach also reveals his interest in including and valuing convictions and beliefs in political philosophy rather than striving to build theory from something purportedly deeper or truer. A reflective equilibrium balances our firmest socialized convictions (modeled in the theory, such as by the original position) with a set of principles that our reflection upon these convictions produces, aided by a thought experiment. In Rawls’s domestic theory, the thought experiment involves (a) placing individuals in the original position behind a veil of ignorance and (b) considering what principles of justice might evolve when constrained in this manner. We go back and forth (from the output principles to the more simple starting-points), making adjustments until resulting principles make sense from where we are at, while also stretching us to see what principles are implied by firmly-held convictions and widely accepted norms.

Political philosophy cannot coerce our considered convictions any more than the principles of logic can. If we feel coerced, it may be because, when we reflect on the matter at hand, values, principles, and standards are so formulated and arranged that they are freely recognized as ones we do, or should, accept. We can use the original position to further this recognition. Our feeling coerced is perhaps our being surprised at the consequences of those principles and standards, at the implications of our free recognition. Still we may reaffirm our more particular judgments and decide instead to modify the proposed conception of justice with its principles and ideals until judgments at all levels of generality are at last in line on due reflection.\textsuperscript{42}

\textbf{4.1.2 The capacity to question the state}

Neither Hegel nor Rawls believe that people who have been socialized to the point that they robotically endorse public values, or who live with such fear of the state that they do not entertain the possibility of criticizing government policy are free.\textsuperscript{43}

\textsuperscript{42}Rawls, \textit{Political Liberalism}, 45.

\textsuperscript{43}I deduce this from what reconciliation of the individual with the state involves in Hegel’s political theory. For a more thorough account of reconciliation than what is given in this chapter, see for
CHAPTER 4. FREEDOM AND THE CONCEPTION OF THE PERSON

For Hegel, questioning and reflection are fostered by an ideal rational state. However, Hegel’s idea of reconciliation (of the particular with the universal via membership in the state) should not be misinterpreted as supporting a right to dissent. In Hegel’s view, individual freedom is served not when people oppose the state, but rather when they recognize the state as actualizing their freedom. And in doing so, people reconcile themselves with a universal truth, freely come to will the state, and play their critical role in the actualization of greater freedom for themselves and Geist (with which their freedom is intertwined). In Hegel’s theory, a rational state fosters this reconciliation, fulfilling individuals’ subjective interests while also educating and enlightening citizens to deepen these interests beyond satisfaction of simple desires and “subjective caprice”.

Rawls also associates freedom with a capacity to question, reflect upon, and endorse public values. A society in which this does not happen is considered oppressive rather than well-ordered in Rawls’s framework. In contrast to Hegel, however, Rawls does not suggest that the government must play a role in cultivating this capacity. Decent regimes are not required to provide specific educational measures or other mechanisms or provisions to cultivate a questioning, critical-thinking public. A decent government must only respect “a sufficient measure of liberty of conscience to ensure freedom of religion and thought” and allow dissent, listen to these grievances (it cannot simply be tokenism), and “give a conscientious reply.” Rawls implies that ensuring institutional space for dissent and stipulating that this dissent be taken seriously are sufficient. As long as this is the case, he assumes individuals will have the capacity to reflect upon government policy and will in fact do so. I believe it is

example, Hardimon, 1994; Pippen, 1989. I also believe it is the case for Rawls because in LoP, regimes are considered oppressive if they do not provide room for dissent and if people blindly adhere to the government policy due to fear or indoctrination.

44 Hegel, Elements of the Philosophy of Right, § 260.
46Ibid., 72.
problematic that Rawls offers no further provisions in terms of education or freedom of the press that could be understood as facilitating or even enabling this capacity for dissent in decent nonliberal peoples. The line between oppressive indoctrination and socialization (or moral learning) is difficult to draw and it is one that Rawls does not help to illuminate in spite it playing a significant role in his theory. Societies where individuals were deeply indoctrinated to support the government or public values through rampant and oppressive propaganda and education would be deemed intolerable (un-decent) by Rawls’s *LoP*, but political socialization is acceptable and even valued. In the outline of primary goods in chapter seven, I work to address these problems by clarifying what is needed to ensure the freedom from oppressive indoctrination is respected, and I go into more detail regarding what counts as unacceptable propaganda. I also discuss education and press freedoms as well as other measures that are needed to support the capacity to endorse and question the state and political institutions more generally.

### 4.1.3 Freedom as reconciliation of the particular with public values

For Hegel, political change is only successful at actualizing freedom if it occurs when individuals (shaped by their own history and context) activate the change and become accustomed to it via their own distinctive reason. Hegel argues against foreign involvement in a country’s constitution, for example, because “even if its content were more or less rational,” “the wish to give a nation a constitution *a priori*... is an idea [*Einfall*] which overlooks the very moment by virtue of which a constitution is more than a product of thought. Each nation accordingly has the constitution appropriate and proper to it”[^47] A constitution “is the work of centuries,” it “must embody

[^47]: Hegel, *Elements of the Philosophy of Right*, § 274.
the nation’s feelings for its rights and [present] condition; otherwise it will have no meaning or value, even if it is present in an external sense.” 48 “What Napoleonic gave to the Spanish was more rational than what they had before, and yet they rejected it as something alien, because they were not yet sufficiently cultivated [gebildet].” 49

I believe discussing Hegel’s idea of reconciliation is helpful for understanding Rawls’s implicit idea of freedom in *LoP* and what Rawls considers to be the proper objective of liberal foreign policy. Rawls explicitly connects his argument for restraint in liberal foreign policy with his view that it is “a good for individuals and associations to be attached to their particular culture and to take part in its common public and civic life.” 50 The importance of individuals’ connectedness to their public life “is no small thing. It argues for preserving significant room for the idea of a people’s self-determination and for some kind of loose or confederative from of a Society of Peoples.” 51

Both Hegel and Rawls believe the particular (how individuals see themselves and the beliefs they hold) is important for moral reasons. Ironically, Hegel’s justification for valuing the particular is metaphysical and for Rawls the particular is important in large part due to his rejection of metaphysical foundations for his theory. Nevertheless, the importance of the particular for both philosophers is reflected in the theoretical importance given to international pluralism. In line with his metaphysics, Hegel believes the diverse states of the world and the individuals that are embedded within them are serving the ultimate freedom of world spirit or *Geist* by progressing along their different trajectories. The freedom of the “one universal spirit” can only be realized through the fuller realization of freedom “of the national spirits in their

---

48 Hegel, *Elements of the Philosophy of Right*, § 274.
49 Ibid.
51 Ibid.
necessary progression.”

States can only actualize the freedom of their members by advancing their distinct course of history, and it is only through this that there will be “consummation of an all-embracing totality.”

World history is the expression of the divine and absolute process of the spirit in its highest forms, of the progression whereby it discovers its true nature and becomes conscious of itself. The specific forms it assumes at each of these stages are the national spirits of world history, with all the determinate characteristics of their ethical life, their constitutions, their art, their religion and their knowledge.

States are at different developmental stages—some are closer to actualizing the freedom of their members than others. All of them need to go through their own “necessary progression” if they are to serve the ultimate “aim of world history.”

Contra Hegel, Rawls works to detach his theorizing from any metaphysical or epistemological premises, which in Rawls’s view are untestable and irresolvable. This is not to imply that Rawls considers all doctrines to be morally equal (Rawls is not a cultural relativist and he prefers liberal democracy over other political ideologies) but rather that political liberalism cannot draw upon any philosophical argument to justify liberal democracy over alternative ideas of public justice which may appeal to different (though just as irresolvable) philosophical ideas.

Rawls’s objective for political philosophy is to develop principles of justice that can be endorsed given pluralism. His idea of public reason can be understood as giving value to individuals’ particular perspectives. Individuals must propose terms of cooperation that are reasonable for others to accept from their viewpoints, “as free

---

52 Hegel, Lectures on the Philosophy of World History, § 65.
53 Ibid.
54 Ibid.
55 Ibid., § 64.
56 "Political liberalism moves within the category of the political and leaves philosophy as it is. It leaves untouched all kinds of doctrines... with their long traditions of development and interpretation... and presents itself in its own terms as freestanding (Rawls, Political Liberalism, 375)."
CHAPTER 4. FREEDOM AND THE CONCEPTION OF THE PERSON

and equal citizens, and not as dominated or manipulated, or under pressure of an inferior political or social position.”

Rawls, like Hegel, can be understood as giving theoretical weight to “national spirits of world history, with all the determinate characteristics,” but not because they are serving any metaphysical aim but instead because principles of international justice must satisfy requirements of public reason for peoples with, in Rawls’s words, “their distinctive institutions and languages, religions and cultures, as well as their different histories.” “The idea of realistic utopia is importantly institutional. In the domestic case it connects with the way citizens conduct themselves under the institutions and practices within which they have grown up; in the international case with the way a people’s character has historically developed.”

Rawls’s LoP and Hegel’s political writings have both been criticized for condoning the oppression of individuals—in part, for similar reasons. Like Rawls, Hegel gives theoretical significance to political community, and in Hegel’s case (and arguably for Rawls also) the most important political community is the state. Some have interpreted Hegel’s theory as justifying and inspiring authoritarianism. State-sponsored

---

58 Hegel, Lectures on the Philosophy of World History, § 65.
60 Ibid., 16. As I suggest in chapter two, Rawls’s adoption of a peoples-persons analogy evident in the passage above is unfortunate because it overshadows the ways in which LoP respects individuals. Behind a “people’s character” in Rawls’s framework are individuals who have been socialized by its public life and endorse its idea of justice. However, Rawls does not make this connection explicit, leaving his theory vulnerable to the criticism that his theory of international justice fails to stand up for the rights of oppressed individuals.
61 An especially perplexing aspect of Hegel’s political theory (especially for contemporary readers) concerns the relationship Hegel draws between individual freedom, the state, and a divine force. In Hegel’s view, individuals enjoy the fullest and richest experience of freedom by becoming reconciled to the laws and practices of the state because “the state is the actualization of freedom not in accordance...with the concept of the will, i.e., in accordance with its universality and divinity.” (Hegel, Elements of the Philosophy of Right, § 260) “Since the state is objective spirit, it is only through being a member of the state that the individual [Individuum] himself has objectivity, truth, and ethical life” (ibid., § 258).
62 For a helpful discussion and references to scholars who have interpreted Hegel more as an authoritarian thinker, see Patten, 1999.
murder does not seem very different from what Hegel implies as necessary at times: “Whether the individual exists or not is a matter of indifference to objective ethical life, which alone has permanence and is the power by which the lives of individuals are governed.”

Interpreting Hegel’s ideas as justifying oppression, however, is not fair to his political theory, and this reading is now generally in disrepute. Hegel does suggest that citizens enjoy the fullest freedom when their particular inclinations are unified with those of the state. What is important to emphasize, however, is that this personal endorsement of the will of state—if it is to serve the fundamental purpose of further actualizing freedom—must be done freely. An individual cannot be coerced to recognize the necessity of the state for one’s freedom or be forced to accept their duties to the state. The state is actualizing the freedom of its members only if the objectives of the state are also the objectives of its individual members.

The essence of the modern state is that the universal should be linked with the complete freedom of particularity [Besonderheit] and the well-being of individuals... but the universality of the end cannot make further progress without the personal [eigne] knowledge and volition of the particular individuals [der Besonderheit], who must retain their rights.

In modern ethical life (a phrase denoting Hegel’s ideal for public order), individuals do not make concessions in order to accommodate their duties to the state (at least not regretfully or coercively); instead, they recognize these obligations as serving their freedom, and in doing so, freely come to endorse these duties. What is particularly noteworthy about Hegel’s comment above is that although he believes an individual is most free when reconciled with the state, such an ideal state of affairs cannot be brought about through the exercise of state power. “What matters most is that the

---

63 Hegel, *Elements of the Philosophy of Right*, § 145.
64 Ibid., § 260.
law of reason should merge with the law of particular freedom, and that my particular end should become identical with the universal; otherwise the state must hang in the air." 65 “What matters most” is not the content of one’s particular values and interests (and whether this content actualizes one’s freedom) but rather the unity of this particularity with the state. If the welfare of citizens is “deficient, if their subjective ends are not satisfied, and if they do not find that the state as such is the means to this satisfaction, the state itself stands on an insecure footing.” 66

The importance of “freedom of particularity” 67 is especially evident in both Hegel and Rawls’s political thought when we consider how their theories respond to individuals and groups who do not support the public life of their societies. As discussed in greater detail in chapter two, Rawls believes that comprehensive doctrines that individuals hold should be tolerated unless they pose a “threat to democratic institutions.” 68 A society should practice toleration as long as it can maintain and protect its “just basic structure within which permissible forms of life have a fair opportunity to maintain themselves and gain adherents over generations.” 69 “Liberal political principles and ideals can be satisfied by the basic structure of society even if numerous citizens lapse on occasion, provided that their conduct is outweighed by the appropriate conduct of a sufficient number of others.” 70

Similarly, Hegel suggests that a state with advanced and secure institutions can tolerate individuals and groups that do not support public values or fulfill political duties.

A state which is strong because its organization is fully developed can adopt a more liberal attitude... and may completely overlook individual

65 Hegel, Elements of the Philosophy of Right, § 265, Addition.
66 Ibid.
67 Ibid., § 260.
69 Rawls, Political Liberalism, 198.
matters [Einzelheiten] which might affect it, or even tolerate communities whose religion does not recognize even their direct duties towards the state (although this naturally depends on the numbers concerned).

4.1.4 Too deferent to unjust particularity?

The paragraphs above emphasize the extent to which the particular is respected in Hegel and Rawls’s theories. The potential of a state’s policies to further freedom can only be realized if the members of a society endorse these policies. What matters most is the self-awareness of what will ultimately make one free. Without this ownership and engagement, the ability of public policy to promote freedom is deflated, regardless of how convincingly it may be appear conducive to freedom, by design.

...to block before [man] every door but one, no matter how noble the prospect upon which it opens, or how benevolent the motives of those who arrange this, is to sin against the truth that he is a man, a being with a life of his own to live. This is liberty as it has been conceived by liberals in the modern world from the days of Erasmus (some would say of Occam) to our own. Every plea for civil liberties and individual rights, every protest against exploitation and humiliation, against the encroachment of public authority, or the mass hypnosis of custom or organized propaganda, springs from this individualistic, and much disputed, conception of man.

Although the emphasis on reconciliation can be understood as protecting individual particularity from being overrun by powerful political movements and ideology, Hegel and Rawls’s theories can also strike readers as overly deferential to oppressive doctrines and political systems that individuals may, in spite of their better interests, endorse. A consequence of giving theoretical significance to particularity, perhaps, is that problematic subjective views are afforded undue importance. This is one reason for the criticism of Hegel’s view that “what is rational is actual; and what is actual

---

71 Hegel, *Elements of the Philosophy of Right*, § 270.
72 Berlin’s essay uses gendered language here (“man” rather than “a person”).
73 Berlin, 1958, 12.
CHAPTER 4. FREEDOM AND THE CONCEPTION OF THE PERSON

is rational.”  

Here Hegel is trying to communicate that the secret to one’s own freedom and happiness lies before one’s eyes, in the social structure of which one is a part. Whether or not individuals experience full freedom depends on whether they are convinced that this rationality is present in existing social arrangements. This aspect of Hegel’s thesis makes it seem, at first glance, “unacceptably conservative. The thesis seems to presuppose that modern social institutions are legitimate or at least that they are not seriously illegitimate or unjust.”

Two points with respect to Hegel’s idea of freedom can be said in response to this concern. First, like Rawls, freedom is actualized in a pluralist context and incorporates the idea of reconciliation. Every state needs to actualize its freedom and the freedom of its members in its own way. This does not mean that individuals must become resigned to their public life but rather they should play an active role in its development while also recognizing the significance of what already exists. Second, it is also important to note that Hegel, like Rawls, offers ideal-type constructions of states that depart from reality. Individuals experience their fullest freedom in what Hegel refers to as a rational modern state. “On no account can Hegel’s theory be so construed as to refer to any existing state; it is the idea of the state which Hegel is dealing and any existing state cannot be anything but a mere approximation to the idea.”  

As Rawls explains, Hegel “sees himself as describing the institutions of the modern state insofar as they are reasonable (vernnftig). He doesn’t mean to defend all existing aspects of these arrangements...I have taken him to be laying out an ideal-typical system of institutions that he thinks does constitute modern freedom.”

In Hegel’s words:

74 Hegel, Elements of the Philosophy of Right, 20, Preface.
75 Patten, 1999, 3.
76 Avineri, 1972, 177.
77 Rawls, Hegel I: His Rechtsphilosophie, 348.
CHAPTER 4. FREEDOM AND THE CONCEPTION OF THE PERSON

In considering the Idea of the state, we must not have any particular states or particular institutions in mind... The state is not a work of art; it exists in the world, and hence in the sphere of arbitrariness, contingency, and error, and bad behaviour may disfigure it in many respects. But the ugliest man, the criminal, the invalid, or the cripple is still a living human being; the affirmative aspect—life—survives \(\text{besteht}\) in spite of such deficiencies, and it is with this affirmative aspect that we are here concerned.\(^{78}\)

Although individuals are most free if they live in a modern rational state, these institutions cannot be successfully introduced via artificial, foreign intervention. Instead, each diverse state actualizes the freedom of its members, itself, and Geist by undergoing its inevitable historical process.

Freedom, for Hegel, is not simply a matter of performing the right actions (those prescribed by reason) but also of having the right motivation as well as an understanding of the rationality of one’s activity. It is possible to force someone to go through the right motions, but it is self-defeating to force or coerce or manipulate a person into having the right motivation or understanding.\(^{79}\)

Rawls’s interest in building his political conception of international justice from the international political world as we see it”\(^{80}\) and from “peoples as they are”\(^{81}\) has prompted similar charges that his theory is unacceptably deferent to unjust politics. Critics have argued that Rawls relaxes fundamental liberal principles and excludes fundamental liberal provisions from his idea of freedom for international justice theory: that \(\text{LoP}\) is “beneath it all a project of \text{modus vivendi}, of seeking a compromise between liberal and nonliberal regimes, rather than that of achieving stability with respect to liberal justice.”\(^{82}\)

This criticism overlooks the overarching political liberal concern with developing principles of justice that are acceptable to those that will be governed by them. In

\(^{78}\)Hegel, \textit{Elements of the Philosophy of Right}, § 258, \textit{Addition}.

\(^{79}\)Patten, 78.

\(^{80}\)Rawls, \textit{The Law of Peoples}, 83.

\(^{81}\)Ibid., 13.

political liberal theory, how individuals “conceive of themselves”\textsuperscript{83} and the political traditions and norms which they have been socialized to accept through “moral learning” has significance for the legitimacy of political institutions and for the development of principles of justice. A political conception is therefore not a \textit{modus vivendi}, it is not something that individuals with different beliefs can accommodate or become reconciled to in order to allow life to go on as peacefully as possible. The Law of Peoples is a set of principles that liberals should (and in Rawls’s view can) endorse for liberal and indeed moral reasons. Rawls explains, “in saying that a conception is moral, I mean, among other things, that its content is given by certain ideals, principles, and standards”\textsuperscript{84} The Law of Peoples “uses political (moral) ideals, principles, and concepts to specify the reasonably right and just political and social arrangements for the Society of Peoples.”\textsuperscript{85} The reason why the ideals, principles and standards that underlie political principles of justice are not more robustly liberal (in the view of critics) is due to the constraints of political liberal theory. A conception that can be endorsed from the perspective of a wide range of different moral, and in the international case, public or political-ideological,\textsuperscript{86} doctrines is the most that (political) liberals can hope for in a diverse world, and is a moral conception. Even though the Law of Peoples cannot be publicly justified in reference to specific ideological doctrines, people come to accept it by understanding how it makes sense from the perspective of their beliefs and values.

The idea that Rawls gives unjustifiable theoretical significance to real-world, potentially oppressive political beliefs and the arbitrariness of pluralism may also reflect a fundamental difference of opinion with respect to the extent to which the real world

\begin{footnotesize}
\textsuperscript{83}Rawls, \textit{The Law of Peoples}, 33.
\textsuperscript{84}Rawls, \textit{Political Liberalism}, 11.
\textsuperscript{85}Ibid., 17–18.
\textsuperscript{86}By public or political-ideological, I am referring to different ideas of public life and not a political conception of justice as defined by Rawls which should be considered as one of these ways of organizing public life.
\end{footnotesize}
should constrain and guide political philosophy. A political conception is a moral doctrine but it is a moral doctrine that is influenced by arbitrary realities. For example, if the world was not pluralistic, or if individuals did not endorse nonliberal doctrines, the Law of Peoples would certainly be different. However, the morally right thing to do is the morally right thing to do given certain facts, including the fact of pluralism. “Political philosophy does not, as some have thought, withdraw from society and the world.”

It is also important to understand the purpose of political philosophy from a political liberal perspective. Political liberalism is not occupied with uncovering truths and presenting them in a persuasive way. Convinced that the task of political philosophy cannot be to uncover a truth that will be universally endorsed (it either does not exist or if it does, it will not be recognized as such from the perspective of diverse doctrines), Rawls focuses instead on “preparing the way for peoples to develop a basic structure that supports a reasonably just or decent regime and makes possible a reasonable Law of Peoples.” Rawls does want to reconcile us to the realities of our world and to what our principles might require in light of them, but in doing so, our principles remain intact, Rawls does not see them as watered-down in light of these contingencies.

The idea of freedom discussed in this section does not rely on Hegel’s theoretical premises and does not endorse his metaphysics. However, I believe that Hegel’s idea of the person as embedded within political context, the significance he gives to what he terms the ‘realm of particularity’ (even when it may not be especially attractive from our point of view), the consequences of the particular for foreign policy, and his idea that freedom is actualized through individuals and the state shaping and re-shaping each other have a strong resonance in Rawls’s political liberal thought,

---

88 Ibid., 123.
including in LoP. By showing how these ideas resonate with political liberalism, I hope to have substantiated an idea of freedom that can serve as a foundation for an individualist approach to political liberal international justice theory.

### 4.2 A political conception of the person for international justice theory

Following political liberal methodology, the list below aims to specify basic and un-controversial premises as a first step towards constructing principles of justice. These can be changed, depending on where they might lead in the thought experiment. If there are discrepancies between the resulting argument and what we consider to be our liberal fundamentals, the “initial situation” and its contractual circumstances (which act as constraints on the thought experiment) can be revised. As Rawls explains: “By going back and forth, sometimes altering the conditions of the contractual circumstances, at others withdrawing our judgments and conforming them to principle, I assume that eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgments pruned and adjusted.”

The representation of the ‘global individual’ that is offered will not represent all persons. The objective is to come up with the most appropriate and sufficient conception of the person for developing principles of international justice.

The twelve ideas outlined below draw on the preceding discussion (in chapters three and four) of the implicit ideas of the person in LoP (1 through 6 below), Rawls’s two moral powers and idea of equality (7–9) and an idea of individual freedom for

---


90 Outliers need to be dealt with through other provisions in the theory to be worked out.
international justice theory (10–12).

1. Social (including political) institutions shape individuals’ values and expectations for public life. At the international level, these institutions are more diverse than at the domestic level.

2. Individuals around the world endorse a wide range of political doctrines, and this range is wider than that found in any one domestic society.

3. Individuals either feel connected to their public life or would like to feel connected to a public life.

4. People tend to feel more kinship with those who have been socialized in a similar way to themselves, that is, those with whom they share history or who have grown up with the same public values.

5. The sense of belonging to a political community and the feeling that one understands and can endorse the laws and public norms that govern her life are “goods”. In other words, we assume that those who feel connected to their societies are, all else equal (holding all other variables constant) better off than those who do not feel connected to their public life.

6. Individuals’ self-respect is influenced, at least in part, by the respect given to the political communities to which they feel associated.

7. Individuals have a capacity for a sense of justice (Rawls’s first moral power). Individuals are assumed to be willing and able “to understand, to apply, and to act from the public conception of justice which characterizes fair terms of social cooperation.”91 “Fair terms of cooperation specify an idea of reciprocity.”92

---

91Rawls, Political Liberalism, 19.
92Ibid., 16.
Fair terms are “terms that each participant may reasonably accept, provided that everyone else likewise accepts them.”

8. Individuals have a conception of the good (Rawls’s second moral power), that is, they have ends they wish to achieve, ideas of what is valuable to their lives, attachments to other persons and loyalties to various groups and associations.

9. Individuals who possess the two moral powers, irrespective of whether they endorse liberal, nonliberal or other political values, are to have equal say over international principles of justice. International principles of justice must be acceptable from their perspectives.

10. A necessary condition for individual freedom is one’s endorsement of the public values and institutions that govern her life.

11. To be free, the endorsement of public life cannot be the result of oppressive indoctrination or force. Individuals must have the capacity to reflect upon public values even accepting that this reflection is never fully detached from one’s political socialization.

12. To be free, individuals must have the capacity and opportunity to influence government. Freedom requires a dynamic interrelationship between a state and its members. A state will shape its members through “moral learning” but members must also shape the state.

---

93Rawls, *Political Liberalism*, 16.
94Ibid., 19.
95For further substantiation of how 11 and 12 may be possible in a nonliberal or nondemocratic society, see chapter six.
The Global Original Position and Veil of Ignorance

The original position developed in this chapter models the conception of the person discussed in chapters three and four, including the two moral powers and a “companion conception of social cooperation” that is not strictly liberal democratic. Individuals, as I have conceived of them, are reasonable: they are willing and able “to understand, to apply, and to act from the public conception of justice which characterizes fair terms of social cooperation”\(^1\) when fairness is understood in the political liberal sense as referring to the willingness of individuals to “act in relation to others on terms that they also can publicly endorse.”\(^2\) Importantly, the original position only models individuals who, in both domestic and international orders, support public ideas of justice that others living under them can accept from their perspectives (as long as these others too are reasonable). The main objective of this chapter is to show that individuals as I have conceived of them would be willing to accept the equality of the original position for constructing principles of international justice regardless of whether they endorse liberal or nonliberal political doctrines. I do this by first showing that individuals, as I have conceived of them, are placed symmet-

---

\(^1\)Rawls, *Political Liberalism*, 19.
\(^2\)Ibid.
rically in the original position because of their capacity to be reasonable—they are willing to propose terms of cooperation that others can endorse. I then explain why the constraints of the global original position are not too liberal, and instead can be accepted from the perspective of both liberal and nonliberal political doctrines. This is important because political liberals aim to construct principles that can be supported by an overlapping consensus of pluralist doctrines in order to promote a stable system of cooperation between people who are deeply divided by the doctrines they affirm. The final section of this chapter explores the characteristics that would be appropriately placed behind a veil of ignorance for the purposes of coming up with principles of international justice.

The thought experiment is a tool for coming up with principles of justice—it places constraints on what we can think about, and how we can justify these principles, and these constraints are based on certain values and convictions. As participants in the thought experiment, people represent individuals and “are to do the best they can for those they represent subject to the restrictions of the original position.” Representatives are only to think rationally, representing the second moral power, the capacity of individuals to have a conception of the good. They are solely interested in gaining benefits and advantages for the individuals they represent. However, the knowledge that we have of the people we represent is constrained by what “we regard as appropriate restrictions on reasons for adopting a political conception of political justice.” These constraints model other aspects of the person, which, like the capacity to be rational, are rather common sense ideas regarding who individuals are, and not especially thick moral principles. Most importantly, individuals are understood as having Rawls’s first moral power, a capacity for a sense of justice. Individuals

---

3Rawls, *Political Liberalism*, 44.
4Ibid., 305.
are assumed to be willing and able “to understand, to apply, and to act from the public conception of justice which characterizes fair terms of social cooperation.”

Fair terms are “terms that each participant may reasonably accept, provided that everyone else likewise accepts them.”

This capacity to be reasonable is modeled by the equality of the global original position and its accompanying veil of ignorance. Persons as I have conceived of them are willing to propose and abide by principles of justice that others can accept, and not those that only make sense from their particular perspective. The veil of ignorance works to ensure that no ideological, religious or philosophical conception of justice is privileged over another when working out principles of international justice. Also veiled is any knowledge of social position, comprehensive doctrine, race, ethnicity, sex and gender, and other endowments, such as strength and intelligence of the individuals that one represents. To put concretely, in the global original position, you are aiming to do the best for those you represent, but you do not know if you represent someone who is poor or rich, American or Somalian, someone who is from a liberal democratic, socialist or communist country, or someone who endorses a public life guided by Christianity, Islam, Judaism or another religion. By not knowing, the thought experiment is designed (through the risk aversion of its participants) to construct principles of international justice that can be defended by a public reason that can be shared by these individuals. There can be a shared public reason among these individuals only because they are, by definition, reasonable; if one only wishes to use Christian or Islamic or liberal doctrine to justify principles of international justice, this person cannot subscribe to the public reason of the global original position I am proposing. It is important to emphasize that these individuals

---

7 Ibid., 16.
8 These characteristics are the same as those excluded by the veil of ignorance in Rawls’s theory of domestic justice (Ibid., 25).
are reasonable about both their domestic and international political life—in both arenas, they wish to propose and endorse principles that others can accept but in the domestic case, there may be more opportunity to base a public idea of justice on a thicker religious or ideological conception if these values are part of the social, political and cultural fabric of this society.

This dissertation, although still political liberal, departs from LoP in which Rawls rejected the idea that a global theory of justice can be based on individuals conceived with the two moral powers and in a position of equality. As he explains:

Some think that any liberal Law of Peoples... should begin by first taking up the question of liberal cosmopolitan or global justice for all persons. They argue that in such a view all persons are considered to be reasonable and rational and to possess what I have called “the two moral powers”—a capacity for a sense of justice and a capacity for a conception of the good—what are the basis of political equality both in comprehensive liberalism, as found in Kant or J. S. Mill, and in political liberalism. From this starting point they go on to imagine a global original position with its veil of ignorance behind which all parties are situated symmetrically. Following the kind of reasoning familiar in the original position for the domestic case, the parties would then adopt a first principle that all persons have equal basic rights and liberties.9

In chapter three, I rejected the association of the two moral powers with liberal democracy by showing how these moral powers can still be considered in the realm of the political in international justice theory. In this chapter, I challenge Rawls’s view that starting with a conception of the person imbued with the two moral powers necessitates the same thought experiment, idea of political equality and principles of justice that were developed in his theory of domestic justice.

---

9Rawls, The Law of Peoples, 82.
5.1 Reasonableness in the global original position

Individuals (as conceived by this project) do not wish to coerce others to hold their particular political doctrines, regardless of whether they (or the others) hold nonliberal or liberal political beliefs. While it is true that principles of justice will never be acceptable to everyone—for example, they won’t be acceptable to those with certain tyrannical, imperialist, or political-evangelical ambitions—even individuals who justify a nonliberal public conception of justice may nevertheless wish to live in societies where these values are widely shared (rather than coerced). Moreover, these individuals can propose reasonable terms of cooperation for international affairs. For example, a person who believes women and men should serve different public roles, or that individuals from certain families or religious orders should have greater political authority, may be willing and able to accept principles of international justice that aim to be blind to variables such as social position, sex and religion. Of course, not all individuals who endorse nonliberal (or liberal) politics are reasonable in the way I have described; this dissertation offers an approach for constructing principles of justice that are acceptable to those who are.

Readers puzzled by the exclusivity or inclusivity of this conception of the person should return to the argument presented in chapters three and four, where the rationale for this conception is substantiated. With respect to whom the conception leaves out (does not model): I define what it means to be reasonable and include only those individuals who are reasonable in the way described. This is similar to how Rawls specifies an idea of the reasonable in his theory of domestic justice: “...political liberalism offers no way of proving that this specification is itself reasonable. But none is needed. It is simply politically reasonable to offer fair terms of cooperation to other free and equal citizens, and it is simply politically unreasonable to refuse to do so.”

---

CHAPTER 5. GLOBAL ORIGINAL POSITION AND VEIL OF IGNORANCE

In the individualist framework for a (political liberal) international justice theory that I develop, the principles of justice are worked out by individuals who endorse a wide range of ideas of justice and who have grown up in societies with different histories and institutions. Reasonable individuals, as I specify them, are willing to offer and endorse terms of cooperation that others can accept from their political perspectives (as long as they too are willing to act reasonably). “Insofar as we are reasonable, we are ready to work out the framework for the public social world, a framework it is reasonable to expect everyone to endorse and act on, provided others can be relied on to do the same.”\(^\text{11}\) We are not working out principles that can be only accepted by those who endorse a specific political doctrine. “We recognize that our own doctrine has, and can have, for people generally, no special claims on them beyond their own view of its merits.”\(^\text{12}\)

Those who insist, when fundamental political questions are at stake, on what they take as true but others do not, seem to others simply to insist on their own beliefs when they have the political power to do so. Of course, those who do insist on their beliefs also insist that their beliefs alone are true: they impose their beliefs because, they say, their beliefs are true and not because they are their beliefs. But this is a claim that all equally could make.\(^\text{13}\)

Reasonable individuals, as conceived by this project, are willing to abide by public reason vis-à-vis nonliberal and liberal doctrines at the international level. They are also not interested in using political power to push their particular political beliefs on others. This parallels (but is not the same as) Rawls’s idea of reasonableness in his theory of domestic justice. “Reasonable persons will think it unreasonable to use political power, should they possess it, to repress comprehensive doctrines that are not


\(^{12}\)Ibid., 60.

\(^{13}\)Ibid., 61.
unreasonable, though different from their own."\(^{14}\) In the approach to international justice developed here, reasonable persons will be similarly unwilling to use political power to repress political doctrines that are not unreasonable.\(^{15}\)

As discussed in chapter three, Rawls purports to drop this moral power in LoP though his text suggests otherwise. Yet, although there is an implicit assumption of the reasonableness of individuals in LoP, there is no thought experiment involving reasonable individuals representing a diverse array of political doctrines. Instead, liberal and decent nonliberal peoples are modeled as reasonable. “As reasonable citizens in domestic society offer to cooperate on fair terms with other citizens, so (reasonable) liberal (or decent) peoples offer fair terms of cooperation to other peoples.”\(^\text{16}\) The Law of Peoples “asks of other societies only what they can reasonably grant without submitting to a position of inferiority or domination. Here it is crucial that the Law of Peoples does not require decent societies to abandon or modify their religious institutions and adopt liberal ones.”\(^\text{17}\)

Of course, in a similar way, decent peoples in Rawls’s LoP framework do not require liberal peoples to adopt decent ideas of justice. The aspirations of peoples for their own domestic institutions differ in substance from the principles they are prepared to endorse internationally due to their commitment to the principle of reciprocity in a pluralist political world. “How peoples treat each other and how they

\(^{14}\) Rawls, *Political Liberalism*, 60.

\(^{15}\) Rawls’s decision to use the term “not unreasonable” rather than reasonable is likely purposeful. Rawls draws a distinction between not unreasonable and reasonable. The term ‘reasonable’ is reserved for societies that are just or close to it (and that respect full equality of their members), ‘not unreasonable’ societies are tolerable but not just (middle ground), and (fully) unreasonable societies are oppressive and likely intolerable. With respect to decent nonliberal peoples, for example, Rawls mentions: “I do not say they are reasonable, but rather that they are not fully unreasonable; one should allow, I think, a space between the fully unreasonable and the fully reasonable. The latter requires full and equal liberty of conscience, and the former denies it entirely” (Rawls, *The Law of Peoples*, 74–75). I do not keep this distinction in my approach. At least at this stage of its unfolding, one is either unreasonable or reasonable, either willing to offer fair terms of cooperation with others who are reasonable or not.

\(^{16}\) Ibid., 25.

\(^{17}\) Ibid., 121.
CHAPTER 5. GLOBAL ORIGINAL POSITION AND VEIL OF IGNORANCE

treat their own members are, it is important to recognize, two different things. A decent hierarchical society honors a reasonable and just Law of Peoples even though it does not treat its own members reasonably or justly as free and equal citizens, since it lacks the liberal idea of citizenship.”¹⁸ Both liberal and decent nonliberal peoples are reasonable with one another. “A people sincerely affirming a nonliberal idea of justice may still think its society should be treated equally in a reasonably just Law of Peoples. Although full equality may be lacking within a society, equality may be reasonably put forward in making claims against other societies.”¹⁹

In the individualist approach to political liberal international justice theory developed in this dissertation, I depart from LoP by modeling individuals, irrespective of whether they endorse nonliberal or liberal politics, as reasonable in the way Rawls ascribes to peoples in LoP (and individuals in his domestic theory).²⁰ Therefore, even so-called nonliberal individuals would be willing to accept the constraints of public reason with individuals who endorse a more liberal idea of justice, as long as these so-called liberal individuals were willing to reciprocate (i.e. to not propose principles of international justice that would be acceptable only from a liberal point of view.)

5.1.1 Are the constraints of the global original position too liberal?

It might be agreed that there is nothing particularly liberal democratic about a desire to find principles of justice that others can accept. But would nonliberal individuals perceive the constraints of a global original position (in which they are equals with those who endorse liberal democracy) as too intrinsically liberal? One might ask: why should the irrelevance of such factors as social position, sex or religion for a liberal

---

¹⁹Ibid., 70.
²⁰See section 3.3.
idea of justice trump what may be a nonliberal need to consider these variables? Those who endorse nonliberal ideas of justice might perceive “veiling” these and other characteristics as a compromise of fundamental values for the sake of public reason, without similar conciliatory measures being taken by liberals and others who do not share their views.

The response to this concern of liberal privilege in the thought experiment for working out principles of international justice is that we are seeking a thought experiment that minimizes particularistic nonliberal and liberal justification for principles. This thought experiment can be understood as a device for ensuring public reason between liberal and nonliberal individuals. The veil of ignorance should restrict both liberal and nonliberal rationale for principles of international justice to the same extent.

The claim can still be made, however, that the device itself has a liberal bias: that the constraints arising from the principle of reciprocity and public reason reflect particularistic liberal values. In *LoP*, Rawls addresses this concern by disputing that equality among peoples and the principle of reciprocity that this equality demands are uniquely western ideals. The Law of Peoples, Rawls explains, “asks of other societies only what they can reasonably endorse once they are prepared to stand in a relation of fair equality with all other societies. They cannot argue that being in a relation of equality with other peoples is a western idea! In what other relation can a people and its regime reasonably expect to stand!”21 The same could be said in response to concerns about the equality of liberal and nonliberal individuals in a global original position.

---

5.1.2 Rational and moral reasons for the equality of reasonable liberal and nonliberal political doctrines

Those endorsing nonliberal and liberal doctrines are not required to recognize each other’s doctrines as equal to their own in a philosophical or substantive sense. Nonliberal individuals are also not required to see equality (as it is understood in liberal democracies) as a value that they must endorse for their own society. However, both liberal and nonliberal individuals accept the symmetry of the original position for the purposes of constructing principles of international justice. In the paragraphs below, I suggest that liberal and nonliberal persons, as I have conceived them, support the equality of the original position and the commitment to reciprocity that this equality requires for moral (from the perspective of their own political doctrines) and rational reasons (from the perspective of their conception of the good).

This support is necessary because the specification of individuals as reasonable, irrespective of whether they endorse nonliberal or liberal political doctrines, only gets us part of the way in motivating the symmetry of the original position. Although individuals are prepared to accept terms of social cooperation that others can accept, they are not prepared to be symmetrically situated with everyone. A question remains regarding why they would be prepared to be in a relationship of equality with each other, and moreover it is essential for the stability of the principles of justice that individuals are able to support them from the perspective of their own political doctrines. Although individuals are willing to commit to public reason for the purposes of publicly justifying principles of justice, these principles reflect an overlapping consensus of their own particular political ideologies. Similar to Rawls’s theory of domestic justice, in the approach described here, “all those who affirm the political conception start from within their own comprehensive view and draw on the
CHAPTER 5. GLOBAL ORIGINAL POSITION AND VEIL OF IGNORANCE

religious, philosophical and moral grounds it provides.” 22 In the approach worked out in this dissertation, individuals would be able to support the political conception from the perspective of their own political doctrine. “Each view supports the political conception for its own sake, or on its own merits.” 23 “The test for this is whether the consensus is stable with respect to changes in the distribution of power among views.” 24 The importance of this for stability is that even if there are power shifts in the international system, the principles of justice will remain intact because they are supported by more than “happenstance and a balance of relative forces.” 25 Below, I explore the moral and rational reasons that individuals who endorse reasonable liberal and nonliberal doctrines might have for supporting the symmetry of the original position.

Rational interests

In LoP, Rawls outlines both rational interests and moral reasons that lead nonliberal and liberal peoples to support their equal standing with each other. These interests are important for ensuring that the Law of Peoples is endorsable (by those it governs) and also stable. With respect to the rational interests, Rawls explains, “representatives of peoples will want to preserve the equality and independence of their own society...the representatives of well-ordered peoples simply reflect on the advantages of these principles of equality among peoples and see no reason to depart from them or to propose alternatives.” 26 One of the most important advantages, in Rawls’s view, is “maintaining mutual respect between peoples.” 27 “Lapsing into contempt on one

---

22Rawls, Political Liberalism, 147.
23Ibid., 148.
24Ibid.
25Ibid.
27Ibid., 122.
CHAPTER 5. GLOBAL ORIGINAL POSITION AND VEIL OF IGNORANCE

side, and bitterness and resentment on the other can only cause damage.” If one or more societies should refuse to accept the idea of the politically reasonable and the family of ideas that go with it, an impasse may arise between them, and war comes. 

Individuals who endorse nonliberal and liberal politics also have rational reasons for supporting the equality of the original position. As specified in chapter four, we assume individuals either feel connected to their public life or want to feel connected to a public life. They also feel more kinship with those who have been socialized in a similar way to themselves, that is, those with whom they share history or who have grown up with the same public values. This sense of belonging to a political community, and the feeling that one understands and can endorse the laws and public norms that govern her life are considered “goods”. In other words, we assume that those who feel connected to their societies are, all else equal (holding all other variables constant) better off than those who do not feel connected to their public life. Moreover, individuals’ self-respect is influenced, at least in part, by the respect given to the political communities to which they feel associated.

All of these aspects of the person suggest that individuals would, from the perspective of their rational interests, support a political conception (as I have spelled it out) for constructing principles of international justice. They would not accept anything less, such as the trumping of their own political beliefs and values, due to their own self-respect and its relationship to their community and doctrine. Yet they also do not want a privileged position. They are fundamentally conceived (in terms of their rational interests) as wanting to belong to a political community and endorse its

28By “on one side,” Rawls is referring to the possible contempt of liberals for nonliberal politics.  
29By “on the other,” Rawls has in mind nonliberal societies on the receiving end of liberal foreign policy.  
31Ibid., 123.
CHAPTER 5. GLOBAL ORIGINAL POSITION AND VEIL OF IGNORANCE

public idea of justice. Individuals who wish to use political power to promote or coerce the adoption of their political beliefs are not modeled in the original position. In the same way as peoples in LoP, individuals as I have conceived them may also recognize that privileging their political beliefs in international law and practice could lead to bitterness, resentment, and conflict among peoples which would threaten the security, stability, and independence of the community to which they are attached. It could also frustrate social cooperation and relations that serve their interests, for example, in security, economic opportunity, trade, and aid during times of need and disaster. Therefore, the political conception with its symmetry of (reasonable) nonliberal and liberal doctrines in the original position could be supported from the perspective of the rational interests of individuals as specified.

Moral reasons

In his theory of domestic justice, Rawls argues: “If social stability is not merely a modus vivendi, it must be rooted in a reasonable political conception of right and justice affirmed by an overlapping consensus of comprehensive doctrines.” “We hope to make it possible for all to accept the political conception as true or reasonable from the standpoint of their own comprehensive view, whatever it may be.” In this project, I aim in a similar way to make it possible for reasonable individuals to accept an international political conception of justice from the standpoint of their own liberal and nonliberal political doctrines.

In LoP, Rawls argues that the equality between liberal and decent nonliberal peoples is required from the perspective of liberal principles. Liberals need “to assure ourselves that the ideals and principles of the foreign policy of a liberal people are

\[32\] These will be elaborated upon below in the discussion of individuals’ primary goods.

\[33\] Rawls, The Law of Peoples, 16.

\[34\] Rawls, Political Liberalism, 150.
also reasonable from a decent nonliberal point of view. The need for such assurance is a feature inherent in the liberal conception.”\textsuperscript{35}

Rawls does not make the same argument for decent nonliberal peoples. He does not address the question of whether decent nonliberal peoples also endorse equality (and its accompanying reciprocity and public reason) with liberal peoples from the perspective of their own ideas of justice. This is likely due in part to what he considers to be the main interest of the Law of Peoples. “In developing the Law of Peoples within a liberal conception of justice, we work out the ideals and principles of the foreign policy of a reasonably just liberal people. This concern with the foreign policy of a liberal people is implicit throughout.”\textsuperscript{36}

A focus on liberal foreign policy is reflected in Rawls’s methodology in \textit{LoP}. Decent peoples do not come up with principles of international justice that are acceptable from a liberal point of view in the way that liberal peoples do for nonliberal peoples. Instead, decent peoples, in their own original position with each other, affirm the same Law of Peoples that liberal peoples have already come up with previously in a separate procedure.

Nevertheless, decent peoples are described as having their own reasons for supporting equality with liberal peoples. Rawls mentions that decent peoples have no desire to engage in “aggressive war” and “therefore their representatives respect the civic order and integrity of other peoples and accept the symmetrical situation (the equality) of the original position as fair.”\textsuperscript{37} He also argues that a Society of Peoples is possible because “different and irreconcilable comprehensive doctrines will be united in supporting the idea of equal liberty for all doctrines and the idea of the separation of church and state. Even if each might prefer that the others not exist,

\textsuperscript{35}Rawls, \textit{The Law of Peoples}, 10.
\textsuperscript{36}Ibid.
\textsuperscript{37}Ibid., 69.
the plurality of sects is the greatest assurance each has of its own equal liberty.”

But these reasons that decent peoples have for supporting equality within the Society of Peoples are not clearly attributed (or attributable) to the common good idea of justice or nonliberal political doctrines of these societies. Rawls does mention that decent peoples would accept the Law of Peoples because, “in view of the common good ideas of justice held in decent hierarchical societies, representatives strive both to protect the human rights and the good of the people they represent and to maintain their security and independence.” Yet even here he does not make the case that supporting the Law or a law that is acceptable to both liberal and nonliberal peoples is required from the perspective of a decent nonliberal doctrine in the same manner that it is for liberal peoples.

The fact that Rawls does not allude to a common good idea of justice or other decent nonliberal rationale for supporting the equality of peoples is odd given Rawls’s interest in the stability of principles of justice. Moreover, even though Rawls treats peoples analogously to how he treats persons in his domestic theory, he does not suggest that decent nonliberal peoples are able to support the political conception of justice underlying the Law of Peoples in the same way that individuals support a political conception from the perspective of their comprehensive doctrines in his domestic theory. Both liberal and decent nonliberal peoples do adhere to public reason and the principles of international justice are acceptable to decent nonliberal peoples. There is nothing in the Law that conflicts with a decent nonliberal idea of justice; the need to ensure decent nonliberal acceptance of the Law is one reason why it cannot be defended by appealing to parochially liberal principles. But this is not the same as having a decent nonliberal rationale for supporting the Law. Rawls alludes only to the liberal reasons for supporting a Law of Peoples tolerant of decent

---

39 Ibid., 69.
CHAPTER 5. GLOBAL ORIGINAL POSITION AND VEIL OF IGNORANCE

nonliberal views (though he does not spell out what this liberal rationale is); he does not suggest that there are also particularly nonliberal reasons to support the Law of Peoples and the equality of liberal and nonliberal peoples.\(^{40}\)

I see no reason why principles of international justice that come about via the individualist thought experiment proposed here could not gain the support of an overlapping consensus in a manner analogous to how principles are developed in Rawls's domestic theory. Like Rawls, I aim to come up with a framework for developing principles of international justice that are not parochially liberal, and I have argued that this is motivated by political liberal principles. As Rawls explains in reference to his domestic theory: “The object of consensus, the political conception of justice, is itself a moral conception... it is affirmed on moral grounds, that is, it includes conceptions of society and of citizens as persons, as well as principles of justice, and an account of the political virtues through which those principles are embodied in human character and expressed in public life.”\(^{41}\) In the approach developed here, I too include a conception of society (that is, of social cooperation) and of a global person that are based on certain ideals and moral values, but these conceptions are not based on strictly liberal values for reasons that are fundamental to political liberalism. Political liberals are interested in developing principles of justice that are acceptable for those living with them, within certain constraints, and are committed to freestanding justification. From a political liberal perspective, nonliberal and nondemocratic

---

\(^{40}\)Rawls does mention at one point in the text that “reconciliation” to the Law of Peoples “requires acknowledging the fact of reasonable pluralism both within liberal and decent societies and in their relations with one another. Moreover, one must also recognize this pluralism as consistent with reasonable comprehensive doctrines, both religious and secular.” He claims that this “last idea” is “precisely what fundamentalism denies and political liberalism asserts” (Rawls, The Law of Peoples, 127). Even here though, Rawls focuses on convincing liberals that this recognition of pluralism has consequences for toleration from the perspective of their own doctrine. It is briefly suggested in this passage that those who hold nonliberal doctrines (as long as they are not “fundamentalist”) will see this pluralism “as consistent” with their “reasonable comprehensive doctrine.” Unfortunately, the idea that seeing pluralism as consistent with ones doctrine is rather vague.

\(^{41}\)Rawls, Political Liberalism, 147.
political doctrines are not oppressive a priori. Principles of justice are constructed from basic, clearly specified moral ideals and values (such as the specification of reasonableness) that in turn suggest certain boundaries of toleration and principles of justice. I believe that liberals can and should support a symmetrical relationship between reasonable liberal and nonliberal individuals (as I have conceived them) for developing principles of international justice from the perspective of their own liberal principles. If the human rights derived from my conception of the person are unacceptable and if liberals see the principles arising from an original position of these persons as violating their firmest convictions, we will revisit the conception of the global person I have offered, and reexamine the symmetry of liberal and nonliberal political doctrines within the global original position.  

I expect that reasonable nonliberal individuals will also be able to endorse this thought experiment and thus the resulting principles because of reasons particular to their political doctrines. This is important to mention not only to ensure stability and adherence of these principles, but also to make the case that principles arising out of this thought experiment would be acceptable to those governed by them. “The selection of principles by the parties in the original position is always to be preceded by a careful consideration of whether the psychology of learning by citizens in well-ordered liberal societies leads them to acquire a sense of justice and a disposition to act from those principles.” Although I will not offer a review of different nonliberal ideas of justice that can support the equality of reasonable nonliberal and liberal political doctrines and veil of ignorance, I will argue that there is nothing inconsistent or prohibitive about using religious or philosophical doctrines to justify equality and the toleration that necessarily arises from a relationship with diverse equals.

\[42\] What I seek to find is a reflective equilibrium. For further discussion of Rawls’s reflective equilibrium idea, see chapter four.

\[43\] Rawls, The Law of Peoples, 45.

\[44\] John Locke’s argument for toleration, for example, was explicitly religious. In his *Letter on
Rawls too suggests that “many paths can lead to toleration” and several times in *LoP*, he refers to the possible Islamic justification for political toleration. His aim in doing so though is to persuade readers of the possibility that a decent nonliberal society that tolerates minorities within its borders could exist—not to demonstrate that the Law of Peoples could be supported from the perspective of a decent nonliberal idea of justice. There is an important difference between saying that the Law of Peoples can be accepted by decent nonliberal peoples because it is not parochially liberal and arguing that it can be accepted by them because it is consistent with, or indeed is required by, their own idea of justice. Rawls does give an example of a historic Islamic doctrine, the basic tenets of which led to toleration by the Ottoman Empire of Jews and Christians. Yet Rawls does not argue that similar reasons may lead a society like Kazanistan to support the Law of Peoples from the perspective of its own particular doctrine.

I believe that the thought experiment offered here, modeling equality and the principle of reciprocity, can be justified by nonliberal ideas of justice. Even though individuals endorsing nonliberal doctrines might consider characteristics behind the veil of ignorance (such as one’s religion or sex) politically relevant, they are will-
CHAPTER 5. GLOBAL ORIGINAL POSITION AND VEIL OF IGNORANCE

ing to place them behind the veil of ignorance for the development of principles of international justice for reasons internal to their doctrine.

Nonliberal and liberal support from the perspective of their particular political doctrines for their symmetry in the global original position may not be necessary; the pragmatic reasons offered earlier for supporting this equality may be sufficient to ensure the political conception of justice can be supported by those with diverse politicalideological perspectives. However, the support for the thought experiment from the perspective of both liberal and nonliberal political doctrines would enhance the stability of the principles that would arise from such a thought experiment. Leaders of these societies would potentially be able to persuade even devout followers of these doctrines that these principles are more, rather than less, fitting with their own ideas of justice. According to my argument, leaders would be able to appeal to these reasons to gain support of their populace for a more inclusive and tolerant international law because there are two different public reasons and both are consistent with political liberal constraints—one suitable for domestic life and one appropriate for the more diverse international context. The US president in a national press conference can say, for example, that he supports a particular UN Security Resolution proposal because it is fitting with American values to do so, but his UN ambassador cannot justify this policy on the Security Council floor solely by appealing to American values that others may not accept.

Above, I outlined the rational and moral reasons why individuals as I have conceived them for the purposes of working out principles of international justice would endorse the equality of the global original position, irrespective of whether they endorse liberal or nonliberal political doctrines. This is important to explore because the thought experiment—for both moral and practical reasons—needs to develop

religion can hold political office, or that women and men should have different public roles in society based on religious doctrine.
principles that can be endorsed. Therefore, the thought experiment must be based on values that reasonable individuals are prepared to accept. I now discuss the veil of ignorance in the global original position and explain why it would shield knowledge of the same variables as in Rawls’s theory of domestic justice as well as others associated with one’s political doctrine and country of citizenship.

### 5.1.3 Veil of ignorance

In Rawls’s domestic theory, the veil of ignorance models “what we regard as appropriate restrictions on reasons for adopting a political conception of justice.” In some respects, my conception of the person suggests that when theorizing on justice turns to the international context, the veiling of variables such as social position, race, comprehensive doctrine, ethnicity, or sex cannot be assumed due to international pluralism. Internationally, there is a diverse array of views concerning the relevance of these characteristics for a public conception of justice, and nonliberal ideas of justice are widely held. The decision to keep these characteristics hidden, it may be argued, reflects liberal democratic values, which are inappropriate for theorizing on international justice. This in essence is Rawls’s rationale for dropping the original position of persons and its accompanying veil of ignorance in *LoP*.

However, I believe that it is appropriate to keep the characteristics that are behind the veil of ignorance in Rawls’s theory of domestic justice behind an international veil for reasons that were outlined in the previous section when justifying the equality of individuals in the global original position. All individuals in the global original position are conceived as reasonable, irrespective of whether they endorse liberal or nonliberal politics. Individuals who endorse nonliberal politics in their domestic orders would be willing and able to place certain characteristics that are considered

---

politically relevant in their domestic politics behind the veil of ignorance in a global original position. This willingness arises from their capacity to be reasonable, their recognition of the pluralism of political doctrines at the international level, and their rational interests and moral principles which both, upon reflection, can support the symmetry of the original position and its consequences for public reason.

Representing issues pertaining to women and minorities by using the veil of ignorance

Women and girls as well as minorities face specific obstacles and challenges to being free and equal in the manner discussed by this dissertation. One way to facilitate giving the issues women and minorities face a prominent place in theorizing on international justice is to include variables that are gender specific, as well as those pertaining to the specific challenges one faces as a minority behind the veil of ignorance. The idea is to incorporate into the thought experiment specific attention to issues such as domestic abuse and sexual violence so that they are not treated as side issues but are instead considered when working out the foundational justice principles for international law and practice. The rationale behind this suggestion is that even if a society appears to be functional or decent in many respects, without direct attention to the experience of women in a society, it is unclear how really functional or decent a society is. For minorities, the idea is similar: principles of justice should include specific protections and responsibilities for minority groups as well as for individuals with specific vulnerabilities due to disability or illness.\footnote{My point here is different from Rawls’s concern with exclusion in his theory of domestic justice. There he was concerned with what society owes individuals who do not fit into his model and do not have the two moral powers (Rawls, Political Liberalism, 21). The issue I am referring to here concerns the individuals that can be represented by the thought experiment but who have special needs and concerned that are pertinent to the basic framework and principle for international law and practice. This is not to say that the problem of exclusion can be ignored but rather that I simply do not take it up in this work due to limitations in scope.}
Including political doctrine behind the veil of ignorance

To facilitate public reason between liberal and nonliberal political doctrines in the thought experiment for principles of international justice, I add the variable of ‘political doctrine’ to Rawls’s original list of characteristics that are placed behind the veil of ignorance. For his theory of domestic justice, Rawls argues, “Putting people’s comprehensive doctrines behind the veil of ignorance enables us to find a political conception of justice that can be the focus of an overlapping consensus and thereby serve as a public basis of justification in a society marked by the fact of reasonable pluralism.”51 For the individualist theory of international justice developed here, individuals’ political ideologies should be placed behind the veil of ignorance for the same reason but in a different context: we seek a political conception of international justice that can be “the focus of an overlapping consensus” of political doctrines and “thereby serve as a public basis of justification” in a world “marked by the fact of reasonable pluralism” in political doctrines. In the global original position, one may represent a woman who believes in Sharia law or a man who endorses the separation of church and state. Those who have been socialized by religious laws and institutions of Iran or Saudi Arabia and those who have grown up with liberal democratic institutions in Denmark, Japan or the United States are all represented in the global original position as long as they are reasonable in the political liberal sense—they are prepared to be in a relationship of equality with those who endorse nonliberal and liberal political views and are willing to propose terms of social cooperation for international justice that others are able to accept.53 By placing the knowledge of

---

52 There are individuals in all countries that do not support the public values of the state. These individuals, as long as they are reasonable and rational, would also be represented in the original position and principles of international justice should be acceptable from their perspectives.
53 In Rawls’s domestic theory, someone who endorses Sharia law for public life, or any other religious idea of justice, would drop out of the thought experiment because his political aspirations would be considered unreasonable. For those who are puzzled by the different treatment of nonliberal
one’s political doctrine behind the veil of ignorance, representatives aim to come up with principles of international justice that all reasonable and rational individuals might accept, even though individuals may, after the veil is lifted, have their own specific reasons related to their political doctrine for endorsing these principles.
Chapter 6

Human Rights in The Law of Peoples

This chapter offers a novel interpretation of Rawls’s treatment of human rights in LoP and carefully considers his key ideas, point by point, to determine which elements to retain and which to discard on the way to constructing a complete list of human rights for political liberal international justice theory consistent with the political conception of the person developed by this dissertation.¹

I begin by discussing the relationship of human rights to the political conception of the person in Rawls’s theory of domestic justice, and to political liberal theory more generally. Next, I explore the rights that are included in LoP and consider Rawls’s justification for his conception of basic human rights. The third and final section considers whether Rawls’s human rights framework in LoP is too minimalist.

6.1 Human rights and the political conception of the person

It is important to emphasize that Rawls does not include human rights as part of his conception of the person in his theory of domestic justice. Human rights are instead

¹This list is identified and substantiated in the next chapter.
introduced into Rawls’s theory of domestic justice as “primary goods.” As discussed in chapter two, Rawls introduces these goods to give further guidance as to what individuals restricted by the constraints of the original position and veil of ignorance might rationally advance for themselves.

The problem is that given the restrictions of the veil of ignorance, it may seem impossible for the parties to ascertain these persons’ good and therefore to make a rational agreement on their behalf. To solve this problem we introduce the notion of primary goods and enumerate a list... by asking which things are generally necessary as social conditions and all-purpose means to enable persons to pursue their determinate conceptions of the good and to develop and exercise their two moral powers.²

One puzzling aspect of Rawls’s treatment of human rights in his domestic theory that is especially relevant to this dissertation is that he derives a list of rights and other goods from “a conception of the person given in advance.”³ Human rights can be thought as coming into play in Rawls’s second rather than first level of analysis—they are deduced from a prior specification of the person. Rawls does not explain why he proceeds in this way; that is, why human rights cannot just be drawn out of the public culture of a liberal democracy in the same manner as the three respects in which individuals conceive of themselves as free and other foundational concepts of the person. The likely explanation is that Rawls considered this two-step process as necessary in order to keep his conception of the person firmly in the domain of the political. Perhaps he felt that including human rights as part of a conception of the person would be difficult without relying on metaphysical or epistemological claims about human beings. Or, perhaps he considered rights to be thicker and more potentially controversial concepts that needed to be worked out from what he considered to be the more basic and straightforward liberal democratic norms.

²Rawls, Political Liberalism, 308.
³Ibid.
included in his conception of the person.

By seeking to keep human rights in the realm of the political, however, Rawls departs from “the dominant contemporary philosophical theories of human rights” which “all hold that human rights are grounded in certain common characteristics of human beings.” Rawls does mention that his list of primary goods “presupposes various facts about human wants and abilities, their characteristic phases and requirements of nurture, relations of social interdependence and much else.” He explains: “We need at least a rough account of rational plans of life which shows why they normally have a certain structure and depend upon the primary goods for their formation, revision, and execution.” However, Rawls clearly sees himself as specifying goods (he rarely uses the word “rights”) that are relevant for individuals in a particular (liberal democratic) context—“primary goods are singled out” by looking “to social requirements and the normal circumstances of human life in a democratic society.” Rawls does not consider his theory of (domestic) justice work to be necessarily identifying common characteristics of human beings that are applicable beyond a liberal democracy.

Allen Buchanan’s observation that Rawls’s idea of human rights in LoP “appears to avoid any appeal to...the idea that there are some characteristics that all human beings have that ground human rights,” and that Rawls attempts “to ground a list of human rights without recourse to the idea of humanity, the idea that there is something of moral significance that is common to all human beings” can be directed towards political liberalism more generally. Rawls cannot make such claims in either his domestic or international theories of justice due to the constraints of the political.

---

6Ibid.
7Ibid., 307.
8Buchanan, *Taking the Human out of Human Rights*, 163.
Rawls explains in *LoP*:

These [human] rights do not depend on any particular comprehensive religious or philosophical doctrine of human nature. The Law of Peoples does not say, for example, that human beings are moral persons and have equal worth in the eyes of God; or that they have certain moral and intellectual powers that entitle them to these rights. To argue in these ways would involve religious or philosophical doctrines that many decent hierarchical peoples might reject as liberal or democratic, or as in some way distinctive of Western political tradition and prejudicial to other cultures. Still, the Law of Peoples does not deny these doctrines.\(^{10}\)

Rawls does not explain the provenance of his list of basic human rights in *LoP*.\(^{11}\) Unlike Rawls’s domestic theory, basic human rights in *LoP* are not deduced from a conception of the person, as there is no explicit conception of the person in *LoP*. Instead, they are part of Rawls’s conception of a people. Societies that respect and protect these rights are equal members of the Society of Peoples and enjoy a significant level of sovereignty. Human rights then are not inferred from a prior conception of a people in an analogous way that rights are specified from a prior conception of the person in Rawls’s domestic theory. Instead, they define, in part, who a people is. As Rawls explains:

\[\ldots\text{the features of human rights as I have so far described them have been accounted for in two ways. One is to view them as belonging to a reasonably just liberal political conception of justice and as a proper subset of the rights and liberties secured to all free and equal citizens in}\]

---

\(^{10}\)Rawls, *The Law of Peoples*, 68. In this passage, Rawls suggests that by saying human beings have certain moral powers that entitle them to specific rights (which is the way his argument proceeds in his domestic theory), one is appealing to a religious or philosophical doctrine that can be rejected as liberal or democratic. I take issue with this in the previous chapter. I suggest that there is nothing particularly liberal or democratic about Rawls’s two moral powers, and that they are in fact largely assumed in *LoP*.

\(^{11}\)There has been extensive literature on Rawls’s treatment of human rights in *LoP* expressing discontent with how human rights are enumerated in *LoP*, the limited number of these rights, and the narrow purpose they are assumed to play in international law and practice. For example, see Beitz, 2000; Moellendorf, 1996; Tan, 2000; Tasioulas, 2002; Téson, 1995. Hirsch/Stepanians, 2006 provides a helpful discussion of this criticism.
a constitutional liberal democratic regime. The other is to view them as belonging to an associationist social form... What have come to be called human rights are recognized as necessary conditions of any system of cooperation. When they are regularly violated, we have command by force, a slave system and no cooperation of any kind.\textsuperscript{12}

As this passage makes clear, Rawls’s list of human rights in \textit{LoP} stipulates what he considers to be the minimum criteria for social cooperation. Liberal democratic rights cannot be included largely due to the constraints of the political. There is no philosophical justification that can be levied by political liberals to support the inclusion of distinctly liberal democratic rights in the Law of Peoples or to justify liberal foreign policy that actively pushes for these rights in the face of ideological or philosophical pluralism. Political liberals also cannot make the claim that nonliberal or nondemocratic societies that violate certain liberal democratic rights are intolerable or unacceptable \textit{a priori}.

It is also important to emphasize that outlaw states, which do not respect or protect their citizens’ human rights, are also not considered intolerable \textit{a priori} in Rawls’s approach. Instead, standards for being a decent (or liberal) peoples are specified, and those that do not satisfy these standards do not necessarily have their sovereignty respected. “This refusal to tolerate those states is a consequence of liberalism and decency. If the political conception of political liberalism is sound, and if the steps we have taken in developing the Law of Peoples are also sound, then liberal and decent peoples have the right, under the Law of Peoples, not to tolerate outlaw states.”\textsuperscript{13}

I am sympathetic to many concerns that have been raised regarding the derivation of basic human rights in \textit{LoP}.\textsuperscript{14} Rawls does not sufficiently substantiate his rationale for deciding what to exclude and include on the list. For example, the connection

\textsuperscript{12}\textit{Rawls, The Law of Peoples}, 68.
\textsuperscript{13}\textit{Ibid.}, 81.
\textsuperscript{14}For example, see Téson, 1998; Tan, 2000; Buchanan, 2006; Kuper, 2000.
Rawls draws between liberal democracy and the rights he disqualifies requires further attention. As has been pointed out by Buchanan, “the objection that the dominant contemporary theories of human rights are parochial deserves to be taken seriously... But whether they are parochial can only be determined by scrutinizing the content of the theories.”

There may be many reasons for endorsing so-called liberal democratic rights that are not parochial or that are intertwined with Rawls’s basic human rights or minimal standards for social cooperation. I believe some rigour is lost in the specification of these rights because they are not derived from a conception of the person as they are in Rawls’s domestic theory.

This dissertation more closely follows the methodology of *Political Liberalism* than *LoP* by developing a political conception of the person for international justice theory and specifying human rights (primary goods) from this starting point. In doing so, I hope to offer a new perspective on what should and should not be on the list of basic human rights and to develop a more substantial (individualist) foundation for enumerating this list.

In chapter seven, I consider what primary goods, including human rights, individuals should be assumed to have in light of the conception of the person outlined in this chapter. Although I do try to respect the constraints of political liberalism and seek to offer an alternative approach to international justice theory that is consistent with political liberal values, in developing this approach, I also hope to offer insight into the strengths and limitations of political liberal constraints. With respect to human rights, for example, I will question whether the political liberal interest in avoiding

---

16 I discuss these issues in more detail below and in chapter seven.
17 If this approach is not workable, fails to offer anything new, or appears to generate conceptions that are clearly unacceptable, I will consider alternatives. For example, human rights could instead be worked out as part of an international political conception of the person derived from what could be argued to be social or political norms widely recognized around the world, or by drawing upon more empirical data about individuals and real-world politics. Both of these approaches respect the constraints of political liberal theorizing—others likely do as well.
any appeals to common humanity is necessary, overly conservative and problematic. Perhaps by seeking to prevent and avoid the most “intractable struggles” which are often fought ”for the sake of the highest things: for religion, for philosophical views of the world, and for different moral conceptions of the good,”18 political liberalism is too distrustful and exclusionary of variables that should have normative significance. And perhaps by keeping political theory within the realm of the political, political liberal theory is overly cautious and neglectful of ‘high things’ that the world’s people may largely have in common.

6.2 What is considered a human right in LoP

6.2.1 The “short list” of rights in LoP

In LoP, human rights specify the limits of liberal toleration. Decent peoples (as well as liberal peoples) must satisfy human rights standards in order to have their sovereignty respected and be recognized as equal members of the international community. The list of human rights in LoP includes the following:

1. The “right to life (to the means of subsistence and security)”19

2. The “right to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought)”20

3. The “right to property (personal property)”21

---

20Ibid.
21Ibid.
CHAPTER 6. HUMAN RIGHTS IN THE LAW OF PEOPLES

4. The “right to formal equality as expressed by the rules of natural justice (similar cases to be treated similarly).”

6.2.2 Additional rights in LoP

Rawls does not suggest that his list is comprehensive but rather that these are “among the human rights” that all peoples must respect and protect. Given the important role that human rights play in LoP—drawing the line for the respect of state sovereignty and potentially warranting forceful international intervention on their behalf—Rawls’s incomplete and brief discussion of the subject is surprising. Rawls does not offer a full list of the rights that are part of the Law of Peoples, nor does he give a straightforward justification for what he includes and excludes. This has led to some confusion in the literature on LoP; the ‘short list’ outlined above is often misinterpreted as Rawls’s comprehensive list of basic human rights for the Law of Peoples. James Nickel, for example, has suggested that Articles 16 and 18 from the Universal Declaration of Human Rights are excluded by “Rawls’s short list of freedoms.”

Article 16 of the Universal Declaration refers to marriage rights and stipulates, among other provisions, that “marriage shall be entered into only with the free and full consent of the intending spouses.” Like many articles concerning human rights,

---

23Ibid.
24I refer again to the practical role that human rights serve in LoP in section 6. 2. For a fuller account of this, see Beitz, 2004. The practical role that human rights play in the theory is not a focus of this work. I foresee instead that the particular role that (the list of) human rights will play in international law and practice—i.e. whether it offers an apriori case for coercive pressure or intervention—would be worked out by individuals in the original position I have described.
25See Kokaz, Ethics & International Affairs 21 [2007], 318.
26Nickel, Making Sense of Human Rights, 99. While it is true that the rights outlined in these Articles are not on the short list that Rawls puts forward, these Articles, or aspects of them, are included elsewhere in the text of LoP, and Rawls explicitly states (though not where he gives the short list) that “Articles 3 to 18 may all be put under this heading of human rights proper, pending certain questions of interpretation” (Rawls, The Law of Peoples, 80n).
27The full Article reads as follows: (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled
CHAPTER 6. HUMAN RIGHTS IN THE LAW OF PEOPLES

this Article leaves ample room for interpretation; it does not explicitly deal with questions of inter-religious or inter-racial marriage and it does not refer to gay marriage. Because of this, Article 16 can be interpreted in many ways by different political cultures, and there is nothing incommensurable between Rawls’s conception of decency and the provisions protected in this Article. This may be why Rawls mentions that Article 16 would come under the heading of human right, “pending certain questions of interpretation.”

With respect to Article 18, Nickel’s assessment that it is excluded by Rawls’s short list misses aspects of this Article that are included in LoP and that are in fact present on the Rawls’s short list above. Article 18 of the Declaration reads as follows: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” Rawls’s short list does stipulate that individuals have the right “to a sufficient measure of liberty of conscience to ensure freedom of religion and thought.” Clearly the rights outlined in Article 18 would not be upheld in decent peoples to the degree they are in liberal democracies. As Rawls explains, decent nonliberal “doctrines must admit a sufficient measure of liberty of conscience and freedom of religion and thought, even if these freedoms are not as extensive nor as equal for all members of the decent society as they are in liberal societies.” Rawls does not explain what he means by “sufficient” but he does hint at what he has in mind: “Although the established religion may have

to equal rights as to marriage, during marriage and at its dissolution; (2) Marriage shall be entered into only with the free and full consent of the intending spouses; (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

29 This document is readily available on the United Nations website.
30 Ibid., 65.
31 Ibid., 74.
various privileges,” Rawls explains, “it is essential to the society’s being decent that no religion be persecuted, or denied civic and social conditions permitting its practice in peace and without fear.”

Rawls implies that he sees public discrimination on religious grounds as reflecting privilege rather than persecution, but the line between privilege and persecution is finer than he suggests. Privileges to certain religious groups are tolerated by Rawls’s framework—for example, peoples that only allow those of a specific religion to hold high political offices can still be considered decent in Rawls’s framework—but persecution, or his idea of it, is not. As he explains in a footnote, “liberty of conscience may not be as extensive nor as equal for all members of society: for instance, one religion may legally predominate in the state government, while other religions, though tolerated, may be denied the right to hold certain positions. I refer to this kind of situation as permitting ‘liberty of conscience, though not an equal liberty.’” Rawls sees decent peoples as securing certain political privileges for those of specific religions, classes, or ethnic groups but he does not consider this to count as political persecution. Yet clearly this is a matter of interpretation of the meaning of privilege and persecution. Some would consider public discrimination on religious grounds as persecuting certain groups while privileging others.

Nevertheless, it is not evident that Articles 16 and 18 of the Universal Declaration are excluded by LoP. Other rights that are in LoP but are often overlooked are what Rawls refers to as a second class of rights that are “obvious implications of the first class of rights. The second class of rights covers the extreme cases described by the special conventions on genocide (1948) and on apartheid (1973).” Another right that is included in LoP but is not on Rawls’s short list is the right of emigration. Rawls

---

33Ibid., 65n.
34Ibid., 80n.
argues “...[I]t is essential that a hierarchical society allow and provide assistance for the right of emigration” ([Rawls, The Law of Peoples, 74]) and “subject to certain qualifications, liberal societies must allow for this right.”

6.2.3 Political and liberty rights, including the right to democracy

The discussion above suggests that Rawls’s human rights conception in LoP includes more rights than is often thought. That said, many rights that are often considered universal are not basic human rights in LoP. The Universal Declaration is comprised of thirty articles, and of these, Rawls mentions that only Articles 3 to 18 may be “put under this heading of human rights proper.” This means that many well-known rights such as the “right to freedom of opinion and expression” (Article 19), and the “right to peaceful assembly and association” and to not be “compelled to belong to an association” (Article 20) are omitted from LoP’s rights framework. Rawls also excludes Article 21:

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

However, even the exclusion of these rights is not straightforward, and a nuanced understanding is necessary. Earlier in this dissertation, I suggested that Rawls’s

---

36 For examples of a more minimalist interpretation of the rights in LoP than is given here see Nickel, 2007; Nickel, 2006; Pogge, 2006; Nussbaum, 2002.
37 Ibid., 80n.
38 Universal Declaration of Human Rights, 1948.
framing of LoP as about peoples rather than persons masks the many ways that LoP is designed to respond to the interests and rights of individuals. In a similar way, Rawls’s minimal conception of human rights overshadows the many more freedoms and rights that LoP works to protect.

In general, the literature on human rights and international justice has suffered from a lack of clarification of what rights are included under the umbrella terms, “right to democracy” and “liberal democratic rights.” Rawls’s description of decent nonliberal societies deserves more acknowledgement and discussion of the ways they are democratic. The literature so far has generally adhered to rather than questioned Rawls’s problematic binary classification, grouping liberal democracies in one category and nonliberal and nondemocratic societies in another. The reality however is that even in the flawed nondemocratic states that exist today, especially those that (at least rhetorically) espouse a nonliberal political ideology or idea of justice, there are provisions for political participation and consultation including the use of elections for some public offices. They are generally inadequate (even based on Rawls’s minimal criteria for decency) and perhaps even superficial or disingenuous, but they exist and complicate Rawls’s classification. I do not want to be misunderstood as equating, in terms of justice, nonliberal and liberal states as they exist today (or even could exist at anytime). However, it is relevant to mention that liberal democracies also have formalized and legal nonliberal and nondemocratic institutions as well as non-formalized ones that are upheld by traditions and norms of public culture. Certain offices may be appointed (by elected or non-elected officials) or reserved for monarchs within liberal democracies. There may also be affirmative action policies that provide a certain check (however liberal democratic this check may be interpreted in spirit).

\[39\text{Here I am distinguishing religious or communist states (such as Saudi Arabia, Bhutan, Iran, as well as Vietnam, China, etc.) from states that are overtly and routinely controlled by command and violence (such as Myanmar).}\]
against the prejudices and biases that repeatedly play out in democratic elections and other selection processes. Liberal democracies also routinely (democratically) decide to pass what could be interpreted as nonliberal legislation, such as banning of public religious symbols in France and Switzerland.40

Although Rawls does not describe *LoP* in this way, he implies that certain violations of liberal democratic rights can be tolerated,41 and others cannot. The Articles mentioned above (19–21) do not fall under the heading of basic human rights in *LoP* and therefore do not play the specific political function that rights play in *LoP*.42 However, these Articles (or parts of them) are included as standards that must be met for a society to be recognized as an equal member of the Society of Peoples.

Rawls’s framework may be understood as having two different categories of standards that political communities must satisfy. Each have different consequences when violated. Most importantly, “peoples criteria” must be satisfied for a people to enjoy privileges of membership with equal standing in the international community. However, these standards are not as urgent and do not warrant employment of the same degree of coercive international pressure and action. In this category fall the provisions for political participation of all members of society, opportunity for dissent, the common sympathies of members for each other and their public life, and certain legal standards, namely that no one is exempt from the law and officials must administer the legal system guided by a “common good idea of justice” rather than by command or force.43

40I am grateful to Joe Carens for bringing up the example in Switzerland of a November 2009 referendum (that was passed by a clear majority) banning the building of minarets on mosques.
41Here I am using the word ‘tolerated’ in the political liberal sense. Those who are tolerated are considered equals and have the privileges and obligations that come with reciprocity.
42For more information on special (practical) role that human rights play in *LoP*, see for example, Beitz, 2004.
CHAPTER 6. HUMAN RIGHTS IN THE LAW OF PEOPLES

With respect to Article 19, Rawls’s discussion of decent hierarchical societies and his hypothetical example of Kazanistan suggest that decent peoples do respect the right to freedom of opinion and expression and that dissent must be permitted “not, to be sure, in a way allowed by democratic institutions, but appropriately in view of the religious and philosophical values of the society as expressed in its idea of the common good.” Although individuals do not have the right to vote or to complete freedom of opinion, “it is necessary and important that different voices be heard, because judges’ and other officials’ sincere belief in the justice of the legal system must include respect for the possibility of dissent. Judges and other officials must be willing to address objections. They cannot refuse to listen... dissent expresses a form of public protest and is permissible provided it stays within the basic framework of the common good idea of justice.”

Rawls’s description of decent peoples also suggests that a member of this society does have the “right to take part in the government of his country, directly or through freely chosen representatives” (as mentioned in Article 21) although “freely” in this case could not refer to an especially liberal democratic idea of freedom, but instead would reflect an idea of freedom that is shared across different political doctrines, such as the conception of freedom offered in chapter four. “The basis of the authority of government” could also be considered the “will of the people” within decent peoples in a manner suggested by Article 21. Although authority may come from religious or philosophical doctrine in decent peoples, individuals endorse this doctrine (the “common good idea of justice”) as the source of the authority. An underlying assumption of LoP is that it is possible for individuals to willingly endorse a nonliberal or nondemocratic political system and its idea of public justice. Decent peoples can be understood as reflecting both individuals’ rational interests and ideas.

---

45Ibid.
CHAPTER 6. HUMAN RIGHTS IN THE LAW OF PEOPLES

of justice for public life. “Each person belongs to a group represented by a body in
the consultation hierarchy, and each person engages in distinctive activities and plays
a certain role in the overall scheme of cooperation.” 46 “Since these groups represent
the rational interests of their members, some persons will take part in publicly rep-
resenting these interests in the consultation process, but they do so as members of
associations, corporations, and estates, and not as individuals.” 47

In line with the international human rights standards discussed above, all members
of decent peoples are also subject to rule of law. A decent system of law imposes
“bona fide moral duties and obligations (distinct from human rights) on all persons
within the people’s territory.” 48 Officials of decent peoples must also be committed
to administering the law guided by the public idea of justice of their society. “This
sincere and reasonable belief on the part of judges and officials must be shown in
their good faith and willingness to defend publicly society’s injunctions as justified
by law.” 49

Similarly, although the “right to peaceful assembly and association” and to not be
“compelled to belong to an association” (Article 20) are not included as basic human
rights, individuals in the decent peoples Rawls describes, while not free to change
their associational membership, are not forced to belong to these associations either.
This again reflects a foundational premise of LoP that nonliberal or nondemocratic
constraints on one’s choices (as a result of government policy or public culture) do
not necessarily curtail one’s freedom, or imply that a person is oppressed. As I
explored in chapter four, whether or not one’s freedom is constrained depends on
what freedom is taken to mean. In LoP, members of decent peoples are not free to
create themselves and choose their duties and obligations in the liberal democratic

47Ibid., 73.
48Ibid., 65–66.
49Ibid., 67.
sense, but they are also not forced to accept their place in political life. Members of decent peoples generally believe they are playing their rightful role in a society governed by a nonliberal idea of justice that they have grown up with and endorse. Indeed, Rawls implies that they may consider this public life as securing more freedom (or a deeper freedom) than if these constraints on their choices or individual agency were removed. Rawls explains:

> Of course, a decent hierarchical society has never had the concept of one person, one vote, which is associated with a liberal democratic tradition of thought that is foreign to it, and perhaps would think (as Hegel did) that such an idea mistakenly expresses an individualistic idea that each person, as an atomistic unit, has the basic right to participate equally in political deliberation. In a decent consultation hierarchy (which Rawls gives as an example of an acceptable nonliberal political structure),

> ...members of the people are viewed as decent and rational, as well as responsible and able to play a part in social life. ...they recognize these duties and obligations as fitting with their common good idea of justice and do not see their duties and obligations as mere commands imposed by force. They have the capacity for moral learning and know the difference between right and wrong as understood in their society.

> “Each person belongs to a group represented by a body in the consultation hierarchy, and each person engages in distinctive activities and plays a certain role in the overall scheme of cooperation.”

The paragraphs above suggest that although Articles of the Universal Declaration are not included as basic human rights in LoP, they are included as standards for

---

50 Political liberals would see many members of liberal democracies as embedded in a constitutive liberal democratic context also. This does not mean that they have the same limitations in freedom as members of nonliberal peoples. The point I am making is that individuals who endorse liberal democracy have also often been socialized to endorse its duties and obligations.


52 Ibid., 66.

53 Ibid., 72.
decency. *LoP* makes a distinction between rights that can potentially be protected by international force and other standards that must be met if a people is to enjoy other privileges, such as equal standing in the Society of Peoples. Some rights that are not part of Rawls’s basic human rights are included in *LoP* as decency standards.

As I discuss in the next chapter, in my individualist framework I do not make the same distinction between standards for being considered a decent (or liberal) peoples and human rights criteria. I have not endowed the term ‘human right’ with repercussions for foreign policy in the same way as *LoP* and therefore I am at more liberty to include more rights than Rawls did in *LoP*. My interest is to specify global primary goods (of individuals) in a similar way that Rawls did in his domestic theory for the purpose of further considering principles of international justice. In my framework, individuals in the original position would determine which rights might have priority over others (similar to the prioritization of basic liberties in Rawls’s domestic theory) and would specify themselves which rights would be considered part of a “special class of urgent rights” \(^{54}\) that potentially warrant coercive international response.

### 6.2.4 Exclusions

What is clearly excluded from both of the categories identified above—‘rights’ standards and ‘peoples’ standards—are “equality rights.” \(^{55}\) Rawls excludes Article 1 of the Universal Declaration—“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood” \(^{56}\)—because in his view, this Article states distinctly “liberal aspirations.” \(^{57}\) Within decent peoples, everyone must receive equal treatment

---


\(^{57}\)Ibid.
before the law (all individuals are subject to the same law, and cannot be treated arbitrarily) and all can be assumed to equally endorse this law (including those that from a liberal perspective are not treated equally), but the law itself can codify religious and gender inequality. In the hypothetical nonliberal society of Kazanistan, “Islam is the favored religion, and only Muslims can hold the upper positions of political authority.” 58 “A state religion may, on some questions, be the ultimate authority within society and may control government policy on certain important matters.” 59 Those with alternative religious or secular ideas of public life will not have equal opportunity to have their political views reflected in public policy or have equal access to public office.

Decent peoples may also have different public roles for women and men in line with a religious or philosophical doctrine. The “right of equal access to public service” and to “universal and equal suffrage” (both listed in Article 21 of the Universal Declaration of Human Rights) are not included in LoP as either basic human rights or standards for decency. Rawls does discuss standards that must be met to ensure minorities and women are heard and shape public policy, but he does not see equality rights as necessary for this to be achieved. For example, speaking of women who in Rawls’s view “have long been subjected to oppression and abuse,” he suggests: “one step to ensure that their claims are appropriately taken into account may be to arrange that a majority of the members of the bodies representing the (previously) oppressed be chosen from among those whose rights have been violated.” 60

The text of LoP suggests that Rawls was troubled by the discrimination and subjugation of women in religious and other nonliberal political doctrines. However, he rejects the notion that it is religion or religious politics per se that necessarily

58 Rawls, The Law of Peoples, 75.
59 Ibid., 74.
60 Ibid., 75.
cause women’s subjugation, suggesting that “the fact that women’s status is often founded on religion, or bears a close relation to religious views, in not in itself the cause of their subjection, since other causes are usually present.” In making this point, he refers to Muslim writers that “deny that Islam sanctions the inequality of women in many Muslim societies, and attribute it to various historical causes.” What is implied here, and indeed, the likely reason that Rawls discussed this, was to suggest that decent nonliberal peoples that are supported by women and perhaps even empower women can exist and to counter the view that nonliberal political doctrines are categorically repressive.

While Rawls is sympathetic to those who aspire for decent nonliberal politics and he implies that we must take great care in judging what oppression of women might look like or be caused by, he does suggest in the introduction to LoP that in all societies, there is a need for women’s “equal political participation with men and assured education.” He also mentions that “equal justice for women” is a fundamental aspect of “sound social policy for a realistic utopia.” But this language is toned down later in the text when he discusses specific standards for decency, including basic human rights. He does argue that “any conditions of the consultation procedure [within decent peoples] that are necessary to prevent violations of the human rights of women are to be adopted” but the idea of “any conditions” here is confined to the parameters of his already worked out conception of human rights and not one that could possibly include liberal democratic or equality rights that further empower and protect women.

In LoP, Rawls attempts to balance his concern with equal political participation

---

62 Ibid., 110n.
63 Ibid., 9.
64 Ibid.
65 Ibid., 111.
CHAPTER 6. HUMAN RIGHTS IN THE LAW OF PEOPLES

and justice for women (which he believes should be reflected in the Law of Peoples), with his interest in tolerating at least some nonliberal political doctrines that espouse different public roles for women and men. While he does suggest that most members of decent peoples, including women, endorse its public life, emphasizing and reflecting further upon this point would have better served his argument. This would have preempted some of the criticism that women are necessarily oppressed by decent nonliberal doctrines and shifted debate to the more interesting question of what assumptions liberals should make concerning the meaning of oppression in a pluralist world.

Andrew Kuper, for example, argues: “from a liberal perspective—for reasons Rawls himself has done most to elaborate—the geographical location and group membership status of a woman born into a nonliberal Islamic society, or indeed anyone else, is morally arbitrary. She does not come to be a free and equal person for us when she crosses the border into a liberal society.” As discussed earlier in this dissertation, I believe it is fair to criticize Rawls for not assuming all individuals are free and equal in the way understood within liberal democracies. Those who wish to uphold these values would ideally clarify what these terms should mean when theorizing on international justice, and justify their applicability to the task at hand given pluralism. What is more problematic about Kuper’s criticism is that it assumes women are, in most if not all cases, passive members of nonliberal societies (in the sense that they cannot independently endorse or exercise agency in its public life) and are necessarily oppressed. While certainly there are many women who are oppressed by nonliberal and nondemocratic political orders, Kuper fails to acknowledge that in Rawls’s ideal-type decent peoples, women members may in fact (and generally do, if my reading is accepted) support the religious or other ‘common good idea of justice’

---

CHAPTER 6. HUMAN RIGHTS IN THE LAW OF PEOPLES

guiding their society’s public life.\textsuperscript{67}

As discussed in the first two chapters of this dissertation, nonliberal and nondemocratic regimes are not considered to be oppressive by definition by this dissertation. I reject the idea that liberal democracies have a monopoly on freedom and I assume that individuals can freely endorse certain nonliberal and nondemocratic political doctrines (when freedom is understood more according to the conception put forward in this work). I also do not assume that nonliberal and nondemocratic doctrines are necessarily oppressive for women and minorities. To put another way, I argue, with Rawls, that it may be possible for women and minorities to endorse these doctrines and to feel a strong sense of connection (however complicated this connection may be) to societies governed by these doctrines that translates into a desire—indeed, a personal and individualist desire—for (societal) respect and self-determination.\textsuperscript{68}

Kuper’s criticism above either assumes that all women reject nonliberal Islamic political doctrines, which is simply not true or implies that whether or not these doctrines are accepted by women has no moral significance for liberals, which I consider problematic.\textsuperscript{69} Many women around the world endorse conservative religious politics, including different interpretations of Islamic Sharia law. I believe it is fair to interpret Rawls’s conception of decency as requiring that women members of decent nonliberal peoples generally endorse its common good idea of justice. I therefore do not share Martha Nussbaum’s interpretation that for \textit{LoP}, toleration is “a principle that respects groups rather than persons, and... actually shows deficient respect for

\textsuperscript{67}In societies that are not decent, there is no guarantee of toleration or respect from other peoples; Kuper’s concern with the liberal hands-off approach towards nonliberal peoples is therefore only relevant with respect to decent peoples.

\textsuperscript{68}I give more attention to this issue in chapter two.

\textsuperscript{69}Berlin, 1958 offers an insightful reflection on the difficult problem raised by the issue of assuming a person is oppressed when she does not think she is, even though he accepts, as I do, that individuals can be considered oppressed by a doctrine even if they do not think so, or endorse a doctrine that is oppressive. As I discuss in chapter four, I consider acceptability (of public life and government) as a necessary but insufficient condition for individual freedom.
persons, in so far as it allows their course to be dictated by that of the dominant group in their vicinity, whether they happen to like or belong to that group or not.”

Societies that rule over women and minorities by force would not meet Rawls’s standards for decency. For reasons discussed in greater detail earlier in this dissertation, political liberals also cannot make the claim that women *should* reject the political beliefs they hold because these beliefs (from a liberal perspective) do not serve their interests.71

In this section, I have offered a new interpretation of the human rights that are included in *LoP*. I argue that Rawls’s Law of Peoples would protect more human rights than is generally thought. I also suggest that whether certain rights should be included or not depends in part upon what freedom and repression are taken to mean in a context of international pluralism.

The discussion above also clarifies what precisely about liberal democracy is excluded from Rawls’s conception of human rights. In my view, nonliberal and liberal democratic societies are generally not dichotomous in the real world nor are they clear opposites in Rawls’s *LoP* framework; decent peoples have certain provisions that could be considered liberal democratic. More accurate and prudent for scholarly work on this subject is to see nonliberal and liberal societies (in most cases) as occupying positions along a continuum between full liberal democracy on the one hand and full nonliberal and nondemocratic public life on the other. This may facilitate a shift in focus to the precise human rights protections and freedoms that are required for individuals to be free members of societies governed by social cooperation rather than force.72

---

70 Nussbaum, *Politics, Philosophy, and Economics* 1 [2002], 293.
71 For a comparison of the protection of women’s rights and interests afforded by *LoP* and Nussbaum and a feminist defense of *LoP*, see Bernstein, 2007.
72 For an example of the sort of analysis I have in mind, see Carens’s discussion of the case of Fiji in Carens, chapter nine.
CHAPTER 6. HUMAN RIGHTS IN THE LAW OF PEOPLES

6.3 Rawls’s justification for basic human rights

Rawls does not offer an explicit justification for what he considers a basic human right and a standard for decency. This section explores the different explanations that are given in LoP for Rawls’s rights conception and decency criteria, and the reasons for why Rawls decides to include only a subset of liberal democratic rights, including those found in the Universal Declaration and International Covenants on Human Rights.

6.3.1 Ideas of human nature

Rawls does mention that he considers the “laws of nature”73 when developing the Law of Peoples and that he sees the possibility of a Society of Well-Ordered Peoples as consistent with the “natural order.”75 If a conception of justice is to be realistic, Rawls argues, “it must rely on the actual laws of nature and achieve the kind of stability those laws allow.”76 Facts about human beings and social life, facts that “can be confirmed by reflecting on history and political experience,”77 are of great interest to Rawls because he aims to develop a theory that is workable and realistic. Yet Rawls also mentions that his idea of basic rights does “not depend on any particular comprehensive religious doctrines or philosophical doctrine of human nature.”78 Rawls is concerned that a metaphysical argument for his human rights conception would not be widely accepted from the perspective of different comprehensive (and in the case of LoP) political, doctrines. The facts that are included therefore need to

74By a “Well-Ordered Society of Peoples”, Rawls is referring to an association of liberal and decent nonliberal peoples.
75Ibid., 19.
76Ibid., 12–13.
77Ibid., 124.
78Ibid., 68.
be rather basic and may come across as even trivial but the idea is they will provide parameters for the construction of principles of justice, to ensure these principles can realistically be endorsed and followed.

In chapter two I argued that Rawls considers individuals to be significantly shaped by the social institutions with which they frequently interact—individual perception of interests and needs are malleable and contingent on contextual factors. Rawls's interest in developing workable and realistic political theory takes this assumption seriously by seeking to base international justice theory on principles that can be shared by different political perspectives. In other words, what humans are is, to an important extent, how they have been shaped, and this is the premise by which political liberal theory is developed.

6.3.2 The ‘political consensus’ of human rights

Rawls's specification of basic rights reflects an understanding of oppression that is widely shared and understood by individuals living in diverse cultural, political and social contexts around the world. As suggested by Nickel, "The Law of Peoples avowedly treats international justice the way that Political Liberalism prescribes—by working up a political conception of international justice from ideas already implicit in the practices and cultures of liberal and decent countries."80

---

79For example, Rawls mentions: “...now citizens are conceived as thinking of themselves as free in three respects, so I survey each of these and indicate the way in which the conception of the person is political” (Rawls, Political Liberalism, 29), my emphasis. Earlier in the paper, I noted that Rawls views members of decent nonliberal peoples (not just their leaders) as having a different conception of themselves. Although statements such as: “...a decent hierarchical society has never had the concept of one person, one vote, which is associated with a liberal democratic tradition of thought that is foreign to it...” may not be read this way, I think when coupled with Rawls’s ideas of “moral learning” and “common sympathies” and his view that individuals in decent nonliberal societies “recognize, understand, and act in accordance with their moral duties and obligations,” I think it is a fair interpretation to say that members of decent nonliberal peoples see themselves differently (Rawls, The Law of Peoples, 73, 66).

80Nickel, Are Human Rights Implemented by Intervention?, 263.
Nickel’s interpretation is correct in the sense that Rawls does describe basic human rights as the list common to both liberal and decent peoples:

Comprehensive doctrines, religious or nonreligious, might base the idea of human rights on a theological, philosophical, or moral conception of the nature of the human person. That path the Law of Peoples does not follow. What I call human rights are... a proper subset of the rights possessed by citizens in a liberal constitutional democratic regime, or of the rights of the members of a decent hierarchical society. As we have worked out the Law of Peoples for liberal and decent peoples, these peoples simply do not tolerate outlaw states. This refusal to tolerate these states is a consequence of liberalism and decency.\footnote{Rawls, The Law of Peoples, 81.}

Rawls is interested in general norms of international political life that are widely shared, in part to ensure his principles are realistic and workable. In Rawls’s domestic theory, he explains that he “started with a number of familiar and basic ideas implicit in the public political culture of a democratic society. These have been worked up into a family of conceptions in terms of which political liberalism can be formulated and understood.”\footnote{Rawls, Political Liberalism, 43.} Similarly, in LoP, Rawls singles out his list of human rights from other criteria because they are “recognized as necessary conditions of any system of social cooperation.”\footnote{Rawls, The Law of Peoples, 68, emphasis added.} “A decent hierarchical people’s system of law, in accordance with its common good idea of justice... secures for all members of the people what have come to be called human rights.”\footnote{Ibid., 65, emphasis added.} In other words, these rights have already been deemed significant from the perspective of various political cultures and societies.

Yet the idea that a political conception of international justice is constructed from ideas implicit in certain diverse political cultures does not adequately explain where human rights and other decency standards come from. This is because these standards determine when consensus matters and when it does not—they specify the
CHAPTER 6. HUMAN RIGHTS IN THE LAW OF PEOPLES

boundaries of relevant political culture (liberal and decent). The public culture of liberal and decent peoples is deemed relevant in large part because of the adoption of certain human rights norms, and cannot therefore be drawn upon to specify what these human rights norms might be. There is a circularity problem if societies are classified as decent because they accept human rights, but the rights are considered “human” or “basic” because decent peoples find them acceptable. What then, from a political liberal perspective, justifies the list of basic human rights?85

The “political consensus” explanation of the origins of human rights runs out in LoP because certain ideals independent from this consensus are used to specify when consensus matters and when it does not. Basic human rights and the Law of Peoples are not acceptable from the perspective of all political doctrines. As Beitz explains, “Because human rights are conceived so that they are necessarily common only to decent societies, it cannot be argued that interference to protect human rights in other societies would always be consistent with the conventional moralities of those societies.”86 Outlaw states87 in Rawls’s theory encompass not only tyrannical regimes, but also regimes with ideas of justice and even human rights that are unacceptable to liberal and decent peoples.

A political conception of rights is not relativist or compromising; rights are not specified by mapping out an overlapping consensus among all political ideas of justice.

The list of human rights honored by both liberal and decent hierarchical regimes should be understood as universal rights in the following sense: they are intrinsic to the Law of Peoples and have a political (moral) effect whether or not they are supported locally. That is, their political (moral) force extends to all societies, and they are binding on all peoples and

85Kokaz makes this point in her exploration of the foundations of human rights and assistance in LoP in Kokaz, 2007b.
86Beitz, American Political Science Review 95 [2001], 274.
87In Rawls’s Law of Peoples, outlaw states do not meet the criteria for decency and therefore are properly subject to sanctions and other forms of international pressures. See Rawls, The Law of Peoples, 81.
societies, including outlaw states. The human rights framework in LoP, but what ultimately specifies the content of human rights is the liberal determination of the boundaries of liberal toleration. LoP is chiefly about liberal foreign policy. This interest is reflected in Rawls’s methodology for developing the Law of Peoples. Rawls begins by first using the original position and veil of ignorance to conceptualize principles of justice for a “closed and self-contained liberal democratic society.” At the next level, he applies the original position to representatives of only these liberal peoples in order to specify the Law of Peoples. He then uses the original position for a third and final time to ensure that the Law of Peoples is acceptable from the point of view of decent nonliberal peoples. “The reason we go on to consider the point of view of decent peoples is not to prescribe principles of justice for them, but to assure ourselves that the ideals and principles of the foreign policy of a liberal people are also reasonable from a decent nonliberal point of view.”

This methodology departs significantly from Rawls’s approach in his theory of domestic justice which built principles of justice from the ground up, in this case from fundamental ideas “drawn from the public political culture of a democratic

---

89Ibid., 86. See also ibid., 30–32.
90Ibid., 10, emphasis in original.
CHAPTER 6. HUMAN RIGHTS IN THE LAW OF PEOPLES

society.”91 In the Law of Peoples, Rawls does not begin by identifying ideas of justice that are held in common by the political cultures of the world and constructing the Law of Peoples from this starting-point. The focus in “developing the Law of Peoples within a liberal conception of justice”92 is “the ideals and principles of the foreign policy of a reasonably just liberal people.”93 “In developing the Law of Peoples I said that liberal societies ask how they are to conduct themselves toward other societies from the point of view of their own political conceptions. We must always start from where we now are.”94

Ideas of human nature (discussed earlier) and shared ideas (between pluralist societies) of what counts as a cooperative society (also discussed above) do play a role in shaping Rawls’s conception of decency but only because this is what liberalism requires. In Rawls’s view, liberals should be concerned that public conceptions of justice are acceptable to those who believe in nonliberal and nondemocratic political doctrines. “The need for such assurance is a feature inherent in the liberal conception.”95 But it is liberal values that are stipulating when ideas of human nature matter and that set parameters for necessary political consensus.

Rawls believes that “most reasonable citizens of a liberal society will find peoples who meet [the decency] criteria acceptable as peoples in good standing. Not all reasonable persons will, certainly, yet most will.96 “If the content of reasonableness, decency, and rationality is laid out properly, the resulting principles and standards of right and justice will hang together and will be affirmed by us on due reflection.”97 But, as Beitz points out, “it is a serious question whether we have enough to go

91 Rawls, The Law of Peoples, 32.
92 Ibid., 10.
93 Ibid., 32, emphasis in original.
94 Ibid., 121.
95 Ibid.
96 Ibid., 67.
97 Ibid., 87.
CHAPTER 6. HUMAN RIGHTS IN THE LAW OF PEOPLES

on intuitively to make such a judgment.” Rawls does not give a straightforward justification for why he draws the line where he does. Below I consider factors that have influenced Rawls’s decision to include certain rights and provisions and to reject others. In the next section of this chapter, I examine whether these reasons should influence the content of human rights to the extent they do and I consider concerns that have been raised with Rawls’s minimalist human rights framework in LoP.

Concerns with liberal parochialism

Given Rawls’s explicit focus on liberal foreign policy and developing the Law of Peoples “within a liberal conception of justice,” it is ironic that the most explicit explanation Rawls gives for excluding many of the rights in the Universal Declaration and other international covenants is that they “seem more aptly described as stating liberal aspirations.” Rawls mentions elsewhere in the text that his list of human rights cannot be “rejected as peculiarly liberal or special to the Western tradition. They are not politically parochial.” What Rawls implies is that liberal foreign policy requires us to forego certain liberal ideals for the sake of stronger liberal commitments.

Nevertheless, there is a tension in the political liberal project between its commitment to liberal values and to political constraints (that to some extent require it to dislodge itself from some of these values). This dissertation suggests that the interest in the constraints of the political can be motivated by liberal values, which is something that Rawls alludes to when he argues that political liberalism applies the principle of toleration to philosophy itself. However, the tension remains and I

---

98 Beitz, American Political Science Review 95 [2001], 275.
100 Ibid., 80n.
101 Ibid., 65.
102 Rawls, Political Liberalism, 10.
am not sure it can be overcome; political liberal theory aims to be at least partially acceptable to those that endorse nonliberal politics (or in the ways it deems critical) while at the same time, theorizing in a way that is very (and perhaps parochially) liberal. However, as John Tasioulas has suggested, “it is artificial to confine the issue of ethnocentrism to the content of norms with universal reach as opposed to the justificatory route by which they are reached.” I am not sure Rawls would apologize for this— at a certain point in the theoretical exercise, the theory is liberal and is tolerant because it is liberal. This is why it still calls itself a liberal theory (though people have questioned whether it is).

The need for self-determination

Rawls also mentions that he excludes rights that “presuppose specific kinds of institutions, such as the right to social security, in Article 22, and the right to equal pay for equal work, in Article 23.” The problem with the presupposition of institutions such as these is not explained; Rawls appears to drop Articles that he believes assume too much about the public values that a society is prepared to endorse or about the specific institutions they have, or seek to develop. Implied by this is that certain public institutions need to be self-determined by individuals living within diverse political and economic contexts.

Necessary for social cooperation

As mentioned above, when discussing political consensus Rawls also distinguishes his list of human rights from other criteria because they are “recognized as necessary

---

103 Tasioulas, 394. I benefitted from Joe Carens’s comments on this issue.
104 In chapter five, I try to make the case that the individualist approach I develop is not too liberal by discussing the moral and rational reasons that individuals who endorse either nonliberal and liberal political doctrines might have for endorsing the approach. However, I do not mean to suggest that in doing so or even asking such questions, I am not being liberal (so to speak.)
105 Rawls, The Law of Peoples, 80n.
conditions of any system of social cooperation.” When human rights are “regularly violated,” he argues, “we have command by force, a slave system, and no cooperation of any kind.”

Special class of urgent rights

The role that human rights play in LoP also has implications for which rights can really be considered human or basic. Rawls reserves the term “human rights” for a “special class of urgent rights.” Rawls’s list of human rights does not cover all attributes a society must have in order to be treated as an equal in the international community; human rights are a necessary but not sufficient condition for being in good standing in the Society of Peoples. However, only human rights violations can warrant “justified and forceful intervention by other peoples, for example, by diplomatic and economic sanctions, or in grave cases by military force.” Human rights “set a limit to the pluralism among peoples.” The “human rights criteria” secures a people’s sovereignty. If human rights are violated, a state may be subject to a wide range of coercive actions.

6.4 Is Rawls’s conception of human rights too minimal?

Below, I consider whether Rawls’s rationale for his conception of basic human rights is sufficient and accurate by critically examining the rationale behind Rawls’s minimalist rights framework, as well as the logic behind his decision to include some rights and

---

107 Ibid.
108 Ibid., 79.
109 Ibid., 80.
110 Ibid., 79.
not others in *LoP* either as basic rights or as standards for decency. I begin by considering whether the rights Rawls omits from *LoP* are as parochially liberal as Rawls suggests. I make a distinction between the pluralist support that can be found for liberal democratic values within the rich and diverse non-western political traditions and the political ideologies that individuals and societies actually endorse. I also examine whether Rawls’s argument and conclusions rely too heavily on simplified and abstract ideas of liberal and nonliberal societies. I argue that what ultimately matters is not whether certain political ideologies are actually more liberal democratic than often thought (by those in the ‘west’) but rather how individuals see the doctrines they hold in relation to the west, and what they believe in the (echoing Rawls) “here and now.”\footnote{Rawls, *The Law of Peoples*, 12.} This section then turns to the question of whether decent peoples are even possible or whether more rights need to be included as basic rights or as standards for decency if decent peoples are to be governed and endorsed in the way that Rawls suggests. The third section examines whether it is a formidable and irresolvable challenge to know whether individuals endorse their societies, or whether peoples are in fact decent, in the absence of liberal democratic institutions that Rawls excludes from *LoP*. At the close of this chapter, I clarify what I consider to be a tension in *LoP*’s human rights framework between Rawls’s specification of rights as those freedoms and protections that are necessary for social cooperation and his idea of rights being in a special class that provide an apriori case for intervention and foreign coercion when violated abroad.
6.4.1 Liberal parochialism

Rawls’s notion that certain universal human rights might “be rejected as peculiarly liberal or special to the Western tradition”\(^{112}\) deserves critical attention given its significant impact on Rawls’s conception of basic rights and his argument for toleration of nonliberal peoples more generally. It is important to mention that Rawls is ambiguous as to whether he believes the problem is that certain rights are distinctly liberal and are not shared across various political doctrines, or that certain rights are perceived as particularly liberal. The literature on human rights in LoP has tended to focus on whether many rights and liberties that Rawls associates with a liberal democratic tradition are in fact parochial as he suggests, and has generally challenged Rawls on this point.\(^{113}\) However, apparent in LoP is also a concern—not with the tradition that certain rights are historically or factually connected with—but with the perception that certain rights are associated with a particular “western” way of life regardless of how wrong this perception may be. This is evident in Rawls’s concern that certain rights may be “rejected as peculiarly liberal.”\(^{114}\)

Pluralist support for liberal democracy

There is no doubt that various human rights conventions are difficult to accept from the perspective of certain religious and philosophical doctrines. Many scholars, however, deny that these doctrines are a legitimate part of the religious and philosophical traditions they profess to belong to. Some scholars of Islam and of Middle Eastern


\(^{113}\)There is an extensive literature that explores the universality of human rights in light of the many questions raised by pluralism. See for example Fabre/Miller, 2003; Ignatieff, 2003; Rorty, 1998. Martha Nussbaum challenges Rawls’s idea that liberal democracy is a western idea in Nussbaum, 2002. Others who have also questioned the particularism of liberal democracy (though not necessarily just in relation to Rawls’s work) include, for example, Cohen, 2004; Ibrahim, 2006; Jung, 1994; Sen, 1998.

\(^{114}\)Ibid., 65, my emphasis.
CHAPTER 6. HUMAN RIGHTS IN THE LAW OF PEOPLES 161

studies,115 challenge interpretations that liberal democracy is foreign to either the Arab or Muslim world.116 Instead, they claim that liberal democratic norms have long been part of Arab and Muslim societies, pointing out historical examples such as how “the earliest Caliphs after the Prophet Muhammad were chosen through an ancient electoral college” and that “earlier Muslim kingdoms devised systems of pluralism, such as the millet system under the Ottoman Empire guaranteeing autonomy for minorities.”117 Martha Nussbaum argues: “Some of [Rawls’s] arguments rest on a very shaky historical understanding... Rawls typically presents liberalism, and political liberalism in particular, as a response to a peculiarly Western historical experience.”118 “It is actually mistaken of Rawls to suggest,” Nussbaum argues, “that his core ideas are parochially Western, even in the sense of their historical origin.”119

Even some of the more specific ideas in Rawls’s conception have deep roots in other cultures. For example, ideas of religious toleration and reasonable pluralism were worked out in India from at least the edicts of Ashoka in the 4th century BC, and a highly sophisticated set of doctrines of political respect for religious difference was elaborated during the Moghul Empire in the 15–16th centuries—well before ‘our’ invention of such ideas.”120

115 For example, Mottahedeh, 2001; Ibrahim, 2006
116 Although these terms are often linked together because the Muslim world encompasses much of the Arab world, Islamic politics of course extend beyond Arab countries and provinces and are prominent in Iran, Indonesia, Pakistan, Afghanistan, Russia (Chechyna), Kazakhstan and many other regions of the world.
117 Mazrui, keynote address given at the Fourth Annual Conference of the Center for the Study of Islam and Democracy in Washington DC, May 16, 2003. Interestingly, Rawls also points to the case of the Ottoman empire: “The doctrine I have attributed to the rulers of Kazan was similar to one found in Islam some centuries ago. (The Ottoman Empire tolerated Jews and Christians. Ottoman rulers even invited them to come to the capital city of Constantinople)” (Rawls, The Law of Peoples, 76n).
118 Nussbaum, Politics, Philosophy, and Economics 1 (2002), 287.
119 Ibid., 289.
120 Ibid.
CHAPTER 6. HUMAN RIGHTS IN THE LAW OF PEOPLES

West/non-West binary as problematic

Nussbaum is certainly correct in pointing out that “the shop-worn conceptual division of the world into Western’ and non-Western”\(^{121}\) does not reflect the reality of pluralism. Earlier in this chapter, I suggested that Rawls’s binary classification of societies into liberal and nonliberal peoples obfuscates the ways that even the decent nonliberal peoples he describes are democratic and liberal.

Nussbaum points out that many of us, and many of our societies, have brought together and continue to dabble in different traditions, that “all human beings are ingenious borrowers of ideas.”\(^{122}\) Certainly, people have been socialized and attracted to different and even competing values and traditions, and seek to reconcile them in complex ways within their personal and political lives. Yet I am not convinced that if Rawls’s discourse or thought experiment reflected a more complicated world rather than an abstract, simplified one, then his argument or resulting principles of justice (the Law of Peoples) would be significantly different. Rawls’s abstract arguments may rely on simple binary categories, but that does not mean that the more complicated principles that his constructivist approach develops are irrelevant to a more complex real world. In this sense, although the way Rawls has framed his project is problematic for reasons that I have mentioned throughout this dissertation, I do not believe his abstraction to simplified binary categories suggests that his argument rests on a “shaky historical understanding.” The key interest for Rawls is to ensure the Law of Peoples is acceptable from liberal and decent nonliberal points of view. Whether or not real-world societies or individuals for that matter fit tidily into these categories seems irrelevant to this outcome. The Law of Peoples aims to be acceptable from the perspective of different political doctrines.

\(^{121}\) Nussbaum, Politics, Philosophy, and Economics 1 (2002), 287.
\(^{122}\) Ibid., 288.
An abstract, simplified conception of the person

The individualist approach developed in this dissertation accepts that people grow up within a wide range of societies and have been part of liberal and nonliberal, western and eastern, northern and southern histories and everything in between. Individuals have always straddled different political worlds and struggled to reconcile their competing aspirations for political life; in a globalized world, this has only intensified. By using abstract categories of liberal and nonliberal individuals in my political conception of the person to refer to individuals who endorse liberal and nonliberal public ideas of justice, I am not suggesting that people themselves fit neatly into these categories. In spite of very different political socialization, for example, a conservative Christian living in the United States who wants US law and foreign policy to reflect Christian values may have more in common with a religious Muslim cleric in Iran who has similar political aspirations for Islam than with her secular American neighbour. I do not assume that those in the west are ardent liberal democrats and those living in the east or in the Arab or Islamic world are not. Although I do assume that individuals have been socialized to accept certain political norms, I also accept that this socialization does not take place in isolation, and that individuals filter and buffer this socialization with their own faculties and diverse experiences. What matters to my individualist approach is that individuals around the world, in all societies, accept a wide range of political doctrines, and aspire for them to be reflected in their public institutions. When developing a constructivist approach to international justice, however, I cannot model multi-layered, confused, or undecided individuals. Even so, I am not convinced this limitation weakens my case for the resulting principles of justice that individuals (as conceived here) can (by design) hold and accept.
CHAPTER 6. HUMAN RIGHTS IN THE LAW OF PEOPLES

Should we care about flawed interpretations of religion, culture and history?

Perhaps Nussbaum is suggesting that Rawls’s argument rests on a shaky foundation because if we accept democracy-friendly, tolerance-oriented interpretations of Islam, or of Arab civilization (and its political history), or other nonliberal political doctrines, it follows that the Law of Peoples should not work so hard to be acceptable to individuals who adhere to flawed interpretations of their own political histories. In other words, human rights may not be “parochially liberal” in the way Rawls assumes, and therefore rights that actually transcend different political doctrines and histories should not be compromised on the grounds of cultural sensitivity. Individuals with cultural or religious opposition to human rights either hold distorted conceptions of traditions, or they are using opposition to the “west” for strategic political purposes.

Rawls is reluctant to engage in the analysis required to reach a definitive interpretation of expansive and diverse doctrines and histories and likely believes that such a quest is illusive. Resolving debates concerning whether or not liberalism and democracy are fundamentally European, western, male, Anglo-Saxon, etc., is not critical to Rawls’s argument for toleration. Political liberalism does not engage in philosophical or historical debate over legitimacy and interpretation of doctrines upon which, at least in Rawls’s view, people will be long divided.\textsuperscript{123} What matters is what individuals “here and now”\textsuperscript{124} understand as right and wrong for their public life.

\textsuperscript{123} As discussed earlier in this chapter, Rawls is interested in historical facts and wants his theory to be cognizant of them. However, in my view, these facts need to be, in his words, as “trivial”, basic and innocuous as possible. Therefore, I do not believe he would consider the question of authenticity in religious–political doctrine to be something that can be taken easily as fact.

\textsuperscript{124} Rawls, \textit{The Law of Peoples}, 12.
What matters is what individuals are prepared to endorse

Of course, there is also disagreement about whether cross-cultural and cross-ideological consensus in human rights norms is greater than Rawls admits. Charles Beitz, for example, suggests that “the parochialism assumption is questionable on empirical grounds.”\textsuperscript{125} “It is hardly clear,” he argues, “that there is greater agreement in modern democratic societies than elsewhere on those elements of the conception of the person which animate the original position.”\textsuperscript{126} Yet, even a rather cursory look at political doctrines held around the world suggests otherwise. Islamic governments, do not subscribe to the notion of limited government familiar to liberal democracies. Religious, family, and moral values which liberal democracies often try to isolate from government influence are firmly within the public domain in many if not all Islamic states.\textsuperscript{127} Moreover, we cannot assume that members of these societies all endorse a separation of church and state, and other aspects associated with political freedom and equality as it is commonly understood in liberal democracies. Although most if not all of these states would have to undertake significant reforms to qualify for Rawls’s decent peoples status, the fact remains that many individuals around the world hold nonliberal and nondemocratic aspirations for public life and it is not clear, particularly from a political liberal view, that this is irrelevant to the question of how we should go about theorizing on international justice.

Challenges to liberalism and democracy are not of course limited to the Arab or

\textsuperscript{125}Beitz, \textit{Journal of Philosophy 80} [1983], 596.
\textsuperscript{126}Ibid.
\textsuperscript{127}The League of Arab States, for example, which is comprised of twenty-two countries, sees Islam as permeating all aspects of life in the Arab world: “Islam, faith of the vast majority of Arabs, is more than just a religion; it is the focal point of Arab society for Muslims and non-Muslims alike, permeating their culture at every level—political, social, and economic” (http://www.arableagueonline.org). The Organization of the Islamic Conference, which has fifty-seven member countries, aims to “speak with one voice to safeguard the interests and secure the progress and well-being of their peoples and of all Muslims in the world” (http://www.oic-un.org).
CHAPTER 6. HUMAN RIGHTS IN THE LAW OF PEOPLES

Muslim world.\textsuperscript{128} A debate prevalent in the 1990’s concerned whether “Asian values” exist and are distinct from liberal democratic norms, or whether political leaders throughout Asia were simply using a cultural-philosophical justification to hold on to autocratic political power. In June 1993, thirty-four Asian and Middle Eastern states adopted The Bangkok Declaration\textsuperscript{129} in preparation for the World Conference on Human Rights which emphasized that rights are to “be encouraged by cooperation and consensus, and not through confrontation and the imposition of incompatible values.”\textsuperscript{130} “National sovereignty and territorial integrity” must be protected, the Declaration stated, as well as respect of “non-interference in the internal affairs of States, and the non-use of human rights as an instrument of political pressure.”\textsuperscript{131} Human rights, it goes on to say, “must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds.”\textsuperscript{132} Distinctive “Asian values” were thought to be loyalty to the state, the family, and the corporation, even when this calls for great personal sacrifice, and a strong emphasis on society’s stability, prosperity and achievement rather than individual freedom and autonomy.\textsuperscript{133}

\textsuperscript{128} Although Rawls’s example of Kazanistan suggests that at the time of writing he had religious, and likely Islamic states in mind, which make up the largest number of religious states at the time he was writing (as well as today), he is open to a wide range of possibilities being accepted as decent nonliberal. He spends some time detailing the political structure of a hierarchical peoples that isn’t democratic but allows dissent and a procedure of consultation, and yet states: “the other kind of decent people is simply a category I leave in reserve, supposing that there may be other decent peoples whose basic structure does not fit my description of a consultation hierarchy, but who are worthy of membership in the Society of Peoples.” (Rawls, The Law of Peoples, 63).

\textsuperscript{129} The full text of the Bangkok Declaration is available at http://law.hku.hk/lawgovtsociety/Bangkok\%20Declaration.htm.

\textsuperscript{130} Preamble, The Bangkok Declaration.

\textsuperscript{131} Article 5, The Bangkok Declaration.

\textsuperscript{132} Article 8, The Bangkok Declaration.

\textsuperscript{133} There is evidence that some of these so-called particularistic values have been reflected in law. Article 49 of the Chinese Constitution for example stipulates that parents who are unable to support themselves have the right to be supported by their children who have come of age. See, for example, Chan, 235.
Similar to the debate concerning Islam’s relationship to liberalism and democracy discussed above, the view that liberal democratic norms are foreign and problematic for Asian cultures and societies has been challenged by many scholars. Amartya Sen has surveyed historical scholarship and religious teachings of many Asian traditions and offers countless examples to situate liberal and democratic ideas within the Asian culture and political history. Buddhist philosophy, Sen claims, which is firmly rooted in the political history of South Asia, as well as Southeast Asia, China, Korea, Japan and Thailand, “not only emphasized freedom as a form of life but also gave it a political content.” Sen also suggests that there are strong liberal democratic values within Confucian philosophy. Although Confucius “did believe in order,” Sen explains, “he did not recommend blind allegiance to the state. When Zilu asks him how to serve a prince, Confucius replies, “Tell him the truth even if it offends him”—a policy recommendation that may encounter some difficulty in contemporary Singapore or Beijing.”

 Debunking and complicating over-simplified or prejudiced characterizations of political cultures and traditions is important. However, I suspect that most if not all of the world’s political cultures have a history that includes experimentation and attachment to competing values—from tolerance to intolerance, democracy to authoritarianism. This is not to say that they all political systems have been equally tolerant or democratic, but rather that most have been to some degree. In this sense, Sen and Nussbaum are guilty of some of the simplification they charge Rawls with. Depending on how one wishes to characterize the political values of a tradition, different variables and anecdotes can be sorted and selected from its texts to support a certain characterization. There is a range of stories and values available for the taking. As the intellectual battles over history continue, and debates concerning the

---

135 Ibid.
CHAPTER 6. HUMAN RIGHTS IN THE LAW OF PEOPLES

characterization of philosophical and religious doctrines persist, decisions need to be made about the human rights that should be prioritized in international law and practice. When he wrote *The Law of Peoples*, Rawls believed there was far from an international consensus among “peoples as they are”\(^\text{136}\) regarding the universality of certain human rights norms. Similarly, in my individualist framework, what individuals believe matters, irrespective of whether or not it is based on revisionist history. Ten years have passed since Rawls published *LoP* but pluralism remains at least as significant now as it was when Rawls formulated his international political theory. We do not have a world unified by liberal democracy.\(^\text{137}\)

Rawls’s critics have asked why it matters what individuals actually currently think and believe, especially if these rather beliefs are antithetical to liberal values. “The Rawls of *LP* fails to heed Kant’s injunction in *Perpetual Peace* not to end up tailoring a political morality to the concerns of those currently in power.”\(^\text{138}\) “One finds no great concern to stabilize every existing order, nor should one. There is no reason to mourn the destruction of unjust social and political orders.”\(^\text{139}\)

My response to these concerns was articulated in chapters three and four of this dissertation, where I justified my political liberal conception of the person for international justice theory. It comes down to what political liberals are comfortable describing as unjust, and on what grounds, in the absence of metaphysical or episte-


\(^{137}\)My corroboration of Rawls’s assumption of the fact of global pluralism does not cover all ideological and religious pluralism in public life. Above, I focus on Islamic and Asian states that have rejected certain liberal democratic rights on religious or ideological grounds, in part because of the scholarship that has worked to debunk the idea that liberal democracy is parochial or western. Other interesting cases include Bhutan and Israel (as religious states, at least in many respects), Cuba, Vietnam, Laos, and China that officially espouse various communist ideologies. I do not assume that all individuals support the public life of these societies, nor do I assume that they do not. I assume that many individuals support a wide range of public ideologies for their political life, including those mentioned here, and seek an approach to international justice that enables individuals to be governed by institutions, both nationally and internationally, that they endorse to the extent possible.


\(^{139}\)Moellendorf, *Pacific Philosophical Quarterly* 77 (1996), 147.
 CHAPTER 6. HUMAN RIGHTS IN THE LAW OF PEOPLES

mological argument and given the reality of pluralism.

**Contested public values**

This dissertation accepts that public values are generally contested, and that when a state or people speaks with one voice, this masks many divided opinions about what the public idea of justice should be and how it should be translated into government policy. I agree with Beitz’s supposition that, “When we are concerned about a violation of human rights in another society, we are usually not confronted with a situation in which people are unanimous in endorsing standards of conduct that justify the behavior of concern to us. The picture of a “we” who believe in human rights and a “they” who do not is badly misleading.”

While it is true that many societies and states are divided over the interpretation of human rights norms and other priorities, it is not the case in LoP, at least not so in the peoples Rawls describes. In Rawls’s idealized “peoples,” members are bound together by common sympathies and a generally shared belief in public values (although they do have minorities). In order to be an equal member of the international community, Rawls’s framework suggests that a society must have largely resolved any internal tensions over the substantive content of its public life and character of its public idea of justice in a way that, as much as possible, allows individuals to be governed by a public idea of justice they endorse. In order to be considered well-ordered peoples in LoP, societies must have effective domestic governance and they have largely addressed problems that lead to conflict, factionalism, and migration. As Rawls explains,

> There are numerous causes of immigration. I mention several and suggest that they would disappear in the Society of liberal and decent Peoples.

---

CHAPTER 6. HUMAN RIGHTS IN THE LAW OF PEOPLES

One is the persecution of religious and ethnic minorities, the denial of their human rights. Another is political oppression of various forms, as when the members of the peasant class are conscripted...as mercenaries in...dynastic wars for power and territory. Often people are simply fleeing from starvation...Yet famines are often themselves in large part caused by political failures and the absence of decent government...The problem of immigration is not, then, simply left aside, but is eliminated as a serious problem in a realistic utopia.\(^{141}\)

In states where there is significant divisiveness, for example, over the secular vs. religious character of public life or what is sometimes referred to as moderate vs. conservative (traditional) values, political liberalism suggests that—to the extent possible—institutional arrangements should enable individuals to live together with public institutions they can all endorse. If, due to incommensurability or other reasons, these arrangements cannot be found and sufficient avenues for accommodation and compromise have been explored, LoP supports the right of exit.

Although LoP is not explicit on this point, in my view LoP would permit other peoples as well as international institutions to help resolve internal divisions and conflicts in others societies, in a way that abides by the spirit of reciprocity suggested by the Law of Peoples. Places that are facing factionalism, social unrest, and lack of trust or support in government would not be recognized as peoples and so would not enjoy the privileges of this status (including a strong claim to sovereignty). LoP suggests that alternative arrangements (such as devolution of certain policy-making capacity to more local government structures), allowance for autonomous governing bodies within a state, or even separation may be justified if they are necessary for people may not subscribe to the values of the society that they are born into (even if it does satisfy the peoples standards laid out). Moreover, they will likely (and certainly do often) wish to migrate to wealthier places to secure a better life and more opportunities for themselves and their families. On what grounds should they not be allowed to do this (Carens, 2009)? I take up these issues in chapter seven when I discuss primary goods.

\(^{141}\)Rawls, The Law of Peoples, 9. Joseph Carens has rightly asked of Rawls's account—even if we have a realistic utopia, why would individuals' interests in migrating stop there? As he points out, people may not subscribe to the values of the society that they are born into (even if it does satisfy the peoples standards laid out). Moreover, they will likely (and certainly do often) wish to migrate to wealthier places to secure a better life and more opportunities for themselves and their families. On what grounds should they not be allowed to do this (Carens, 2009)? I take up these issues in chapter seven when I discuss primary goods.
CHAPTER 6. HUMAN RIGHTS IN THE LAW OF PEOPLES

allowing individuals to be governed by institutions they accept.\textsuperscript{142} Note here the end-goal suggested by $LoP$ is not to push for liberal democratic institutions per se, but rather to work towards resolving disputes, finding innovative compromise, and promoting a governing structure that most members can accept (within certain constraints, though not ones that are parochially liberal). Therefore, any foreign intervention, pressure, or involvement would need to conform in rhetoric and practice to this end.

6.4.2 Are decent peoples possible?

Rawls’s decision to exclude the human rights he does in $LoP$ relies on two key assumptions:

1. these rights are unnecessary for individuals to endorse a government, to participate in public life and to ensure their government is accountable to its members;

2. these rights are unnecessary for ensuring the basic human rights specified by $LoP$ are secured.

In the first part of this chapter, I suggested that $LoP$ includes more rights than is often thought. The main variables that Rawls omits from his criteria for decency that are associated with liberal democracy are those related to:

1. limited government and the separation of church and state

\textsuperscript{142}A similar point is made, I believe, in Reidy, endnote 14. There he mentions that “One advantage of Rawls’s approach here is that it allows us to speak straightforwardly of the Palestinian or Kurdish or Navajo peoples as entitled, as peoples, to just treatment within the global order. While none of these peoples enjoys institutional embodiment in the form of a state, all have sufficient institutional embodiment, as well as the requisite moral capacities, to qualify as peoples in Rawls’s framework.” Setting aside the issue of whether or not these groups would meet the moral standards required to be considered peoples, I do agree that Rawls’s framework supports self-determination of those living within states not necessarily to have a state of their own in any case but at the very least to be governed by laws and policies in both the domestic and global orders they can accept.
CHAPTER 6. HUMAN RIGHTS IN THE LAW OF PEOPLES

2. public equality (between women and men, as well as different religious groups, ethnicities, races and classes

3. provisions for elections and the idea of one person, one vote

4. freedom of speech and association (permitted in decent societies but not to the degree common in liberal democracies).

Below I explore whether the rights that Rawls excludes are necessary for his description of a decent (or liberal) peoples to be coherent. I examine whether more human rights need to be protected in order to have a government that is endorsed and accountable to its people (which I interpreted decent regimes to largely be), and whether the protection of the basic human rights that Rawls specifies requires more expansive rights (such as certain freedoms of expression) to be safeguarded.

Rights necessary for political participation and government accountability

As has been discussed, a decent society does not have a liberal or fully democratic public idea of justice, and yet members of a decent people (including women and minorities), generally subscribe to their public life, feel connected to their society and each other, and are being heard and taken seriously by their governments. Rawls also believes that the political provisions for decency are sufficient to allow a society to be dynamic. “The common good conception of justice held by decent peoples may gradually change over time, prodded by the dissents of members of these peoples.” Kazanistan, for example, “has been changed from time to time to make it more sensitive to the needs of its people and the many different groups represented by legal bodies in the consultation hierarchy.”

---

143For an interesting discussion of whether there are societies that come close to meeting the decency standards, see Doyle, 2006.
145Ibid., 77.
CHAPTER 6. HUMAN RIGHTS IN THE LAW OF PEOPLES

gradual changes, and this is no less true of decent societies than of others. Liberal peoples should not suppose that decent societies are unable to reform themselves in their own way.”

“Decent societies should have the opportunity to decide their future for themselves.”

In order to make the argument that more rights need to be recognized by LoP if decent peoples are to be as responsive and dynamic as Rawls suggests, the case needs to be made that the specific liberal democratic rights left out are necessary for sufficient representation, accountability, and responsiveness. This inevitably involves making the bold claim that individuals who do not subscribe to these omitted political norms for religious or philosophical reasons cannot have a political structure that mirrors their political beliefs and values. I believe that this has not been shown.

To those who are skeptical that individuals could affect change or influence government in the absence of liberal democratic rights and protections that Rawls excludes from his decency criteria, there are examples of this sort of political responsiveness and change even in the flawed nonliberal and nondemocratic societies that exist today. In Kuwait, for example, which many would consider to be nonliberal and nondemocratic state, a coordinated campaign by Kuwaiti women, activism on the part of civil society groups, and public demonstrations in front of government offices, led to Kuwaiti women gaining full political rights, including suffrage in May 2005. In an interesting twist to this story, the Emir of Kuwait (which is the head of state, and a hereditary post) issued a decree in 1999 giving voting rights to women which was

---

147 Ibid., 85.
149 Even in Saudi Arabia, arguably one of the most repressive religious states and far from a decent people, King Abdullah’s decisions in 2009 to appoint Norah al-Faiz as Deputy Minister for Women’s Education (the first woman minister in Saudi history) and to replace both the Minister of Justice (head of religious policy) and Minister of Education with more reform-minded leaders appear to have been taken, at least in part, in response to agitation among the public for further reforms. (Cheney)
overturned by the elected Parliamentary officials (those in opposition included some
conservative tribal leaders, some Islamists, as well as some liberals who supported
women’s right to vote but opposed the Emir’s power to do it through decree.)¹⁵⁰ In
Vietnam and Laos, two communist countries, private—public dialogue, according to
a recent impact assessment, led to significant legal and government reforms related to
business climate. “The PPDs [private—public dialogues]...opened communication
and advocacy channels where before they did not exist...allowing reform issues to
be considered, accelerated and successfully processed by governments.”¹⁵¹

By referring to these examples above, I am not justifying these governments or
suggesting that the freedoms protected within these societies are sufficient. I mention
them only to illustrate that it is possible for political change prodded by individuals
and civil society to occur within nonliberal and nondemocratic contexts (and likelycontexts that have less provisions to do so than the the decent peoples of LoP’s
framework.) The reason I am doing this is not to defend nonliberal or nondemocratic
governments or societies or doctrines which I personally think are unjust. My views
in this respect do not have moral significance for the question at hand which is: what
sort of principles of international justice are moral in light of the fact that others
certainly think nonliberal or nondemocratic political doctrines are in fact just? I
specify ideals and values with respect to freedom and equality that are not parochially
liberal but that can serve as foundational for a theory of international justice. What
the examples above aim to show is that nonliberal and nondemocratic societies cannot
be assumed to be oblivious, unresponsive or closed to public opinion, requests and
activism. This matters because this dissertation claims that individuals who endorse
nonliberal or nondemocratic political doctrines can be considered free if they live with
political institutions they accept, and if these institutions, while still nonliberal and

¹⁵¹ Herzberg/Sombosat, 2.
nondemocratic, are capable of (and do) respond to the changing needs and interests of individuals.

One might challenge this line of argument stating that things are always possible depending on how 'possible' is understood. To take an extreme case to clarify the point, it may be 'possible' to change a government if one is willing to risk one's life or security to do so. However, in the decent peoples Rawls describes, this is not the sort of possibility Rawls has in mind. The examples above of Kuwait, Vietnam and Laos suggest that nonliberal and nondemocratic societies may adjust to respond to public sentiment, and not just when individuals have risked their lives to be heard.\textsuperscript{152}

**The connection between basic human rights and liberal democracy**

More attention has been given in the literature on LoP to whether liberal democratic rights are necessary to protect even the basic human rights that Rawls includes. Rawls invites this question in the following passage:

> Should the facts of history, supported by the reasoning of political and social thought, show that hierarchical regimes are always, or nearly always, oppressive and deny human rights, the case for liberal democracy is made. The Law of Peoples assumes, however, that decent hierarchical peoples exist, or could exist, and considers why they should be tolerated and accepted by liberal peoples as peoples in good standing.\textsuperscript{153}

Some critics have argued that decent peoples cannot exist due to the linkages between liberal democratic rights that LoP excludes and the basic rights that it aims

\textsuperscript{152}In the decent peoples Rawls describes, it is implied that the security, as well as other rights and freedoms of dissenters is protected (Rawls, *The Law of Peoples*, 72). Rawls’s argument that decent regimes do respond to dissent and allow it, however, would have benefited from an explicit acknowledgement of the protections that must be afforded to those with dissenting and oppositional views. I try to have a more thorough acknowledgement of this in the idea of freedom discussed in this dissertation (in chapter four) and to include it within my conception of primary goods (chapter seven).

\textsuperscript{153}Ibid., 79.
to protect. Andrew Kuper, for example, argues that the “extensive interconnections between political freedoms and the understanding and fulfillment of economic needs”\(^\text{154}\) justify the protection of liberal democratic rights. To corroborate his argument he refers to the work of Amartya Sen, who has demonstrated that “non-democratic regimes are in fact almost unfailingly detrimental to human rights and well-being.”\(^\text{155}\)

There are three significant problems with Kuper’s argument. First, it requires further analysis of the empirics that Sen references. The question is not whether glaring violations in basic human rights always happen in nondemocratic states (the answer to this question is irrelevant for Rawls’s argument), but rather whether violations in basic human rights always happen, or almost always happen in states that would satisfy Rawls’s criteria for decency. Kuper needs to show that even with the level of political participation, representation, and dissent that Rawls requires for decency, basic human rights are violated. To put another way, he needs to argue that the states in Sen’s research would be considered decent (rather than outlaws or burdened per Rawls’s framework). Second, Kuper makes a logical error. Even if we accept (as I do) that basic human rights tend to be more violated in nondemocratic states, this does not mean that all, or almost all, nondemocratic states violate or would violate basic human rights. A rough comparative study of the social indicators in say Cuba or Saudi Arabia (nondemocratic and nonliberal) vs. fledgling democracies in sub-Saharan Africa will show that on many basic human development indicators, democracies do not always beat nondemocracies. One reason that scholars have been interested in comparing and contrasting China and India’s economic development (a topic Sen himself has explored) is because they have made similar progress (and on some key indicators, China has progressed more rapidly) despite the fact that India


\(^{155}\) Kuper, *Political Theory 28* [2000], 663.
Finally, I believe that scholars should be careful at relying on an empirical interconnections argument for defending political rights. This is because when this connection drops away, say in the case of nondemocratic governments that protect their members’ basic rights, I expect that liberals will want to have an argument to defend certain political rights and freedoms. Rawls implies this in the beginning of *LoP*, where he suggests that “benevolent absolutisms” that “honor human rights” but deny their members “a meaningful role in making political decisions” are not considered well-ordered peoples in his framework. By rejecting benevolent absolutisms as decent, Rawls is rightly suggesting that political freedoms must be honoured for their own sake.

### 6.4.3 Liberal democratic rights as necessary for knowing if a society is decent

Another possible argument for more extensive liberal democratic rights is that they are necessary to know if a society is decent or not. If a government cannot be voted out of office, or if there is not a free press or free speech, how are we (as liberal peoples and others in the international community) to know what is really going on in these peoples?

I think two things can be said in response to this concern. First, this argument needs to fully explore opportunities that exist for gaining greater understanding of nonliberal and nondemocratic politics. Those who make this argument need to show that we cannot acquire the information we need to make sound judgments about another society within the decency constraints. Understanding a very different society requires substantial work, and the more different the other is, the more work is likely

---

required. Cultural and religious factors that are not well understood or easily accessed need to be considered. Researchers need to further understand political socialization and historical context, interpret another language, and read between lines that are not the same lines as one’s own political context. For this, area studies experts, historians, diasporas, refugees, and immigrants can be helpful for enabling understanding and helping establish the veracity of assumptions regarding oppressive politics.

This task may not be quite as daunting as it appears. Generally, governments are unsuccessful at hiding oppressive politics. Even in the most closed states in the world today, such as North Korea and Burma, there is an awareness of government repression and neglect. When individuals do not support their public idea of justice, there is often violence, incarceration of political prisoners and minorities, and rampant human rights abuses. Rarely is there ambiguity about corrupt elections and token political consultation and representation. The harder questions (such as how many Vietnamese, Chinese, or Cubans support their governments or communist ideology, or the level of support among Iranian or Saudi Arabian women for various tenets of Islamic law or a particular version of it) pose serious challenges for understanding others. I accept that this may be difficult or even impossible, but before arguing against toleration due to epistemic constraints, we should be confident that these epistemic constraints are in fact insurmountable.

I think it must also be asked whether the limits of toleration can rightly be based on the epistemic constraints of liberal peoples and the international community more broadly. Suppose there are some individuals who support nondemocratic regimes and public policies (e.g., a preference for religiously-appointed, unelected political leaders at least for some political offices)—how could these individuals convince others without relying on mechanisms that they do not support? It seems unreasonable that nonliberal peoples must adopt liberal political doctrines and policies in order for
liberals to be able to make proper assessments for their own foreign policy. If this need for knowledge should be one factor within an argument for toleration, than perhaps there should be a requirement (reflected in the criteria for decency and international law) that states admit foreign journalists and researchers and allow them to speak to the populace unhindered for the purpose of further understanding on-the-ground politics. Epistemic constraints should not require nonliberal societies to drop their political doctrines altogether.

For those who might claim, how are they to speak unhindered if they will be jailed after an interview with the foreign press for speaking out against the government? On this question, we need to make a distinction between decent peoples and the nonliberal and nondemocratic societies that readers likely have in mind. There is nothing in Rawls’s decency criteria to suggest that individuals would be penalized for speaking out against the government for its treatment of minorities, its violations of rights, its failure to allow adequate participation of members of society in government policy etc. A government cannot censor its public in order to retain its own power. It can censor its public based on values and norms that are widely shared—conceivably individuals would be free to say that they do not support their government or their society’s way of life but they would not be free to challenge the idea of public justice publicly. Of course, all of these restrictions cannot be arbitrary, but rather part of public law that by definition, members would generally endorse.

### 6.4.4 Rights as necessary conditions for social cooperation

As mentioned above, one reason Rawls appears to draw the line where he does when conceptualizing basic human rights is that he sees his list of rights as characterizing the necessary conditions for social cooperation. When these are not respected, “we
CHAPTER 6. HUMAN RIGHTS IN THE LAW OF PEOPLES

have command by force, a slave system, and no cooperation of any kind.”\textsuperscript{157}

Rawls is correct that a society that does not respect basic human rights is not a society of social cooperation. However, it is not clear that Rawls’s list of basic human rights offers a complete list of the minimum conditions for social cooperation. Standards for decency that Rawls does not classify as basic human rights may also be “necessary conditions of any system of social cooperation,”\textsuperscript{158} such as a certain degree of freedom for dissent and provisions for political participation and representation.

In my view there is a tension in Rawls’s human rights framework between his interest in reserving the term “human rights” for a “special class of urgent rights” and also using the term to describe the minimal requirements for social cooperation. This is because the freedoms and provisions necessary for social cooperation may not have the urgency of other human rights. Rawls may not wish to give an \textit{a priori} argument for intervention to protect political participation or freedom of speech, for example, but he does believe aggressive foreign intervention may be warranted to protect basic subsistence and security. Yet in my view, a certain degree of political participation and freedom of speech (which Rawls includes as standards of decency and not basic rights) is necessary for any society of social cooperation. Rawls’s conception of basic human rights does not adequately encapsulate the minimum criteria for social cooperation; his interest in reserving human rights for a special class of urgent rights that potentially warrant aggressive international response may hinder putting forward a fuller, more accurate account of the necessary standards for any society of cooperation.

The next chapter draws upon the analysis above of the limitations and strengths of Rawls’s human rights framework in \textit{LoP} to offer a conception of (individuals’) primary goods for political liberal international justice theory, including a complete

\textsuperscript{157}Rawls, \textit{The Law of Peoples}, 68.
\textsuperscript{158}Ibid.
list of human rights.
Chapter 7

Specifying Global Primary Goods, Including Human Rights

This chapter specifies a set of primary goods—which includes a complete list of human rights—as part of the proposed thought experiment for working out principles of international justice. This completes my exposition of an individualist thought experiment designed to produce these principles from a political conception of the (global) person.

7.1 Primary goods and the political conception of the person

7.1.1 The meaning and purpose of global primary goods

As discussed in chapter two, Rawls introduces primary goods into his thought experiment because of his concern that representatives behind a veil of ignorance will have too little guidance for proposing principles of justice. Primary goods are “the considerations that move the parties in the original position.”¹ They are what in-

¹Rawls, Political Liberalism, 307.
CHAPTER 7. SPECIFYING GLOBAL PRIMARY GOODS

Individuals are assumed to care about, what they want, given what we know about them—given the “conception of the person worked out in advance.” Rawls describes primary goods as specifying the “social requirements and the normal circumstances of human life in a democratic society.” “Primary goods are singled out by asking which things are generally necessary as social conditions and all-purpose means to enable persons to pursue their determinate conceptions of the good and to develop and exercise their two moral powers.” Primary goods are important to specify because “an effective political conception of justice includes...a political understanding of what is to be publicly recognized as citizens’ needs and hence as advantageous for all.” “With this account of primary goods,” he states, “we have answered our main question...namely, how, given the fact of reasonable pluralism, a public understanding is possible concerning what is to be counted as advantageous in matters of political justice.”

In a similar way, the list of primary goods in the approach to international justice developed by this dissertation specifies what we might understand as the “social requirements and the normal circumstances of human life” though not strictly within a democratic society. These are goods that are important for the full development and exercise of the two moral powers (discussed in chapter three), as well as for individual freedom (as specified in chapter four) of all persons irrespective of the political doctrines that they may hold.

Of course, the list here will not be satisfactory from all perspectives; in a similar way, the political conception of the person put forward in chapters three and four does not model all individuals. “It is neither possible nor just to allow all concep-

---

3 Ibid., 307.
4 Ibid.
5 Ibid., 179.
6 Ibid., 187.
7 Ibid., 307.
tions of the good to be pursued.”

The specifications made so far specify a limit of toleration: those who are not modeled by the conception of the person, or who do not have the primary goods listed below will not regard the principles of justice resulting from this thought experiment as acceptable from their point of view. When proposing principles of international justice, representatives are not required to limit themselves to rationale that will be acceptable from the perspective of all individuals, but only those who possess the two moral powers in the way described by this project. Intolerance of unreasonable and irrational political views is a consequence of the specification of a person, including of their primary goods. The idea of a constructivist approach is to clearly specify the ideals underlying the theory, to make them vivid and transparent, and to consider what our commitment to these ideals suggests for more complex questions concerning justice, including the limits of liberal toleration.

7.1.2 Advantages of this approach over LoP

The political liberal conceptualization of human rights given in this dissertation has three advantages over Rawls’s in LoP. First, I include rights and freedoms as primary goods that Rawls does not include as basic human rights. In my individualist framework, these rights are listed as primary goods that all individuals have based on a political conception of the person. My approach can include more primary goods and human rights because, unlike Rawls, I have not given human rights a special status for international law and practice. Here, I am interested in specifying the primary goods, including human rights, that can be drawn upon by representatives in a global

---

8 Rawls, Political Liberalism, 187.

9 By intolerance, I am referring to the abstract political liberal sense that the principle of reciprocity is extended only to (and the principles of justice only need to be acceptable from the perspective of) those modeled by the conception of the person.
original position to come up with a Law of Peoples that is explicitly based on the individual. Therefore, at this stage of the argument I am using the terms ‘rights’, ‘liberties’, and ‘goods’ to refer to variables that require protection or fulfillment if an individual is to be free (in the way described in chapter four) and able to “pursue their determinate conceptions of the good and to develop and exercise their two moral powers.”

Whether or not the violation of human rights potentially warrants intervention or force is not determined at this stage of my argument. Instead, this question should be considered by using the thought experiment developed in this dissertation: would individuals as I have conceived of them with the primary goods I specify give human rights this special status? Which rights would they put into the special class of urgent rights potentially warranting international intervention? Would they see such a category as in their interest? At this stage of the project, however, my interest is to specify primary goods, including human rights, and therefore many of the decency standards of LoP are listed alongside what Rawls would consider basic human rights.

Second, my framework for human rights gives clear moral primacy to the individual as the fundamental unit for political liberal theorizing. The reason why certain (liberal democratic) human rights are not considered universal is because they do not accord with the political conception of the person given in chapter four. Below, I identify goods that transcend different political ideologies by deducing them from a conception of the person I have given in advance—a model of reasonable individuals that endorse different political ideologies and have grown up in diverse political contexts around the world.

Third, this dissertation offers a complete list of human rights for political liberal international justice theory. As mentioned in chapter six, Rawls did not see LoP as giving a full list. The list below aims to be a full account of primary goods that respect

---

10 Rawls, Political Liberalism, 305.
the constraints of political liberal theorizing. For example, with respect to what is often referred to as social and economic rights, my list of primary goods includes access to education and health services, which are both neglected in Rawls’s LoP. I believe provisions for both education and health care are necessary for individuals to exercise their two moral powers, to be free in the manner I discuss (in line with my conception of the international person), and to pursue their conception of the good. They are also necessary to enable a society to be self-determining. If members of a society are to “decide the future for themselves,” surely they cannot be suffering from disease and will require a certain level of literacy and education.

7.2 A list of (global) primary goods

As evident from Rawls’s specification of primary goods in his domestic theory, as well as mine for international theory, the deduction from a conception of the person is not scientific. An idea of the two moral powers, as well as other components of the conception of the person do not offer a self-evident or objective trajectory to all of the primary goods listed.

The primary goods below are specified by drawing upon the political conception of the person in chapters three and four, Rawls’s basic human rights conception in LoP and my analysis of it in chapter six, Rawls’s list of primary goods in his domestic theory, as well as broader human rights scholarship including international declarations and covenants on human rights. The list of global primary goods specifies what can be publicly recognized (for the public reason of international justice theory) as the needs of individuals for the purposes of working out political liberal principles of international justice. While I do draw upon the array of sources listed,

---

the specification aims to be as closely connected to the political conception of the person outlined in chapters 3 and 4 as possible; I determine what about these sources is relevant to the task at hand based on the global conception of the person offered by this project. The index here does not necessarily include what many people most want and value judged by their particular political doctrines and beliefs. As Rawls explains in reference to his domestic theory: “Even if in most cases the index does not approximate very accurately what many people most want and value as judged by their comprehensive views, primary goods will surely be regarded by all, or nearly all, as highly valuable in pursuing those views.” Similarly, the list here aims to express what can be regarded as important for having the two moral powers—a capacity for a sense of justice and a capacity to be rational—as well as being free in the way described by this project. These are valuable goods for pursuing and endorsing a wide range of political doctrines.

Women are assumed to have the primary goods specified. What is not assumed in the original position (evident from the primary goods), however, is that all women desire, or should desire for their own good, a public idea of justice that gives them the same rights and obligations as men. This does not mean that religious or what are often considered traditional or conservative public ideas of justice are considered just from a political liberal point of view. Instead, I accept that women (and men) may endorse these ideas of justice, and this attachment and connection has moral significance. However, if all persons are to be able to develop and exercise their two moral powers, and to pursue their different conceptions of the good, specific measures and principles for international justice must work to address the particular challenges

---

12My objective is to offer a complete and well-justified list. However, I have little doubt that this list could be better substantiated (the scholarship pertaining to each article is quite extensive), and is incomplete. A treatise could be written on each article below, and I expect that I have likely left something out in spite of my efforts not to do so.

CHAPTER 7. SPECIFYING GLOBAL PRIMARY GOODS

faced by women and girls.\textsuperscript{14} Representatives in the original position must take into consideration the fact that women and girls have distinctive vulnerabilities due to their sex and gender. For example, to ensure the security and health of women and girls are protected (a primary good), there needs to be specific attention to the issues they commonly face simply because they are female, such as domestic abuse, sexual violence, and maternal mortality.\textsuperscript{15}

1. The “right to life (to the means of subsistence and security)”\textsuperscript{16}

(a) Subsistence:\textsuperscript{17} All individuals require safe air, food and water, basic shelter and adequate clothing.

(b) Right to basic education. Individuals should have access to educational resources to learn the skills necessary for survival, health, citizenship and productivity. To support citizenship, this must also include an education on one’s government, public values, political history, rights and obligations.

(c) Health: Environmental conditions, water and sanitation systems, public health measures and available health services must give individuals excellent chances of surviving childhood and childbirth, achieving physical

\textsuperscript{14} The very young, the very old, those with disabilities, etc. also face specific barriers and vulnerabilities, that need to be acknowledged in the thought experiment for developing principles of justice.

\textsuperscript{15} I discuss how the proper influence of these issues on principles of international justice might be facilitated by the thought experiment I propose in chapter 5, section 5.2.


\textsuperscript{17} Although Rawls does include a right to subsistence on his list of basic human rights, it is not clear that he has in mind rights to health and education as part of subsistence. In a footnote, Rawls suggests that he defines subsistence as “minimum economic security,” and mentions that he accepts Henry Shue’s interpretation of subsistence rights as basic (Ibid., 65n). However, Shue has defined subsistence as unpolluted air, unpolluted water, adequate food, adequate clothing, adequate shelter and minimal preventative health care. It is not clear if Rawls is including these variables in his right to subsistence. For the specification of subsistence rights, I draw upon James Nickel’s discussion of social rights, which he terms the “Vance Conception” because it was advocated by former US Secretary of State Cyrus Vance (Nickel, Making Sense of Human Rights, 138–142). Also it is important to note here, especially given its possible influence on questions of distributive justice in the face of global inequality, Rawls’s is concerned with “absolute” poverty rather than “relative” poverty (Bertoldi, 85).
and mental competence and living a normal lifespan.\footnote{Of course, here there are a number of items to consider in more detail, and many of them are controversial. What is a “normal lifespan”? When should government intervene in individual health? (For example, should certain unhealthy products be taxed heavily in order to cut down on obesity and cancer?)} Access to medical technology and information that enables living a healthy, happy life.

2. The “right to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought).”\footnote{Rawls, \textit{The Law of Peoples}, 65.} No religion can “be persecuted, or denied civic and social conditions permitting its practice in peace and without fear.”\footnote{Ibid., 74.}

3. The “right to property (personal property)”\footnote{Ibid., 65.}

4. The “right to formal equality (as expressed by the rules of natural justice (similar cases to be treated similarly)).”\footnote{Ibid.} Individuals must be governed by a rule of law that follows an idea of justice, and judges and officials must uphold the law. No one in society is above the law; it must impose duties and obligations on all persons in its territory and it must consider the “fundamental interests of everyone in society.”\footnote{Ibid., 67.}

5. Freedom of movement within and beyond borders\footnote{The implications of this for the construction of principles remains to be seen and I do not work this out here. Of course, I do not include goods in order to reach certain principles, the idea is to have goods that are based on a constructivist process that is tied to certain basic ideals and see where this leads both looking forward towards the principles, and reflecting back upon the starting assumptions.} and free choice of occupation against a background of diverse opportunities\footnote{Items 5–8 are primary goods in Rawls’s theory of domestic justice that he does not include in \textit{LoP}. I believe there is a prima facie case for freedom of movement even beyond borders as well as free choice of occupation. This does not mean that there may not be good reason to curtail these freedoms but rather that any restriction on them needs to be justified. In line with the idea of}
6. Powers and prerogatives of offices and positions of responsibility

7. “Income and wealth, understood broadly as all-purpose means (having an exchange value): income and wealth are needed to achieve directly or indirectly a wide range of ends, whatever they happen to be.”

8. “The social bases of self-respect: these bases are those aspects of basic institutions normally essential if citizens are to have a lively sense of their own worth as persons and to be able to develop and exercise their moral powers and to advance their aims and ends with self-confidence.”

9. Respect from international community for one’s political life, officials and citizens; freedom to visit other countries, have exchanges, embassies, dialogue, negotiations, visas, as well as freedom from coercive pressure from other states unless permitted by an international law one endorses.

10. Endorsement of public life: Laws and institutions of public life need to be supported and endorsed, and not imposed by one’s own government or other governments.

---

Freedom discussed in this dissertation, this justification can come in the form of individuals wanting certain constraints in line with the idea of justice they endorse. I accept Joe Carens’s view that restrictions on freedom of movement require some sort of moral justification (Carens, 2009) but believe this justification can come from diverse moral perspectives. A similar point can be made with respect to free choice of occupation, and powers and prerogatives of offices and positions of responsibility. There are legitimate reasons for limiting these freedoms, such as traffic laws and regulations for freedom of movement. Certain occupations may be tightly regulated or illegal (such as prostitution which may be for ‘moral’ reasons), or a person may not be free to serve in some position of responsibility because of certain conflicts of interest they might have– for example, individuals cannot provide independent reviews or evaluations of projects that they have personal business investments in or that their spouses manage. I include these primary goods while accepting that certain legitimate justifications can be given for restricting them, including moral justifications that may come across as rather particular.

27 Ibid. Related to item 8, I have added (in item 9) the need for individuals to feel that the political community that they are attached to, or identify with in some way, is respected internationally as part of the “social bases of self-respect.”
28 See items 1–6 of the conception of the person specified in chapter four.
11. The right to political participation. There must be opportunities for individuals to influence the public life of their societies and to shape a public life that reflects their needs and interests.

12. Opportunity for dissent and criticism of government. This dissent will need to abide by certain restrictions made public by law, which are widely endorsed and are in place to protect the security and stability of the public idea of justice and public order of the society. At the same time, these laws must leave the public idea of justice sufficiently open and attentive to change. Public criticism of the government with respect to any of the goods listed here should be permitted. Dissent cannot be restricted solely to ensure a government’s hold on power and to silence opposition.

13. Freedom of speech, including press freedom: Any restrictions and controls on the freedom of speech must be in line with a public idea of justice that one endorses. Similar to the right to dissent, any restrictions on free speech must be balanced by the right of individuals to engage in genuine inquiry and critical assessment of their government and its policies. Foreign (and domestic) journalists and researchers should be free to enter and exit societies and speak unhindered to members of a society without state or state-sanctioned retribution to either themselves or the citizens they are speaking with. At the same time, foreigners, like citizens, must respect domestic law and operate within its constraints when reporting within its jurisdiction.

14. Publicity of laws and government deliberations. All laws should be widely available in a manner that is accessible by members of a society. The publication of government decision-making can be restricted due to concerns with a society’s security and to promote the free exchange of ideas by policy-makers during
deliberations. However, in general the government should aim to be transparent, information cannot be limited simply to bolster a government’s hold on power or to hide corrupt or unjust practices.

15. Freedom from political indoctrination and propaganda. Individuals will inevitably be socialized to accept certain political values. However, the government should not defend and popularize policy by means that the government knows are purposefully misleading or false. The government should not rely on one-sided, biased presentations of issues, emotional appeals and rhetorical devices in order to override genuine inquiry and critical assessment by its populace of its domestic politics, or other governments, societies and cultures.

16. Freedom from censorship of international news and media unless these restrictions are directed and agreed upon by members of a society. This provision reflects the idea that one’s endorsement of a political life depends on the recognition and understanding of alternative public ideas of justice and ways of organizing society. Individuals should also be exposed to international news about their government’s policies and society’s practices.

17. Citizenship in a political community with the rights and obligations it involves. Individuals should have the opportunity to feel connected to a public life and belong in a political community. This primary good does not assume that individuals only wish to be a part of a liberal democracy.

18. Right of exit: Freedom to emigrate.

19. Right to political asylum and refugee status: The definition of a refugee should

---

29 See item 12 of the political conception of the person, chapter four.
30 See items 1–3 and 5 of the political conception of the person, chapter four.
31 See items 3, 5, and 11 of the political conception of the person, chapter four.
32 See items 3, 5, and 11 of the political conception of the person, chapter four.
include those whose aspirations for public life cannot be recognized or realized in their society, and who, for ideological reasons, cannot work within the public framework of their society to create a public life that they can accept.

7.3 Running the thought experiment

The list above of primary goods completes the substantiation of a thought experiment for constructing political liberal principles of international justice. The purpose of the thought experiment is to specify the “ideals, principles, and standards”\(^{33}\) that are to apply to the relations among states, peoples or societies, including the main political, social, and economic institutions of the international system. The individualist approach I have developed does not have a conception of ‘peoples’ in Rawls’s sense. Instead, representatives in the original position may be representing members of societies that might meet Rawls’s standards for liberal and decent peoples, or they may not. They may be representing someone who is internally displaced or someone that is languishing in jail as a political prisoner. By restricting this information, the idea is to come up with principles that can be acceptable given the vast and diverse needs, interests and political doctrines of our world as long as these are rational and reasonable (as defined).

One might ask, why are the individuals in the original position seeking to develop principles for relations between peoples or societies and not individuals? Critics may wonder whether I am incorporating the current problematic state-centric system into my model instead of allowing individuals to decide whether this is how they would structure the world to best serve their rights and interests.

My response to these concerns is that the focus on relations between states or

societies is warranted given the political conception of the person. Those in the original position are representing individuals who are either connected to their societies or states or that wish to be part of a public life that they can endorse. The reality of societies and borders, however arbitrary, is not morally inconsequential; in my project, it is given significance because it has shaped who individuals are, as well as their needs and interests. Individuals in the original position have diverse ideological points of view, to a large extent shaped by myriad political and social contexts in which they live and often feel attached. Representatives wish therefore to retain more local or national governing units that enable individuals to live with public ideas of justice they can endorse. Of course, someone in the original position may also be representing a person whose values are incompatible with her public life; by giving this person representation in the thought experiment (the level of connection to one’s society is behind the veil of ignorance), the idea is to come up with principles of international justice, including with respect to international (inter-state) institutions, to protect this person and enable her to live in a political world that she can accept. Limits to toleration, and indeed what it means to tolerate, the justification for intervention, as well as numerous other principles of international justice would be worked out by considering what representatives in the original position might come up with given the specified constraints on their deliberations.

Very diverse individuals are modeled in the original position, including those who share incompatible beliefs. For example, some individuals will endorse nonliberal, religious, and/or conservative politics while others will believe in the separation of church and state, gay rights, interfaith marriage or (specific) women’s rights which may conflict with more traditional or religious political doctrines. It is important to keep in mind that by design, all individuals represented by the global original

---

34 For an interesting Rawlsian alternative to this, see Kokaz, 2007a.
position are reasonable. Therefore, even if a person believes homosexuality should be criminalized, or women should not be out unaccompanied, or that religion cannot serve a basis for law, the person has no interest in imposing these beliefs on others who do not share their doctrine.
Chapter 8

Conclusion

What can be the basis for international principles of justice given the diversity of political doctrines endorsed around the world? Political liberalism does not require liberals to compromise their ideals in the face of pluralism. Instead, it considers what these ideals require in a diverse world. This dissertation suggests that a central value of political liberalism is that individuals should be governed by public ideas of justice and institutions they endorse. I show how this idea permeates Rawls’s political liberal thought, particularly with respect to the restraint he exercises when working out his principles of justice. Rawls drops certain ideals, including liberal values that he himself endorses, in order to construct principles that can be accepted from diverse points of view. In one of the most interesting passages of *Political Liberalism*, Rawls mentions, “the aim of justice as fairness, then, is practical: it presents itself as a conception of justice that may be shared by citizens as a basis of a reasoned, informed, and willing political agreement. It expresses their shared and public political reason... In formulating such a conception, political liberalism applies the principle of toleration to philosophy itself.”

This project presents a political liberal approach to international justice theory.

---

that upholds liberal respect for the individual while accommodating the political liberal commitment to toleration. All liberal approaches to justice value the principle of toleration. The toleration afforded by political liberal theory is unique, however, because it extends to the level of theoretical principles. Political liberals aim to develop a public conception of justice that can be accepted from the perspective of diverse doctrines. To tolerate, in political liberal theory, means to generate principles that can be endorsed by others who do not share one’s view, as long as they too are willing to do the same. At a theoretical level, for the construction of principles, political liberals apply the principle of toleration. The political liberal commitment to working out principles that can be accepted from diverse points of view underlies much of the political liberal enterprise, including its commitment to freestanding rather than philosophical, religious or ideological justification for its principles.

There are many difficult puzzles in political liberal thought, however, and one of them is apparent in its focus on freestanding justification for its principles. Principles of justice, from a political liberal perspective, should be freestanding so that they can garner widespread and stable support, but they do not need to be acceptable to everyone. The puzzle is that in order to draw the line for when acceptability matters and when it does not, political liberals cannot simply rely on freestanding justification. This is because freestanding justification only really appears freestanding to those who share it and can endorse it from the perspective of their own doctrines. To others it comes across as ideological or culturally rooted. Freestanding therefore is in some respects a misnomer and needs to be qualified; political liberal principles are rooted within a specific liberal democratic public culture and are justified by appealing to widely held and implicit values within this culture. They are freestanding only in the sense that they do not rely on philosophical, metaphysical or epistemological arguments on which individuals within this culture are divided.
The limits of toleration in the political liberal sense—that is, the determination of who the principles of justice need to be acceptable to—are specified by basic and simple concepts with the hope that they can be foundational for a public conception of justice that can be shared by diverse perspectives. In Rawls’s theory of domestic justice, principles need to be acceptable to all reasonable individuals, and the idea of reasonableness is specified by drawing upon certain implicit values within a liberal democratic society. In *LoP*, the principles need to be endorsed from the perspective of both liberal and decent nonliberal peoples. Here too what it means to be decent is described and defined in a way that is consistent with (at least to some elements of) liberal democratic public culture. The standards for decency encapsulate, in Rawls’s view, the *liberal* limits of toleration. However political the theory is, it is also about what it means to be liberal in the context of pluralism and draws upon what it considers to be basic liberal ideals.

It is important to emphasize that the approach that I develop in this dissertation does not operate at the level of societies. Instead, I begin, similar to Rawls’s theory of domestic justice, by considering the assumptions that should be made about the individual when developing political liberal principles of international justice. I argue, in contrast to Rawls, that individuals can be conceived as reasonable and rational (as having the two moral powers defined by Rawls) irrespective of whether they endorse liberal or nonliberal political doctrines. I also outline an idea of freedom that I believe encapsulates an overarching idea of freedom in political liberal thought. This idea sees individuals as socialized by public life, and emphasizes the importance of individuals being reconciled with the political institutions in their lives.

When referring to nonliberal and nondemocratic societies and doctrines (hypothetical or real), including the nonliberal peoples in *LoP*, we need to go beyond binary categories and consider how some if not all nonliberal societies and doctrines (as well
as many liberal democracies) have a complicated mix of liberal and nonliberal, democratic and nondemocratic values and institutions. This is important because when we are considering whether individuals can be free in nonliberal societies, we not only need to know what we mean by freedom, but also what we mean by a nonliberal society. Those who endorse nonliberal and nondemocratic political doctrines may not accept the idea of freedom and public equality underlying the political conception of the person and original position of Rawls’s theory of domestic justice. However, they may still wish to live with public ideas of justice that they endorse, and believe morally, from the perspective of their own ideas of justice, that others too should be governed by political systems they accept. Nonliberal and nondemocratic doctrines can not only accommodate various liberal democratic rights and institutions, they can justify them by reasons that are internal to their doctrines.

This projects takes as self-evident the fact that individuals endorse certain nonliberal and nondemocratic political doctrines and institutions. I also make other assumptions. Nonliberal and nondemocratic politics are not considered oppressive a priori, and, in line with the constraints of political liberalism, I cannot employ a deeply philosophical argument to depict them as such. What matters, I argue, is that individuals can accept the domestic and international principles of justice that influence their public lives. One challenge to this project (due to its emphasis on the importance of endorsability) is whether individuals can really endorse their public ideas of justice and their governments without being considered free and equal in a liberal sense or without having more robust liberal democratic rights. However, I suggest, with Rawls, that there can be mechanisms within nonliberal societies to ensure the (nonliberal) public idea of justice is endorsed and is dynamically responding to the changing society and members. These provisions may be considered liberal and democratic in character, but they may be defended also by appealing to nonliberal,
Another puzzling aspect of political liberalism is that what one personally thinks is just as a theorist can be (and actually should be) irrelevant to theorizing on justice. Rawls saw himself as situated within a liberal democracy and in a sense constituted by its institutions and social fabric. He had strong beliefs and convictions (and reveals them from time to time in his writings) but when theorizing on justice, he subjects himself to the same constraints that he expects those with different values to accept. In a similar sense, I personally believe women and men should have equal public rights, that political offices should be open to contestation by all, and that there should be periodic and genuine elections to determine who will sit in most if not all political positions. However, I recognize that not everyone sees this as I do. Moreover, I do not assume that liberal democracy has a monopoly on freedom—that only individuals who endorse liberal democratic doctrines can be free. I also do not assume that women who endorse conservative and traditional political values that assign women and men different public rights and responsibilities are oppressed, or that men who endorse them are necessarily oppressors.

What matters for the political liberal idea of justice underlying this project is that individuals endorse the institutions that govern their lives and have the capacity, freedom and rights to enable them to do so. The debate should therefore focus on what liberal democratic (or however they should be called) provisions need to be in place to check against oppression, and not to argue for comprehensive liberal democratic rights and institutions which may themselves be considered oppressive from certain points of view. The primary goods specified in this work aim to clarify what individuals need to be free in the manner understood by this project, and to have the two moral powers—the capacity to be reasonable and rational. They outline

\[2\]For example, Rawls considers “a liberal constitutional democracy” to be “superior to other forms of society” (Rawls, *The Law of Peoples*, 62).
the means necessary for individuals to advance their own (permissible) conceptions of the good and to live with public ideas of justice they endorse.

Modeling persons as reasonable in this project does substantial work in allowing a global original position of persons to be used to construct principles of international justice. Reasonableness also has a prominent role in specifying the limits of toleration. Persons, as specified, have no interest in imposing a public idea of justice on others in either domestic politics or international law. The public values that individuals (conceived of here) consider justifiable at the domestic level are different than those they consider appropriate for the international context. The incompatibility of doctrines within my original position (for persons as I have conceived of them will have incompatible doctrines\(^3\)) is not an obstacle for developing common principles of international justice because individuals are (by definition) reasonable, and therefore constrain themselves to shared public reason (aided in the thought experiment with the veil of ignorance). In other words, these individuals leave their incompatible values at the border of their domestic politics and are willing to adopt principles of international justice that others can accept.

This dissertation develops an individualist political liberal approach to theorizing on international justice. In doing so, however, it should be emphasized that I am not making a case for the principles of justice outlined in \(LoP\). This dissertation also does not weigh in on substantive issues such as whether there should be more egalitarian redistribution than what is required by \(LoP\), or whether there should be more open borders to allow individuals living in poor or unstable countries to seek out greater opportunities elsewhere. However, by laying out an individualist approach to international justice theory that accommodates political liberal constraints to theorizing, I hope to have offered an approach for offering new political liberal responses to these

\(^3\)For example, some individuals will believe that religion should be within the government’s domain and others will not
questions. The political conception of the person and global original position developed by this project aim to make vivid the “appropriate restrictions on reasons”\(^4\) that can be given for principles of justice and to model what matters when considering these difficult questions, and how we might think about them. In the global original position, you may be representing someone who lives in poverty in Somalia, Bolivia or Russia, or an educated upper class citizen of China, India, or the US. The idea is to place behind the veil of ignorance “contingent advantages and accidental influences” that “should not affect an agreement on the principles that are to regulate the institutions of the basic structure itself from the present into the future.”\(^5\)

The thought experiment developed here can also be used to specify the limits of toleration in foreign policy. Unlike *LoP*, the human rights listed in this dissertation as primary goods do not have special status for international law and practice. Whether specific primary goods listed here should be prioritized and considered more urgent or worthy of international pressure or intervention should be worked out by the thought experiment. This is similar to Rawls’s theory of domestic justice in which parties in the original position assign the “basic liberties” component of the primary goods priority—a prioritization that is in turn reflected in the principles of justice developed by the theory.

The equal footing given by my approach to those who hold liberal and nonliberal doctrines is abstract; individuals who endorse reasonable liberal and nonliberal political doctrines are symmetrical in the original position for the purposes of working out principles of international justice that they can accept from their perspectives. Although my approach does specify the limits of toleration in the sense that only persons as I have defined them will find the principles of justice resulting from this exercise acceptable, I do not specify the limits of toleration in foreign policy between

---


different societies and peoples in the manner of LoP. The remainder of the conclusion will reflect upon the limits of toleration that are suggested by my approach and will consider whether persons in the original position I have described would constrain foreign policy in the way suggested by LoP.

For Rawls, the equality of liberal and decent nonliberal peoples lead him to argue for highly constrained liberal foreign policy. Peoples are to explain their actions towards each other by drawing upon their shared public reason. Rawls goes on to say that this commitment to public reason has a quelling if not extinguishing impact on parochial foreign policy. “The effect of extending a liberal conception of justice to the Society of Peoples, which encompasses many more religious and other comprehensive doctrines than any single people, makes it inevitable that, if member peoples employ public reason in their dealings with one another, toleration must follow.”$^6$ This public reason requirement in LoP partly explains why Rawls suggests that decent nonliberal peoples should not face military, economic or diplomatic sanctions, including financial incentives,$^7$ to become more liberal.$^8$ Peoples have what Rawls terms a “duty of civility requiring that they offer other peoples public reasons appropriate to the Society of Peoples for their actions.”$^9$ Sanctions and incentives on parochially liberal grounds would be difficult to justify by a shared public reason between liberal and nonliberal peoples. Liberal (or any other doctrinal) parochialism in foreign policy is deeply troubling for Rawls; if foreign policy is not based on public reason, Rawls sees it as a possible coercive imposition on others, capable of wounding self-respect and potentially leading to bitterness, resentment, or conflict.

One reason I am skeptical about the level of foreign policy restraint called for by LoP is because Rawls subjects vastly different foreign policy measures to public reason

---

$^7$Ibid., 85.
$^8$Ibid., 59.
$^9$Ibid.
and in one clean sweep declares them all off-limits. In my individualist framework, principles of international justice need to be defended on grounds that can be accepted from the perspective of certain liberal and nonliberal doctrines that individuals hold. However, public reason does not have to justify all foreign policy actions, and there should be more latitude for particularist foreign policy than LoP affords. Moreover, I believe this increased latitude would be desired by individuals in the global position I have described.

Certain foreign policy measures (e. g., military intervention) will almost always be viewed as coercive and oppressive if they are based on parochial interests. Public reason, shared by liberal and nonliberal views (as long as they are reasonable), should be applied to questions concerning military intervention and economic sanctions, but I am not persuaded that public reason must equally constrain foreign aid incentives and softer diplomatic sanctions. The restrictions imposed by public reason may also not be the best way to demonstrate respect for other peoples or to treat others as equals.

Persons, as conceived in this project, do want their political communities (in which they feel a sense of belonging or attachment) to be respected. They also wish to shape their own political life. However, it is not clear that these primary goods would be necessarily thwarted by certain rather parochial foreign policy measures. Not all disagreements, censure, incentives or even sanctions engender bitterness, resentment, or wound pride in the way Rawls suggests. I also believe individuals can see foreign policy more as a reflection of the state initiating the foreign policy than as an affront to their own political culture.

Rawls implies that a government official (or citizen) may not like or personally respect a decent nonliberal people’s public way of life, but when a citizen considers foreign policy options or when a diplomat engages with representatives from decent
nonliberal peoples, a commitment to international public reason limits the extent to which disagreements should be voiced or acted upon because of the need for peoples to show “due respect” to each other. Yet it must be asked: is this the most appropriate way of showing respect? One might argue that showing respect and treating another as an equal requires more sincerity about one’s view of the other’s public way of life than LoP allows. For example, conceivably a Canadian diplomat can respect a peoples’ freedom to manage public education in a way that makes sense to them, but might make it clear that from Canada’s perspective, girls and boys should receive the same course curriculum options and that Canadian tax dollars will only support this sort of educational reform.\textsuperscript{10} Open and engaging diplomacy is indicative of a relationship between equals. Self-censorship may be perceived as a sign of respect, but it can also be condescending and imply weakness.

Public reason has many strengths, especially in the international political climate where differences of opinion which are often intransigent and age-old can escalate tension, fear, and conflict. At the same time, however, LoP is excessively restrictive and limits the possibility that individuals from vastly different cultures and societies can disagree respectfully, opening up opportunities for genuine dialogue that engages real differences, enhances understanding of the ‘other’, and uncovers workable, endorsable policies. A piece by Richard Rorty that I encountered after writing this work questions whether public reason, by being so restrained, may be counterproductive:

As a loyal Westerner... I agree with Rawls about what it takes to count as reasonable and about what kind of societies we Westerners should accept as members of a global moral community. But I think that the rhetoric

\textsuperscript{10}One variable which Rawls overlooks and yet which affects the normative considerations associated with financial incentives is wealth. A case can be made that wealthy nonliberal peoples are in a position to be self-determining even in the face of financial incentives to adopt liberal democratic norms. If societies are not required to accept these conditions due to financial or any other duress, they may be simply choosing to adopt these reforms. Conversely, there are societies that believe they have little choice but to accept foreign aid along with its liberal democratic conditionalities.
we Westerners use in trying to get everybody to be more like us would be improved if we were more frankly ethnocentric and less professedly universalist... If we Westerners could get rid of the notion of universal moral obligations created by membership in the species, and substitute the idea of building a community of trust between ourselves and others, we might be in a better position to persuade non-Westerners of the advantages of joining in that community. We might be better able to construct the sort of global moral community that Rawls describes in “The Law of Peoples.”

A related, though different point concerns the relationship between the self-determination of a society and its foreign policy: To what extent should a people be free to be who they wish to be in the world? Do Rawls’s foreign policy constraints unacceptably bind liberal democracies’ (and other peoples’) self-determination? I believe representatives in the original position I have described would want the foreign policy flexibility to publicly endorse and financially support values they believe in both in foreign aid budgets and soft diplomacy. The end-goal of this engagement should not be to squeeze certain public forms of life and political projects out of existence but rather to enter into genuine dialogue and interaction with diverse others and to uphold certain values that one believes in. For example, if the US pulled out of trade or peace negotiations involving decent peoples unless there was a woman representative present as an equal partner this would be considered a diplomatic sanction and would likely be unacceptable in Rawls’s LoP framework. Also unacceptable would be the decision to close an embassy or drop funding for an aid program within a decent nonliberal society because it no longer granted women equal political rights.

---

12The relative power of one people with respect to another may make a difference with respect to the potential for genuine dialogue, and also with respect to requiring foreign policy restraint in order to allow a people to be self-determining. Given the political and economic clout associated with liberal democratic ideology (as supported by the US and other liberal democratic economies, as well as the policies of the The World Bank and other international institutions), it may be impossible for liberal democratic countries to engage as equals with countries pursuing alternative political or economic visions.
I doubt the individuals I have conceived of in this project would forfeit such options for reflecting their society’s beliefs and values through foreign policy (nor am I sure Rawls’s peoples would accept this level of foreign policy restraint). I am also not convinced that this restraint on financial incentives and diplomacy is a sign of respect and equality among peoples, nor am I confident that it is conducive to more peaceful relations between diverse societies.

Although this project is clearly inspired by Rawls’s political liberalism, cosmopolitan criticism of LoP and the cosmopolitan commitment to the individual motivated my interest in developing a political liberal approach that gives moral primacy to the individual. The political liberal commitment to constructing principles that diverse others can accept prompted me to think about who this individual might be. Rawls may have been overly cautious in his view that engagement among diverse peoples (if not restricted by public reason) could lead to bitterness, resentment, and conflict. Yet, history does offer many examples of how easily violence can occur among diverse societies, to the detriment ultimately of individual rights and freedoms. The political liberal interest in developing principles that can be workable and acceptable from both liberal and nonliberal points of view may not appeal to all of our fundamental liberal beliefs or to our desire to support doctrines we uphold as liberal or just. Nevertheless, given the world as we know it, it is worth reflecting upon whether these beliefs and desires are as liberal or as just as we believe them to be. In the global original position offered by this project, those who believe in nonliberal ideas of public justice, as long as they are rational and reasonable, are modeled as free and equal—free to be governed by public values they endorse and equal to those who have grown up in liberal democracies.
Bibliography


Avineri, Shlomo: Hegel’s Theory of the Modern State. Cambridge, UK: Cambridge University Press, 1972


Blake, Michael: Toleration and Reciprocity: Commentary on Martha Nussbaum and Henry Shue. Politics, Philosophy & Economics, 1 2002, Nr. 3, 325–335


Carens, Joseph: 2009, unpublished manuscript


Cheney, Liz: Norah Al-Faiz (The 2009 TIME 100). TIME Magazine 173 2009, Nr. 18


Fabre, Cécil/Miller, David: Justice and Culture: Rawls, Sen, Nussbaum and O’Neill. Political Studies Review, 1 2003, Nr. 1, 4–17


Freeman, Samuel: Rawls. New York: Routledge, 2007


Hoy, Joyce Beck: Hegel’s Critique of Rawls. Clio, 10 1981, Nr. 4, 407–422


Jung, Kim Dae: Is Culture Destiny? The Myth of Asia’s Anti-Democratic Values. Foreign Affairs 1 1994, Nr. 1


Bibliography

Lu, Catherine: The One and Many Faces of Cosmopolitanism. The Journal of Political Philosophy, 8 2000, Nr. 2, 244–267


Bibliography


Pogge, Thomas; Martin, Rex/Reidy, David A., editors: Do Rawls’s Two Theories of Justice Fit Together? Malden, Massachusetts: Blackwell Publishing, 2006

Rawls, John; Copp, David/Hampton, Jean, editors: The Domain of the Political and Overlapping Consensus. New York: Cambridge University Press, 1993a


