

Rawls's Law of Moral Peoples

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Abstract

Rawls does not advocate liberal imperialism in his work. He claims that peoples have a moral nature and that they cannot be treated instrumentally. Subsequently, he argues that decent hierarchical societies should be tolerated. Rawls emphasizes that it is the peoples (not individuals) who are moral actors. The Law of Peoples results from a second original position in which the parties are representatives of peoples whose basic institutions satisfy the principles of justice. Therefore, Rawls rejects cosmopolitanism and the conception of global justice which is founded on the idea of original position in which parties are representatives of persons who hold different social positions.

Introduction

In this paper I will defend Rawls's standpoint about global justice. I'm going to argue that his conception of tolerance must be derived from his concept of "moral personality" (i.e. "moral peoples"). If this concept is well understood, it cannot be argued that Rawls's project is nothing more than *modus vivendi*. Moral personality (i. e. peoples) is a substantive, not instrumental good in Rawls's political philosophy. That is why liberal imperialism for Rawls doesn't make sense. He argues that decent hierarchical societies should be tolerated and accepted to the Society of Peoples. If peoples have a definite moral nature and, thus, are guided by respect for all peoples, if peoples are not instrumental, but substantive goods, than we cannot talk about liberal imperialism. Liberal imperialism, by imposing liberal standpoints on all peoples, treats those peoples instrumentally, without respect for their own way of honoring liberal ideals.

This is the reason why Rawls rejects a cosmopolitan conception of global justice. I will also emphasize that Rawls wanted to avoid any kind of liberal imperialism in his system, because it would undermine the idea of liberalism itself and lead to the paradox of toleration. From this perspective, I'll justify tolerating "decent hierarchical societies" in Rawls's theory of global justice.

Rawls's Theory of International Justice

In his *Law of Peoples*, Rawls attempts to develop a reasonable and workable conception of political right and justice applying to the realization between peoples. Rawls talks about the concept of "peoples" instead of "state" to avoid issues attached to traditional idea of sovereignty. Rawls emphasizes that peoples, "as opposed to state", have a definite moral nature.¹ He regards liberal democratic peoples as corporate moral agents, as persons in the moral sense of the term – rational and reasonable.

Rawls claims that he begins and ends his *Law of Peoples* with the idea of "realistic utopia". He argues that political philosophy is realistically utopian "when it extends what one ordinarily thought as the limits of practical political possibility."² He hopes that our social world allows a possibility of reasonably just constitutional democratic society, which is a member of reasonably just Society of Peoples.

¹ Rawls, *Law of Peoples*, p.59

² Rawls, *Law of Peoples*, p.6

In his *Law of Peoples*, Rawls presents a political conception of justice as a “freestanding view”, which is based on the fact of reasonable pluralism and the idea of overlapping consensus of reasonable comprehensive doctrines.³ His idea of overlapping consensus is based on the fact that people with different comprehensive views might share similar ideas about political justice and, thus, can agree on the basic structure of society. In modern Western societies, there are individuals and groups with different concepts of good and, therefore, with different comprehensive doctrines. Consequently, the fact of the reasonable pluralism is a permanent condition of a democratic society.

The problem of applying justice is how we can create stability when people have different comprehensive doctrines. Rawls’s answer is that we share political values, which makes toleration possible. That is the essence of his conception of justice as a “freestanding view”: diverse individuals from their different comprehensive doctrines have to be able to agree on the same political values.

Rawls claims that in the Society of Peoples, the parallel to reasonable pluralism is the diversity among reasonable peoples with their different cultures and traditions of thought, both religious and non-religious. Rawls emphasizes that the Law of Peoples must be acceptable to reasonable peoples with different comprehensive doctrines and that it must be effective in shaping larger schemes of their cooperation.

According to Rawls, as a realistically utopian idea⁴, the Law of Peoples must have a parallel process that leads peoples to act upon the legal norms embodied in a just Law of Peoples and to accept them willingly. Rawls emphasizes that this psychological process, which he calls “moral learning” is an essential element for the idea of realistic utopia. That is why he argues that the just society of liberal peoples is stable for the right reasons, meaning that its stability is not a mere *modus vivendi*, but rests in part on an allegiance to the Law of Peoples itself.

In the *Law of Peoples* the idea of the “original position” is used again.⁵ In the second original position, Rawls’s goal is to extend a liberal conception for the domestic case to the Law of Peoples, guided by appropriate reasons: “Finally, the parties decide 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.”⁶ Rational representatives of liberal peoples in the second original position are represented as being “situated symmetrically”⁷ rational and subject to a veil of ignorance that excludes knowledge of territorial size, population, strength of people, level or economic development or natural resources.

Rawls argues that representatives of liberal peoples ignore any knowledge of the people’s comprehensive conception of the good, because a liberal society with a constitutional regime does not have a comprehensive conception of the good.⁸ “The parties’ first task in the second

³ Rawls, *Law of Peoples*, p.32

⁴ In his *Law of Peoples* Rawls introduces the idea of realistic utopia which depicts his conception of global justice and represents “an achievable social world”. (Rawls, p. 6)

⁵ Rawls introduces his conception of original position in his *Theory of Justice* (1971). According to Rawls, in the original position representatives as rational agents should agree how society should be ordered behind the “veil of ignorance”, which excludes knowledge of their natural talents, social status, gender, race, wealth and other particular characteristics. Rawls emphasizes that in the second original position, which he defines in his *Law of Peoples*, parties are representatives of peoples, not individuals.

⁶ Rawls, *Law of Peoples*, p.31

⁷ Rawls, *Law of Peoples*, p. 33

⁸ Rawls, *Law of Peoples*, p.34

original position is to specify the Law of Peoples – its ideals, principles and standards – and how those norms apply to political relations among peoples”.⁹

Rawls argues that peoples in the Society of Peoples would be able to agree to eight principles of justice:

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe the duty of non- intervention.
5. Peoples have the right of self-defense but no right to instigate war for reasons other .. than self-defense.
6. Peoples are to honor human rights.
7. Peoples are to observe certain specified restrictions in the conduct of war.
8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime.¹⁰

Rawls claims that he takes these principles from the history and usages of international law and practice. He emphasizes that these principles “require much explanation and interpretation.”¹¹ These eight principles are open to different interpretations. According to Rawls, there are to be debated in the second-level original position. These principles must satisfy the criterion of reciprocity, since this criteria holds at both levels “both between citizens as citizens and peoples as peoples.”¹²

However, Rawls’s main task in the *Law of Peoples* is extending the Law of Peoples to non-liberal peoples and specifying how far liberal peoples are to tolerate non-liberal peoples. Rawls explains that : “Here to tolerate means not only to refrain from exercising political sanctions, it also means to recognize these non-liberal societies as equal participating members in good standing of the Society of Peoples with certain rights and obligations.”¹³

Rawls claims that liberal societies are to cooperate with all peoples “in good standing.”¹⁴ His point is that if all societies were required to be liberal , than the idea of political liberalism would fail to express due toleration for other acceptable ways of ordering society. According to Rawls, liberal society is to respect its citizens’ comprehensive doctrines, if they are reasonable, or more exactly, compatible with a reasonable political conception of justice and its public reason.

Rawls emphasizes maintaining mutual respect among peoples. He argues that respect among peoples constitutes an essential part of the basic structure of the Society of Peoples.

⁹ Rawls, *Law of Peoples*, p.40

¹⁰ Rawls, *Law of Peoples*, p.37

¹¹ Rawls, *Law of Peoples*, p.37

¹² Rawls, *Law of Peoples*, p.41

¹³ Rawls, *Law of Peoples*, p.59

¹⁴ Rawls, *Law of Peoples*, p.59

The extension of liberal political right and justice to the Law of Peoples, proceeds in two steps. The first step is the extension of the Law of Peoples to liberal society only; and the second step is specifying a second kind of society - a decent, though not a liberal society "to be recognized as a *bona fide* member of a politically reasonable Society of Peoples and in this sense tolerated."¹⁵ Rawls's aim is to extend the Law of Peoples to decent societies and to show that they respect the same Law of Peoples that liberal societies do. Rawls argues that both reasonably just liberal and decent hierarchical peoples would accept the same Law of Peoples.

Rawls considers that in a political and social world there are five types of societies: liberal peoples, decent hierarchical peoples¹⁶, outlaw states, societies burdened by unfavorable conditions, and benevolent absolutisms. Rawls refers to liberal and decent peoples as "well-ordered peoples". He argues that other three groups of societies deny their members a meaningful role in making political decisions, so they are not well-ordered.

Rawls is not arguing that a decent hierarchical society is as reasonable and just as a liberal society. According to Rawls, there are two criteria for decent hierarchical societies. First, a decent society should not have aggressive aims. Second, a decent society should secure: a minimal set of human rights, *bona fide* moral duties and obligations that are imposed upon all members within the people's territory, and a sincere and not unreasonable belief on the part of judges and other officials who administer the legal system that the law is indeed guided by a common good idea of justice.

Rawls argues that in the case of a decent hierarchical society, there is no original position argument deriving the form of its basic structure. Although persons are regarded as rational and reasonable, they are not free and equal.

In Rawls's theory of international justice, the idea of public reason plays a central role. The content of public reason is not fixed. It is not specified by any political conception or comprehensive doctrine. The idea of public reason contains a form of public political deliberation. Public reason is invoked by members of the Society of Peoples, and its principles are addressed to peoples as peoples. They are not expressed in terms of comprehensive doctrines, but in terms that can be shared by different peoples.

Rawls's Idea of Peoples as Moral Actors

According to Kok-Chor Tan and many other critics¹⁷, Rawls's project is a *modus vivendi*. It is based on seeking a compromise between liberal and non-liberal regimes, rather than that on achieving stability with respect to liberal justice.¹⁸ In *modus vivendi* liberalism, liberal political institutions have as their foundation "a compromise among antagonistic cultural communities"¹⁹ That compromise places certain limits on the public conduct of their members in exchange for a guarantee of non-interference by outsiders on questions of how those communities handle their internal affairs. For *modus vivendi* liberalism, then citizenship is "good only as a means to an end, i.e. the pursuit of a particularistic way of life in peace."²⁰ According to Rawls,

¹⁵ Rawls, *Law of Peoples*, p.63

¹⁶ The basic structure of these societies is what Rawls calls "decent consultation hierarchy".

¹⁷ Galston, Neil

¹⁸ Tan, "Liberal Toleration in Rawls's Law of Peoples"

¹⁹ Bridges, *The Culture of Citizenship: Inventing Postmodern Civic Culture*, www.cvrp.org/book/Series01/1-26/contents.htm

²⁰ Bridges, *The Culture of Citizenship: Inventing Postmodern Civic Culture*, www.cvrp.org/book/Series01/1-26/contents.htm

the perspective of citizenship can never be understood in this minimalist way, because that would not provide the basis for an effective civic culture.²¹

In his *Political Liberalism*, Rawls argues that citizenship is a substantive good desirable in itself. Rawls's conception of moral personality provides a basis for the question about the nature of civic good which is essential for understanding why Rawls's theory is not a *modus vivendi* theory.

According to Rawls, moral personality has two powers: the capacity for a sense of right and justice (the capacity to be reasonable) and the capacity for a conception of the good (the capacity to be rational).²² The reasonable is an element of the idea of society as a system of fair cooperation. It is reasonable for all to accept its fair terms and that is part of its idea of reciprocity. On the other hand, the rational is a distinct idea from the reasonable and it applies to single agent who is seeking its own ends. Rawls claims that rational agent lacks moral sensibility that underlies the desire to engage in fair cooperation in terms that others as equals might reasonably be expected to endorse. Within the idea of fair cooperation, the reasonable and the rational are complementary ideas. Each connects with its distinctive moral power, with the capacity for a sense of justice and the capacity for a conception of the good.

Rawls argues that conception of the person in his political philosophy is a moral conception. It is a normative and political conception, and not metaphysical and psychological conception. Consequently, it has to be distinguished from an account of human nature given by natural science and social theory.²³ This is Rawls's answer to the question of the value citizenship would be given in terms of conception of the high-order interests proper to moral personality or full cultural citizenship. Therefore, in Rawls's political theory, the role of citizen is good not merely instrumentally, full citizenship is a substantive, final or intrinsic good.

The concept of moral personality which Rawls presented in his *Political Liberalism* is crucial for understanding his idea of peoples.

Rawls claims that he derives principles of the Law of Peoples from inside the framework of political liberalism. His aim is to develop a reasonable conception of justice applying to the realization between peoples. In his *Law of Peoples*, Rawls repeats several times that peoples have a definite moral nature. This means that he regards peoples as moral agents - as reasonable and rational. He emphasizes the importance of mutual respect among peoples.

"The term 'peoples', then is meant to emphasize these singular features of peoples, as distinct from states as traditionally conceived, and to highlight their moral character, and the reasonably just or decent nature of their regimes."²⁴ Rawls argues that peoples are not moved solely by their prudent or rational pursuit interests, the "so-called reasons of state".²⁵ He claims that what distinguishes peoples from states is that just people are prepared to grant respect and recognition to other peoples as equals. It is, therefore, part of a peoples being reasonable and rational that they are ready to offer to other peoples fair terms of political and social cooperation.²⁶

According to Rawls this "moral nature" includes a certain pride and sense of honor. "Peoples must have interests – otherwise they would be either inert or passive, or likely to be swayed by

²¹ Ibid.

²² Rawls, *Political Liberalism*, p.108

²³ Rawls, *Political Liberalism*, p.18, note 20

²⁴ Rawls, *Law of Peoples*, p.27

²⁵ Rawls, *Law of Peoples*, p.27

²⁶ Rawls, *Law of Peoples*, p.35

unreasonable and sometimes blind passions and impulses. The interests which move peoples (and which distinguishes them from states) as reasonable interests guided by and congruent with a fair equality and due respect for all peoples.”²⁷ According to Rawls, it is their reasonably interests that make democratic peace possible.

Rawls’s project is, then, not a mere *modus vivendi*, because it embodies an overlapping consensus that has a moral basis as peoples have moral nature. This concept of peoples represents also substantive, not instrumental good, so it cannot be argued that Rawls’s theory of global justice is a *modus vivendi* theory.

The fact that representatives of equal peoples, rather than persons, determine the content of *Law of Peoples*, leads to a contrast between the Law of Peoples and a cosmopolitan standard of global justice. According to cosmopolitan critique²⁸, Rawls’s Law of Peoples treats individual persons unequally. It privileges the dominant actors in each society.

However, in Rawls’s theory it are peoples, not persons that are fundamental when norms of global justice are being constituted. The Law of Peoples results from a second original position, in which the parties are representatives of those peoples whose basic institutions satisfy the principles of justice selected at the first level. Rawls explicitly rejects cosmopolitanism. He rejects the suggestion²⁹ of defining principles of global justice by imagining an original position in which parties are not representing peoples, but persons holding various social positions and offices world wide. According to Rawls, contemporary cosmopolitanism represents a non-realistic utopia of establishing world government. He emphasizes that his *Law of Peoples* begins and ends with the idea of realistic utopia. The idea of society is realistically utopian in that it represents “an achievable social world”³⁰ that combines political right and justice for all liberal and decent peoples in a Society of Peoples.

In Rawls’s Law of Peoples it is the peoples, not individuals, that are moral actors: “Why does the Law of Peoples use an original position at the second level that is fair to peoples and not to individual persons? What is it about peoples that gives them the status of the (moral) actors in the *Law of Peoples*?”³¹

Rawls claims that the fuller explanation is given in section 11 of his *Law of Peoples*. There he argues that to proceed founding the Law of Peoples on the concept of persons, would take us back where we were in §7.2 where he “considered and rejected the argument that non-liberal societies are always properly subject to some form of sanctions , since it amounts to saying that all persons are to have the equal liberal rights of citizens in a constitutional democracy.”³² But this foreign policy simply assumes that only a liberal democratic society can be acceptable.

Rawls’s main idea is that without trying to work out a reasonable liberal Law of Peoples, we cannot formulate criteria that show when illiberal societies cannot be acceptable. Rawls argues that those societies cannot be tolerated, after the Law of Peoples had been worked out. According to Rawls, this refusal to tolerate those societies is a consequence of liberalism and decency.

²⁷ Rawls, *Law of Peoples*, p.44, 45

²⁸ Tan, Pogge, Beitz

²⁹ Pogge, Beitz

³⁰ Rawls, *Law of Peoples*, p.6

³¹ Rawls, *Law of Peoples*, p.17, note 9

³² Rawls, *Law of Peoples*, p.82

Rawls argues that, on a cosmopolitan account, the foreign policy of liberal peoples would be to shape all not yet liberal societies in a liberal direction until eventually all societies are liberal. Thus, according to Rawls, a cosmopolitan account of global justice represents the idea of liberal imperialism.

Rawls's main point here is that liberal imperialism is contradictory to liberalism itself and leads to a paradox of toleration: "If all societies were required to be liberal than the idea of political liberalism would fail to express due toleration for other acceptable ways (...) of ordering society."³³ According to Rawls, a cosmopolitan Law of Peoples would be intolerant. But that would be inappropriate because it would require the pursuit of policies damaging to self-respect of non-liberal peoples.

Liberal peoples are reasonable and rational, we attribute them moral motives. Rawls argues that this means that political liberalism specifies the idea of reasonable so it is distinct from Kant's transcendental idealism. Rawls emphasizes that content of reasonable and rational, as well as decent, is not derived from the principles of practical reason. He argues that there are no necessary conditions for those three ideas and that differences of opinion can always be expected. Therefore, the idea of liberal imperialism cannot be derived from Rawls's political theory of international justice.

Liberals are required to tolerate those societies that are reasonable, but the outlaw and burdened societies are not to be tolerated. Thus, reasonableness marks the boundary of what is tolerable. Rawls emphasizes that not all peoples can reasonably be required to be liberal. This follows from a principle of toleration of a liberal Law of Peoples and its idea of public reason, which is worked out from a family of liberal conceptions. Rawls argues that it should be asked whether the world would be a better place, morally speaking, if all societies were required to be liberal. Rawls argues that those holding a liberal view might think that the answer would be yes, but this answer overlooks the great importance of maintaining mutual respect between peoples. Rawls claims that decent peoples should be allowed to find their own way to honor these ideals.

According to Rawls, allegiance to the Law of Peoples need not be equally strong in all peoples, but should be sufficiently strong. Because of the fact of reasonable pluralism, the degree to which a reasonably just institutional process enables members of different well-ordered societies to develop a sense of justice may differ from one society to another in the Society of Peoples. Rawls emphasizes: "Liberal societies may differ widely in many ways: for example, some are far more egalitarian than others. Yet these differences are tolerated in the society of liberal peoples. Might not the institutions of some kinds of hierarchical societies also be similarly tolerable? I believe so."³⁴

Rawls also argues that how peoples treat each other and how they treat their own members are two different things. So it is possible for decent hierarchical society to honor a reasonable and just Law of Peoples, even though it does not treat its own members reasonably and justly as free and equal citizens, since it lacks the liberal idea of citizenship.

The concept of "decent non-liberal peoples" is, however, never fully defined by Rawls. He claims that there is no definition for decency. According to Rawls, decency is a normative idea like reasonableness, though weaker: "We give it meaning by how we use it."³⁵ Decent people must

³³ Rawls, *Law of Peoples*, p.54

³⁴ Rawls, *Law of Peoples*, p.84

³⁵ Rawls, *Law of Peoples*, p.67

honor the laws of peace, its system of law must be such as to respect human rights and to impose duties and obligations on all persons in its territory.³⁶

Thomas Pogge has argued that there is an inconsistency in Rawls's conception of toleration of decent hierarchical peoples, as presented in Rawls's *Law of Peoples*. According to Pogge, Rawls slides from the first formulation, which Pogge believes liberals should accept, to the second one, which, as Pogge argues, liberals shouldn't accept:

1) Liberalism involves a commitment to tolerance and diversity that extends beyond the family of liberal conceptions: A liberal world order will therefore leave room for certain kinds of non-liberal national regimes.

2) Liberalism involves a commitment to tolerance and diversity that extends beyond the family of liberal conceptions: It would thus be illiberal to impose a liberal global order on a world that contains many peoples who do not share our liberal values.³⁷

Pogge claims that "by acknowledging (1) we are not compromising our liberal convictions".³⁸ According to Pogge, "a world order would not be generally liberal if it did not leave room for certain non-liberal regimes."³⁹ Pogge argues that, on the other hand, those who acknowledge (2) are compromising their liberal convictions, "for the sake of accommodating those who do not share them."⁴⁰ He claims that liberals then should accept (1) and reject (2). His conclusion is that, after all, the Law of Peoples will either reflect liberal moral views or it will not. By taking formulation (2), the liberals are conceding that it will not reflect moral views.⁴¹

In my opinion, those two formulations are not in conflict, they are not contradictory, because they represent Rawls's standpoint against any kind of liberal imperialism. Rawls argues that liberals should leave room for certain kinds of non-liberal regimes and at the same time he claims that it would be illiberal to impose a liberal global order on those peoples who don't share all liberal values, for the same reason.

Conclusion

The concept of peoples is crucial for understanding Rawls's Law of Peoples. Rawls is trying to explain this concept through entire *Law of Peoples*. Nevertheless, some critics find this concept "vague".⁴² Those critics have, however, misunderstood Rawls's core idea⁴³ that peoples "have a definite moral nature."⁴⁴ They are represented as "substantive good" which is not instrumental (i.e. means for an end) , so Rawls's theory is not founded on a compromise, it is not *modus vivendi* theory. I have argued that from Rawls's conception of peoples, it can be explained why Rawls rejected a cosmopolitan conception of toleration.

I disagree with Tan's standpoint that cosmopolitan conception of international toleration is more consistent with Rawls's own ideas, as presented in Rawls's earlier writings.⁴⁵ In Rawls's political

³⁶ Rawls, *Law of Peoples*, p.83

³⁷ Pogge, "An Egalitarian Law of Peoples", p.216

³⁸ Pogge, "An Egalitarian Law of Peoples", p.216

³⁹ Pogge, "An Egalitarian Law of Peoples", p.216

⁴⁰ Ibid, p.216

⁴¹ Ibid, p.216

⁴² Tan, Pogge

⁴³ This idea is several times repeated by Rawls in his *Law of Peoples*.

⁴⁴ Rawls, *Law of Peoples*, p.44

⁴⁵ Tan, "Liberal Toleration in Rawls's *Law of Peoples*", p.282

liberalism peoples are treated as substantive good, therefore, imposing liberal ideals⁴⁶ is contradictory to Rawls's political philosophy in general. Consequently, Rawls argues that decent peoples should be tolerated and accepted in Society of Peoples. According to Rawls, they should be given a chance to accept liberal ideals from their own perspective and they should be respected, since without trying to work out a reasonable liberal Law of Peoples, we cannot know that non-liberal societies cannot be acceptable.

⁴⁶ According to Rawls, cosmopolitan conception of tolerance has, as a result, liberal imperialism (*Law of Peoples*, §11)

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