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Liberal Toleration in Rawls's Law of Peoples*

Kok-Chor Tan

How should a liberal state respond to nonliberal ones? Should it refrain from challenging their nonconformity with liberal principles? Or should it criticize and even challenge their nonliberal political institutions and practices? In "The Law of Peoples,"¹ John Rawls argues that while tyrannical regimes, namely, states which are warlike and/or abusive of the basic rights of their own citizens, do not fall within the limits of liberal toleration, nonliberal but peaceful and well-ordered states, what he refers to as "well-ordered hierarchical societies" (WHSs), meet the conditions for liberal toleration. That tyrannical regimes are not to be tolerated is uncontroversial enough for most liberals; what is more contentious in Rawls's thesis is his claim that WHSs are to be tolerated. It is this claim that I wish to examine in this article.²

TOLERATION IN POLITICAL LIBERALISM

The law of peoples is the "globalized" version of Rawls's domestically conceived political liberalism and so I shall begin by quickly reviewing some of the basic ideas of political liberalism, especially that of toleration. In *Political Liberalism*, Rawls tells us that one of the main challenges

* I am grateful to the reviewers and editors of *Ethics*, Jean Baillargeon, Frank Cunningham, Karen Detlefsen, and David Dyzenhaus for their helpful comments, advice, and suggestions. Remaining errors are, of course, my own responsibility.

1. John Rawls, "The Law of Peoples," in *On Human Rights*, ed. Stephen Shute and Susan Hurley (New York: Basic Books, 1993), pp. 41–82. References to this work will hereafter be cited in parenthesis in the text.

2. Before beginning, I should note that Rawls makes two fundamental assumptions in "The Law of Peoples" which I grant for the purpose of this discussion. Rawls assumes that (a) there are clear and well-delineated peoples whose communal boundaries coincide with the boundaries of their political communities (i.e., he assumes a state is more or less representative of a nation or people), and (b) these boundaries are morally beyond challenge and how they were arrived at morally irrelevant. As some commentators have pointed out, these assumptions, even for an "ideal" global theory, are highly problematic. See Thomas Pogge, "An Egalitarian Law of the Peoples," *Philosophy and Public Affairs* 23 (1994): 195–224, pp. 197–99; and esp. Stanley Hoffmann, "Dreams of a Just World," *New York Review of Books* 42 (November 2, 1995): 52–57, p. 53.

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facing a liberal-democratic society is the problem of maintaining legitimate stability in the face of deep and irreconcilable moral, religious, and philosophical diversity found in most contemporary states.³ Authoritarian suppression of differences is, of course, not a legitimate option here. But neither is state imposition of liberal values across all areas of society legitimate because, Rawls argues, not all individuals accept the values of liberalism—for example, the idea of individual autonomy—as applicable to every aspect of their lives. To members of some religious communities, the notion that one can reevaluate and revise her religion-based conception of the good life is a foreign and incomprehensible one. Given that reasonable persons can have “reasonable disagreements” over religious, moral, or philosophical comprehensive doctrines, it would be, therefore, unreasonable for the state to insist that they adopt the liberal idea of autonomy in all areas of their lives.⁴ The state would in this case be acting on a contentious comprehensive view, a view not everyone can reasonably be asked to accept, and so would be illegitimate in the eyes of some.

Because of the facts of diverse comprehensive doctrines and reasonable disagreement, Rawls thinks that legitimate stability can be attained only if liberalism itself is detached from its own contentious comprehensive moral doctrine and its application consequently restricted to the political realm. The liberal idea of autonomy is, in this view, applicable only to individuals *qua* citizens, pertaining only to their *public* rights and duties; it is not regarded as a value necessarily applicable in nonpolitical associations like the home, the church, or cultural associations. As Rawls tells us, “political virtues must be distinguished from the virtues that characterised ways of life belonging to comprehensive religious and philosophical doctrines, as well as from the virtues falling under various associational ideals (the ideals of churches and universities, occupations and vocations, clubs and teams) and those appropriate to roles in family life and to the relations between individuals.”⁵ This move away from liberalism as a philosophy to govern all of life—that is, comprehensive lib-

3. John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), pp. xvi–xviii.

4. We can expect “reasonable disagreements” because of the “many hazards involved in the correct (and conscientious) exercise of our powers of reason and judgment in the ordinary course of political life.” These hazards arise because of (a) the fact of conflicting evidence, (b) disagreements over the weight given to pieces of evidence, (c) the indeterminacy of our concepts and principles, (d) different individual “total experience,” which in turn affects the interpretations and considerations we give similar pieces of evidence, (e) the difficulty with assessing normative claims, and (f) the difficulty with setting priority for all possible cases of conflicts. Rawls calls these hazards the “burdens of reason.” John Rawls, “The Domain of the Political and Overlapping Consensus,” in *The Idea of Democracy*, ed. David Copp, Jean Hampton, and John E. Roemer (Cambridge: Cambridge University Press, 1993), pp. 245–69, p. 248 (hereafter cited as “Overlapping Consensus”).

5. Rawls, *Political Liberalism*, p. 195.

eralism—to liberalism as a philosophy to govern only political life is the project of political liberalism. When liberalism is thus confined to the political sphere of a pluralistic liberal society, it is no longer a contentious doctrine but can become the subject of an overlapping consensus between different (including nonliberal) comprehensive views. When this overlapping consensus is in place, liberalism attains what Rawls calls a “freestanding” status; at this point it does not depend on any particular comprehensive philosophical foundation (e.g., Kantian or Millian) for support, but is a political philosophy founded on “neutral ground” and can be equally supported by the different comprehensive doctrines present in society.⁶

None of the above presupposes that all comprehensive doctrines present in a pluralistic liberal-democratic society will endorse political liberalism. Some will simply be intolerant of different comprehensive doctrines; others may violate the public political rights their own members qua liberal citizens are entitled to (e.g., the right to vote in public elections, to exit and form or join new associations, to employment, and to a basic public education). These comprehensive doctrines are what Rawls refers to as “unreasonable” and are to be criticized and even challenged by the liberal state.⁷ Were political liberalism compromised or tailored accordingly to gain the allegiance of all existing comprehensive views, it would be “political in the wrong way, . . . in the sense of merely specifying a workable compromise between known and existing interests.”⁸ The overlapping consensus would, in this case, be more properly a *modus vivendi* than a real consensus around liberal ideals. So, Rawls’s restriction of liberal principles to the political realm must not be read as a compromise of liberal ideas but as a requirement of liberal toleration itself; and unreasonable views are views which fail to meet the conditions for liberal toleration.

The overlapping consensus is more precisely, then, a consensus between *reasonable* comprehensive views (i.e., views which are tolerant of other views and which do not violate the public political rights of their own adherents). Nonetheless, and very importantly for Rawls, a comprehensive view need not be “internally” liberal as well in order to meet the conditions of “reasonableness.” That is to say, the practices and traditions internal to a particular comprehensive view need not accord with liberal principles before we can expect it to be tolerant of other doctrines and respectful of the public rights of its own members. There are several examples of associations which hold nonliberal but reasonable comprehensive views: the church and the (traditional male-dominated)

6. *Ibid.*, pp. 144, 155. As Rawls puts it, for its justification, political liberalism “seeks common ground—or if one prefers, neutral ground—given the fact of pluralism” (p. 192).

7. Rawls, *Political Liberalism*, pp. xvi–xvii, and “Overlapping Consensus,” p. 253.

8. Rawls, “Overlapping Consensus,” p. 259.

family are two cases, to use Rawls's own examples from the previously quoted passage, of associations which can be internally nonliberal yet reasonable on Rawls's terms.⁹ The internal arrangements of these associations cannot by themselves be the criteria for reasonableness because, given the fact of reasonable disagreement, there is no legitimate basis for questioning the truths of their affiliated comprehensive views. As such, "political liberalism does not attack or criticise any reasonable view,"¹⁰ not even if these views are internally nonliberal. As long as a comprehensive view accepts liberal principles as binding in the public political sphere (as expressed in its dealings with other views and in its regard for the public political rights of its members), it lies within the limits of liberal toleration.¹¹

GLOBALIZING POLITICAL LIBERALISM

The law of peoples extends this understanding of liberal toleration to guide the relations between states. This short passage in the opening of "The Law of Peoples" sums up the extension project neatly: "Just as a citizen in a liberal society must respect other person's comprehensive religious, philosophical, and moral doctrines provided they are pursued in accordance with a reasonable political conception of justice, so a liberal society must respect other societies organized by comprehensive doctrines, provided their political and social institutions meet certain conditions that lead the society to adhere to a reasonable law of peoples" (p. 43). Rawls wants his global toleration to be, as in the domestic case, a liberal ideal and not one derived from the need to compromise liberal principles in the face of global diversity. To proceed thus, a reasonable law of peoples is first conceived of, and only after is it asked whether nonliberal regimes can also freely endorse this law.

So, in the first step of the extension, Rawls envisions representatives of liberal states participating in a global "original position" deliberation in order to arrive at the global principles of justice.¹² As with the domes-

9. Witness, for example, the prohibition against women or homosexuals from holding offices in certain religious communities; or witness also, more pervasively, the traditional male-dominant family within which female members are accorded a subordinate role.

10. Rawls, *Political Liberalism*, pp. xix–xx.

11. Some liberals question Rawls's claim that an internally nonliberal doctrine can accept liberalism as a political ideal. For example, Will Kymlicka thinks it is not obvious "why anyone would accept the ideal of autonomy in political contexts unless they also accept it more generally [in their nonpolitical lives as well]." Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995), p. 160. The coherence of the political liberal project rests on the tenability of this "moral dualism" of Rawls. I leave this discussion aside and shall examine instead, albeit concentrating on the international case, whether liberals should even entertain the idea of tolerating nonliberal views.

12. The original position, as we may recall, is "a device of representation" where representatives of rational but reasonable individuals deliberate on the appropriate prin-

tic original position, the parties to the global original position are deprived of certain contingent or morally irrelevant facts by imagining them to be deliberating behind “the veil of ignorance.” They do not know “the size of the territory, or the population, or the relative strength of the people whose fundamental interests they represent. . . . They do not know the extent of their natural resources, or level of their economic development, or any such related information” (p. 54). Under this hypothetical fair and equal state, Rawls believes that liberal delegates would agree to the following global principles:

1. Peoples are free and equal, and their freedoms are to be respected by other peoples.
2. Peoples are equal and parties to their own agreements.
3. Peoples have the right to self-defense but not to wage war.
4. Peoples are to observe the duty of nonintervention.
5. Peoples are to observe treaties.
6. Peoples are to observe justice in war.
7. Peoples are to honor basic human rights. (P. 55)

The next crucial step of this globalization project is to see whether representatives of nonliberal states too would freely assent to these principles. Obviously, representatives of tyrannical states, namely, states which are warlike and/or are abusive of the basic rights of their citizens, will not endorse these global principles. But rather than alter the global principles to accommodate these “outlaw regimes,” as Rawls calls them, which would be a blatant instance of a *modus vivendi*, or making liberalism political and stable in the wrong way, Rawls notes that these regimes are to be publicly criticized in international forums, “contained” and even forcibly challenged in extreme cases (pp. 73–74). Rawls’s stance in this “nonideal” case of outlaw regimes is relatively uncontentious (for liberals) and need not detain us further here. It is with regard to a class of nonliberal states, the class of “well-ordered hierarchical societies,” that Rawls makes a more contentious claim: liberal states must tolerate these nonliberal societies.

Well-ordered hierarchical societies are states which meet these three

principles of justice for the basic structure of their society. See, for example, Rawls, *Political Liberalism*, pp. 22–28. To ensure that this hypothetical deliberation is fair and equal, parties deliberate behind a “veil of ignorance.” That is, they are asked to imagine that they do not know their actual status and stations in society. In this way, no one party could insist on terms biased in her favor according to her own social standing. The important difference, the significance of which shall be discussed in due course, with the global original position is that it is now a device of representation where peoples or societies and not individuals are represented: “As before the parties [to the original position] are representatives, but now they are representatives of *peoples*” (p. 48; my emphasis). Or, to put it more perspicuously (as suggested by Pogge, p. 206n.), it is delegates of societies, and not individuals of the world, who are hypothetically represented at the global original position.

necessary conditions: they are peaceful, they are organized around a common good conception of justice and (consequently) are legitimate in the eyes of their own peoples, and they honor basic human rights (pp. 60–62).¹³ The second condition shows that WHSs are not liberal states (for no liberal state can be organized around a common good conception of justice).¹⁴ Moreover, while WHSs are expected to respect the basic human rights of their citizens (the third condition), these basic rights do not include quintessential liberal rights like the rights of free speech (p. 62), democracy (pp. 69–71), and equal freedom of conscience (p. 63). Yet, Rawls argues, these two conditions together with the condition that a WHS be peaceful are sufficient to ensure that representatives of WHSs will also endorse the global principles agreed on by his liberal representatives. They would, for example, respect the principle of nonintervention and aggression, honor basic human rights, and ensure that their citizens receive their share of duties and rights as dictated by the conceptions of justice peculiar to their societies.¹⁵

Because they are in compliance with these global principles, WHSs qualify as states in “good standing” and therefore “there would be no political case [on the part of liberal states] to attack these nonliberal societies militarily, or to bring economic or other sanctions against them to revise their institutions” (p. 81). While “critical commentary [against WHSs] *in liberal societies* would be fully consistent with the civil liberties and integrity of those societies” (p. 81; my emphasis), *public* criticism by liberal representatives in international political forums like the United Nations, the European Union, and other similar international political bodies is ruled out.¹⁶ Rawls treats WHSs as the global analog of domestic

13. The kinds of basic rights Rawls has in mind are rather minimal. They cover the rights to subsistence and security (the right to life), to liberty (e.g., freedom from slavery or forced occupation) and personal property, to formal equality before the law (in the sense that similar cases be treated similarly), to a limited liberty of conscience, and to emigrate (pp. 62, 68).

14. Some would argue, to the contrary, that a liberal state can indeed be organized around a common-good conception of justice. See, for example, Charles Taylor, “The Politics of Recognition,” in *Multiculturalism*, ed. Amy Gutmann (Princeton, N.J.: Princeton University Press, 1992), pp. 25–73, 56–61. Also, Xiaorong Li claims that “[if] Rawls’s ‘hierarchical society’ could respect all these rights, such a society would hardly differ from a contemporary liberal democratic society.” Li, “A Critique of Rawls’s ‘Freestanding’ Justice,” *Journal of Applied Philosophy* 12 (1995): 263–71, p. 269. I think the above claims are disputable but I shall not challenge them here. For further discussion, see Will Kymlicka, *Liberalism, Community and Culture* (Oxford: Oxford University Press, 1989), esp. chap. 5.

15. So a caste society which accords different rights and duties to members of different castes can be well-ordered if this unequal distribution of rights and duties is in accordance with the traditions and rules of the caste system and not arbitrarily enforced as when similar castes are treated differently.

16. As Fernando Teson rightly points out, “Rawls’s international law principles do not even authorize representatives of liberal societies to publicly (that is, in an international forum such as the United Nations) *criticize* the nonliberal practices [in WHSs]. . . . For in

reasonable but nonliberal comprehensive doctrines; and so as the liberal state ought to tolerate reasonable nonliberal comprehensive doctrines, so too should the liberal global society tolerate WHSs. Given reasonable disagreement, it would be contrary to liberal toleration to expect all well-ordered societies to be domestically liberal and to endorse all the essential liberal individual rights. A liberal global order, in Rawls's view, must have the conceptual space for certain nonliberal societies; in other words, it must be able to accommodate WHSs, not as a matter of compromise, but as a matter of (liberal) principle.

COMPREHENSIVE VIEWS AND NONLIBERAL POLITICAL SOCIETIES

But why would/should liberal delegates be content with the list of global principles Rawls presents? Would they not want a more demanding list of global principles (one which, for one, demands the respect of all the essential liberal rights) and hence be less willing to count WHSs as reasonable regimes or regimes in good standing? Liberals, after all, are concerned ultimately with individual well-being; why should they, then, tolerate regimes whose institutions sustain domestic inequality and are antithetical to any liberal aspiration citizens of these regimes may have? Indeed, we may ask whether these global principles are the ones citizens of WHSs themselves would accept were we to postulate a single-stage "all-inclusive [global] original position with representatives of all the individual persons of the world" (p. 65) instead of the two-stage procedure Rawls favors where only delegates of societies are represented in the second and global stage.

As we have seen, Rawls holds tolerating WHSs to be analogous to tolerating reasonable nonliberal comprehensive views within liberal society. But this is a deeply flawed analogy. There are important differences between comprehensive views and state regimes, which Rawls forgives. First, in the case of comprehensive doctrines, what is permitted are moral, religious, or philosophical differences, not political ones. As we have seen, while it would be unreasonable for a liberal state to enforce

Rawls's international system liberals could derive no argument *from international law* to make such a [public] criticism. They could do so only if the hierarchical societies failed to observe what Rawls calls 'basic' human rights, such as if they arbitrarily killed or tortured people or if public officials violated their own conceptions of justice" (Teson, "The Rawlsian Theory of International Law," *Ethics and International Affairs* 9 [1995]: 79–99, 88–89). For Rawls, this distinction between passing judgments against WHSs as private citizens and associations within liberal societies on the one hand, and passing judgments as official delegates of liberal societies in international forums on the other, parallels his stance in his domestic theory that while individuals and associations may question nonliberal comprehensive views in their private capacities, the liberal state (and individuals in their public capacities) may not. See, e.g., Rawls, "The Law of Peoples," p. 81, and *Political Liberalism*, pp. 215–16.

a vision of the good based on a moral, philosophical, or religious comprehensive doctrine, it would not hesitate to criticize (and even attack if necessary) comprehensive views which advocate nonliberal politics. These views would be denounced as “unreasonable” views. The reason why a liberal state cannot condone nonliberal political views is obvious: a political philosophy cannot accommodate another competing political philosophy without undermining itself. As Ronald Dworkin tells us, any political theory must “claim truth for itself, and therefore must claim the falsity of any theory that contradicts it. It must itself occupy . . . all the logical space that its content requires.”¹⁷ A political philosophy, for reasons of consistency, must take a stance against competing political philosophies.¹⁸ Rawls himself accepts this; he admits that when it comes to the crunch, when political liberalism itself is challenged, we may have no choice but to invoke some of liberalism’s comprehensive views (thereby doing that which “we had hoped to avoid”) to justify putting down the challenge.¹⁹

But at the international level, Rawls advocates tolerating regimes with nonliberal *political* institutions. He says that “whenever the scope of toleration is extended . . . the criteria of reasonableness is relaxed” (p. 78), and so nonliberal politics, unreasonable in the domestic context, becomes reasonable in the international context. Accordingly, certain views not permitted in domestic liberal society are deemed permissible if expressed in foreign societies. It seems that while Rawls would say that a liberal state should criticize a domestic comprehensive view which forbids its members from exercising their public rights (like the right to vote in public elections), this same state should not criticize a WHS which denies some of its citizens this same right. This seems blatantly inconsistent to me. Why does Rawls hold this position?

Rawls does not provide a satisfactory answer here. He points out that

17. Ronald Dworkin, *A Matter of Principle* (Cambridge, Mass.: Harvard University Press, 1985), p. 361.

18. We must get clear, therefore, as to what liberalism claims to be neutral about. Liberalism claims to be *ethically neutral* in the sense that it aims to be impartial between different private conceptions of the good life. But it (because of this) cannot claim to be *politically neutral* in the sense of being indifferent about how society is to be organized politically. This is obvious: a commitment to ethical neutrality necessarily entails a commitment to a particular type of political arrangement, one which, for one, allows for the pursuit of different private conceptions of the good.

19. Rawls writes, “Nevertheless, in affirming a political conception of justice we may eventually have to assert at least certain aspects of our own comprehensive religious or philosophical doctrine (by no means necessarily fully comprehensive). This will happen whenever someone insists, for example, that certain questions are so fundamental that to insure their being rightly settled justifies civil strife. . . . At this point we may have no alternative but to deny this, or to imply its denial and hence to maintain the kind of thing we had hoped to avoid” (Rawls, *Political Liberalism*, pp. 152, 153, 250–51). Under this extreme situation, the “freestanding” aspiration of political liberalism is suspended.

although domestic liberalism begins from a political conception of the person as free and equal and rooted in a liberal public culture, to begin from similar assumptions in the international case would make the basis of justice “too narrow” (pp. 65–66). This is one of Rawls’s expressed reasons for employing a two-stage original position procedure.²⁰ But why avoid this “too narrow” basis for a law of peoples? Is it because liberal toleration requires that we do? Or is it because Rawls worries that WHSs would not endorse the law of peoples otherwise? It can’t be the former reason. As I mentioned, liberal toleration in the domestic context does not require toleration of nonliberal politics; indeed it must demand otherwise. Yet Rawls has given us no principled reason why it should be any different in the global context other than the diversity of political cultures. Absent a good justification, it appears that Rawls has simply relaxed the limits of toleration in order to accommodate representatives of WHSs, to ensure that his law of peoples can be endorsed by some nonliberal states as well.

This modifying of political liberalism to satisfy international conditions is, Fernando Teson points out, a serious error of “The Law of Peoples.” He says, “A political theory cannot survive if one keeps amending its assumptions at every turn to reach results that do not seem to match the theory in its original form. This is simply a way of immunizing the theory against (moral) falsification.”²¹ The seriousness of Teson’s objection is appreciated once we recall one of Rawls’s motivations for extending political liberalism to cover international relations: “In the *absence of this extension* to the law of peoples, a liberal conception of political justice would appear to be *historicist* and to *apply only* to societies whose political institutions and culture are liberal. In making the case for justice as fairness, and for similar more general liberal conceptions, it is *essential to show that this is not so*” (p. 44; my emphasis). That is, it is important for Rawls that political liberalism can be demonstrated to have global scope, that its basic ideas can be freely endorsed by (some) nonliberal societies as well. But if this endorsement is accomplished only by modifying some of the basic tenets of political liberalism in a seemingly ad hoc manner (namely, by relaxing the limits of toleration without good reason), then Rawls has not succeeded in demonstrating the global applicability of his theory on his own terms.

20. Rawls writes, “The difficulty with an all-inclusive, or global, original position is that its use of liberal ideals is much more troublesome, for in this case we are treating all persons, regardless of their society or culture, as individuals who are free and equal, and as reasonable and rational, and so according to liberal conceptions. This makes the basis of the law of peoples too narrow” (p. 66). His other reason for using the two-stage procedure is that this is a methodological preference, with possibly no consequential difference (p. 50). I shall examine this other reason in due course.

21. Teson, p. 85. The falsification in question being the fact that not all societies value freedom, human rights, and democracy as do liberal societies.

It seems then that, his claim notwithstanding, Rawls's international project is beneath it all a project of *modus vivendi*, of seeking a compromise between liberal and nonliberal regimes, rather than that of achieving stability with respect to liberal justice.²² To accommodate WHSs, Rawls had his liberal delegates agree on a global theory of justice which is overly generalized and less demanding than a real liberal global theory would be.

Now, one may argue that there is nothing counterintuitive or obviously inconsistent about responding differently to domestic and international nonliberal practices. A liberal state, as a matter of practice or strategy, cannot always react in the same way to similar kinds of domestic and international violations of liberties given the different conditions of domestic and international societies. One obvious instance of this difference is that there is no established enforcement body in global society to enforce judgments that a liberal state may make against nonliberal states. A liberal state cannot pass enforceable laws criminalizing, say, female genital mutilation in another country the way it can within its own borders.²³ Thus, it cannot help but tolerate certain abuses overseas which it would not condone at home.

But this objection neglects the distinction between making a judgment and acting on that judgment.²⁴ The fact that we may be (genuinely) compelled to act differently between similar cases does not necessarily entail that we have or ought to have judged these cases differently. That we may be forced to put up with certain illiberal practices overseas because of practical constraints does not mean that we need to judge them morally acceptable. We still judge them unacceptable as we do similar domestic abuses even though we may not be able to act on these judgments the way we can in the domestic context. But the normative implication of this distinction between judgment and acting on judgment is significant: if we admit that we are unable to act on a judgment because of practical constraints, then we should be ready to act on this judgment once the constraints are lifted. Indeed, one can say that we are morally obliged, at the very least, to work toward the lifting of these constraints

22. This observation has been made by Hoffmann who points out that the motivation of the law of peoples is "implicit but clear enough: this 'overlapping consensus' is really just a *modus vivendi* among quite different models of society" (Hoffmann, p. 54).

23. Nor, indeed, can international society enact enforceable global laws given the lack of any international law enforcement body. At present, international law is, as we commonly hear, "toothless."

24. This distinction was recently pointed out in Kymlicka, *Multicultural Citizenship*, pp. 164–66. Kymlicka's point in making this distinction is to show that judging the practices of certain minority groups to be illiberal does not entail that the liberal state is therefore "drawn down the path of interference." Similarly, Joseph Raz points out that while oppressive cultural practices should be criticized, we should exercise "restraint and consideration in thinking of the means by which [these practices are] . . . to be countered" (Raz, *Ethics in the Public Domain* [Oxford: Oxford University Press, 1994], p. 170).

as an immediate objective. So, overlooking the judgment /acting distinction—and thereby mistakenly claiming (as does the above objection) that we tolerate some foreign illiberal practices, when we are actually compelled to put up with them—misses this important implication.²⁵

A second important difference between reasonable nonliberal comprehensive doctrines and WHSs which Rawls overlooks is that in the case of the former, individual members have recourse to democracy in the political sphere. They are citizens of a liberal-democratic state besides being members of particular (nondemocratic) communities. So, even if the internal practices of their communities are undemocratic in nature, members of these communities are still able to exercise their democratic rights in their other capacity as citizens.²⁶ In this way, they are, to a degree, able to influence public policies that may have some positive effects on the practices of their communities. (I shall say more later on how public policies can affect communal practices.)

On the other hand, ordinary citizens of WHSs do not have this recourse. Unlike members of nonliberal private associations who are nonetheless free and equal citizens of a larger democratic society, citizens of WHSs are not citizens of any democratic order. They do not, for example, enjoy democratic global citizenship which may help rectify their lack of democratic rights in their own countries. Therefore, unlike members of nonliberal associations, citizens of WHSs do not have the opportunity to democratically influence external (i.e., global) policies which may help reform and democratize the institutions of their own societies.

The fact that WHSs are undemocratic seriously undermines Rawls's proposed two-stage original position. Recall that in the second stage, in the global original position where the principles of global justice are to be fleshed out, it is representatives of *societies* and not of *individuals* who are the parties to the hypothetical deliberation. But if the representatives of WHSs are not democratically elected by their own peoples, it is very unlikely that they can meet Rawls's own stipulation that "the peoples

25. As a matter of fact, Rawls would dissociate himself from the above objection because it treats toleration of WHSs to be a matter of strategy or a *modus vivendi*. But this is not Rawls's understanding of toleration. Remember that for Rawls, tolerating WHSs is required as a matter of liberal justice and not because of the lack of means of enforcing liberal views globally. In his view, liberal states ought to tolerate WHSs regardless of their capacities for acting or the fact of international conditions. Rawls is not simply claiming that we are unable to act on our judgments against WHSs and therefore we need to accommodate them; his point is that these judgments would be illegitimate in the first place.

26. Rawls takes this to be one of the reasons why nonliberal comprehensive views are permissible within a liberal-democratic state: private associations are permitted "to offer different terms to its members . . . depending on the worth of their potential contribution to society as a whole." This is "because in their case the prospective or continuing members are already guaranteed the status of free and equal citizens, and the institutions of background justice in society assure that other alternatives are open to them" (Rawls, *Political Liberalism*, p. 42).

they represent are represented reasonably” (p. 54). Accordingly, the two-stage procedure cannot merely be a methodological preference with possibly no consequential differences, as Rawls seems to suggest at one point.²⁷ On the contrary, whether we opt for a two-stage procedure or a single global procedure (which will provide a “device of representation” for all individuals of the world, as opposed to societies) has obvious implications for the kinds of global principles we will arrive at. It is clear, for example, that individuals reasonably represented behind the veil of ignorance will reject global principles which condone the kinds of institutional arrangements associated with WHSs. After all, individuals (unlike state delegates) know that they could find themselves as lowly placed members of a hierarchical society when the veil is lifted; so, why would they accept global principles which would sanction their possible subordinate status in their own countries?

Indeed, the two-stage procedure is especially objectionable if we remember that WHSs are not expected to envisage a domestic original position for determining their domestic principles of justice. Consequently, not only is there no guarantee of the fairness of these domestic principles, but by allowing only delegates of these societies (who tend to be the ones benefiting from their domestic arrangements anyway) to be represented at the second-stage deliberation, these delegates are able to settle on global principles which accept their domestic arrangements as beyond rebuke.

Now, Rawls asserts that it is not implausible for a people organized hierarchically in their own country to endorse global principles which treat all well-ordered societies with equal concern and toleration: “A people sincerely affirming a nonliberal conception of justice may still think their society should be treated equally in a just law of peoples, even though its members accept basic inequalities among themselves. Though a society lacks basic equality, it is not unreasonable for that society to insist on equality in making claims other societies” (p. 65). But this depends entirely on *who* speaks for the people. This point is especially crucial because we cannot expect all citizens of a WHS to share a common conception of the public good. Even if we grant the assumption that each state represents a national or cultural entity (i.e., a people), we can still expect there to be internal disagreement over existing political arrangements and even over interpretations of cultural and traditional practices. Surely, it is not unrealistic to believe that members of castes or classes at the lower rungs of a hierarchical society would oppose the

27. As he writes, “I think there is no clear initial answer to this question [whether to have a two-stage or one-stage original position]. We should try various alternatives and weigh their pluses and minuses. Since in working out justice as fairness I begin with domestic society, I shall continue from there as if what has been done so far is more or less sound” (p. 50).

dominant values and traditions and the established institutional practices of their society were they empowered to do so. Given that Rawls allows nondemocratically appointed delegates to speak for citizens of WHSs, we must be very suspicious of the kinds of global principles these delegates will endorse, especially if these principles call for equal toleration between states at the expense of equality between citizens within states.

At this point, some comments concerning Rawls's second condition for a WHS, that it "meet[s] the essentials of legitimacy in the eyes of its own people" (p. 79), are in order. Now, Rawls does not mean by this that there can be no dissent at all in a WHS; in fact, he explicitly allows for the "possibility of dissent" here. He says, however, that the opportunity for expressing any such dissent is "not, to be sure, in a way allowed by democratic institutions, but appropriately in view of the religious and philosophical values of the society in question" (p. 62).

The crucial question here, then, is whether there can be disagreements in a WHS regarding the (restricted) procedures by which differences can be voiced. Rawls is not explicit on this, but it seems to me that he must allow for disagreements at this basic level for the following reasons. First, given his own "fact of oppression" (i.e., the fact "that only the oppressive use of state power can maintain a continuing common affirmation of one comprehensive religious, philosophical, or moral doctrine"),²⁸ Rawls must concede that unless a regime organized around a common good conception of justice is successfully tyrannical (thus not a WHS but an outlaw regime), there will prevail certain fundamental disagreements over its basic institutional arrangements or structure, including over how dissent can be voiced.²⁹ Second, it is quite implausible that members of, say, a caste society objecting to their caste status and the restrictions that follow it will accept, nonetheless, the caste-bound procedures by which their objections may be raised. Opposition to the one entails opposition to the other. As such, in accepting the possibility of dissent in a WHS, Rawls must also accept that there will also be disagreements over how dissent can be expressed.

If there must be fundamental disagreements among citizens in a WHS, then the legitimacy condition, that a WHS "meet[s] the essentials of legitimacy in the eyes of its own people," cannot be understood literally to mean that all citizens of a WHS actually accept its basic structure as just. "People" here does not refer to individual persons of a society but refers, more precisely, to an embodiment of a collective way of life or to a nation. In other words, a political society meets the essentials of legitimacy for Rawls when its basic structure is organized in accordance with its own history, conventions, and traditions. This "commu-

28. Rawls, "Overlapping Consensus," p. 246.

29. I owe this observation to an editor of *Ethics*.

nitarian" reading of the legitimacy condition fits neatly with Rawls's elaboration of this condition: a WHS is a society organized around a comprehensive view, it has a common good conception of justice, and its basic institutions are structured "appropriately in view of [its] religious and philosophical values" (pp. 61–62, 64–65, 69–70).³⁰ But as mentioned, the fact that a society is structured according to its own history, culture, and tradition does not rule out dissension over its basic institutional arrangements.³¹

To sum up the points made in this section, the main flaw in Rawls's global thesis is his belief that the global overlapping consensus between different political societies is morally equivalent to a domestic overlapping consensus between different comprehensive views.³² This is a seriously flawed belief because, as pointed out, comprehensive views are unlike political societies in two important ways: the former does not insist on political diversity and, moreover, it operates within a larger liberal-democratic framework. The global overlapping consensus Rawls presents in "The Law of Peoples" is more a political compromise worked out between liberal and nonliberal state delegates than a consensus around genuinely liberal values.

THE PROBLEM OF TOLERATION IN POLITICAL LIBERALISM

The idea of tolerating nonliberal regimes is therefore objectionable. Is this a problem of application (that is, a problem arising from a mistaken application of basically sound ideas to the international case, in which case what is to be done is not to reject the teachings of political liberalism but to reapply them correctly)? Or does this in fact highlight a fundamental flaw with political liberalism itself, in which case what we are required to do is to jettison the theory and seek out alternatives?

I argue that the toleration problem in the law of peoples is not a problem of application but an accentuation of a problem inherent in political liberalism itself. The idea of toleration is, of course, shared by all liberals. It is a central liberal belief that the state ought not to discriminate between individuals' genuinely private conceptions of the good life. But individuals are not the only subject of liberal toleration. Most liberals today also believe that the state ought to tolerate different group-based ways of life (for example, of religious or cultural communities), not be-

30. Teson interprets this legitimacy condition in a similar way: "On [Rawls's] view, we look to tradition and history; they, and not the government or the majority, establish the limits of freedom" (Teson, p. 88). This "communitarian" understanding of WHSs mirrors Michael Walzer's account of the state as a "historic community" where citizens "express their inherited culture through political forms worked out among themselves." Walzer, "The Moral Standing of States," *Philosophy and Public Affairs* 9 (1980): 209–29, p. 211.

31. The discussion in the above three paragraphs has benefited from different helpful comments by Frank Cunningham and the reviewers and editors of *Ethics*.

32. Hoffmann, p. 54.

cause these ways matter in themselves but because of their moral significance to members of these groups.³³

But what is the limit of this group-based toleration? For many liberals, groups whose practices and traditions are antithetical to the liberal aspirations of their own members are not to be tolerated. So, a group which does not permit its members the right and freedom to reevaluate and revise the internal practices and traditions of the group falls outside the bounds of liberal toleration.³⁴ But, as we have seen, political liberals want to extend group toleration to groups which are internally nonliberal. This is important, Rawls claims, because liberals should not expect all individuals to have liberal aspirations and therefore we ought not to challenge reasonable ways of life which are not liberal in character. But this extension of toleration to nonliberal views is problematic once we recognize that within any association there are always internal minorities or dissenters. It is one thing *not* to *expect* individuals to be liberals (in their private lives), it is quite another *not* to *support* whatever liberal aspirations they may have against oppressive group traditions. Surely as a liberal, Rawls cannot remain indifferent if the aspirations of (some) members of nonliberal reasonable groups to reevaluate and revise their conceptions of the good, and their corresponding group practices and institutions, are thwarted by their own groups. But because of his reluctance to criticize the internal practices of reasonable groups, he seems to have reneged on his liberal commitment to these individual dissenters. There is, therefore, a serious tension within political liberalism between its toleration of nonliberal reasonable groups and its commitment to the individual liberty of (dissenting) members of these groups.

Now, one could argue that in the case of domestic political liberalism, this tension is fortuitously alleviated by two important features of a liberal-democratic society, features which I shall show to be lacking in the international context. The state enforced right of exit and the “liberalizing effects” of liberal public policies on nonliberal ways of life, it could be argued, allow the political liberal to have it both ways, that is, to tolerate nonliberal groups without forgoing her commitment to individual liberty. Let me quickly explain how these two mitigating features operate in domestic society.

The first of these features is straightforward: private associations must permit their members the right to leave and join other associations

33. This group-based toleration is justified on the grounds that an individual’s well-being is intimately tied to the “prosperity” of her community. As Kymlicka puts it, one’s cultural membership provides “the context of choice” which gives meaning to one’s conception of the good. Thus, liberals have good individualistic reasons for respecting (and even supporting when necessary) group-based diverse ways of life (Kymlicka, *Liberalism, Community and Culture*, chap. 8). See also Raz, chap. 5, esp. pp. 113–17.

34. See Kymlicka, *Multicultural Citizenship*, chap. 8; and Raz, chap. 7, esp. pp. 169–74.

should they so desire. To deny members this basic right is unreasonable in the Rawlsian sense; denying members the right to leave and join different associations would be contrary to the political idea of citizens as free and equal. As Rawls says, "In the case of ecclesiastical power, since apostasy and heresy are not legal offenses, those who are no longer able to recognize a church's authority may cease being members without running afoul of state power."³⁵ So, while the state need not insist that reasonable private doctrines organize themselves internally according to liberal ideals, it must secure for members the right to leave their associations should they so desire. This is one way the political liberal hopes to escape the tension between its dual commitments to group toleration and individual liberty.

The second feature is a little more complicated and invokes the idea of liberal neutrality. Political liberalism, or liberalism for that matter, does not pretend to be neutral in its effect as Rawls points out. What liberalism is neutral about is in the way policies are justified; they are not to be justified on grounds that some (reasonable) ways of life are intrinsically superior to others and hence more worthy of state support, or that some are intrinsically inferior and hence ought to be done away with. But this does not mean that neutrally justified policies cannot have repercussions on the private arrangements of reasonable groups. Neutrality of consequence or effect is impossible to attain as Rawls himself notes.³⁶ To use one common example, the liberal emphasis on civic education, which (for the political liberal) is justified solely on neutral political grounds (namely, the cultivation of traits and character necessary for equal and free citizenship), can have "liberalizing" consequences beyond the political sphere. As Rawls writes, "It may be objected that requiring children to understand the political conception in these ways is in effect, though not in intention, to educate them to a comprehensive liberal conception. . . . It must be granted that this may indeed happen in the case of some . . . [but the] unavoidable consequences of reasonable requirements for children's education may have to be accepted, often with regret."³⁷ This indirect "liberalization" of nonliberal private practices does not entail a rejection of their affiliated comprehensive views. For the political liberal, this liberalizing effect is an unintended side effect of a neutrally justified public policy. It is just a "regrettable" fact that public policies impartial about the internal arrangements of reasonable groups can have nonetheless nonneutral (liberalizing) effects on these arrangements. However, the fact that neutrally justified policies are not neutral in consequences allows the political liberal state to indirectly reform the internal arrangements of reasonable nonliberal

35. Rawls, *Political Liberalism*, p. 221.

36. *Ibid.*, pp. 192–94.

37. *Ibid.*, pp. 199–200.

groups, thereby protecting and promoting individual liberty (the liberal aspiration), without explicitly rejecting these group arrangements as inadmissible (the political liberal aspiration).

Thus, we can see how Rawls, at the domestic level, can hope to maintain his toleration for nonliberal reasonable groups without forfeiting his liberal commitment to liberal dissenters within these groups. The trickle-down effects of liberal public policies will eventually win the day for them; but in the meantime, should these dissenters find their internal oppression unbearable, they have the state-protected right to leave their associations.

Now, some commentators have asked whether the right of exit and the liberalizing tendencies of liberal public policies can resolve this tension in political liberalism entirely. They point out that a formal right of exit is of little solace for most people, and that the liberalizing effects of liberal public policies are limited in their reach.³⁸ I agree with these criticisms, but for now I only want to show that as far as the international setting goes, these two alleviating features are conspicuously absent.

First, is there a meaningful and substantial right of exit in the international context? The social unit that this right is demanded against in this case would be one's country. Is there such a right in international society? It is true that Rawls insists that well-ordered societies must recognize the right of emigration as a basic human right (p. 68). But what

38. On the small consolation of the right of exit in domestic cases, see Leslie Green, "Internal Minorities and Their Rights," in *Group Rights*, ed. Judith Baker (Toronto: University of Toronto Press, 1994), pp. 101–17. He argues that "the mere existence of exit does not suffice to make it a reasonable option. It is risky, wrenching, and disorienting to have to tear oneself from one's religion or culture" (Green, p. 111). On the limits of the liberalizing effects of liberal public policies on private arrangements (of the family in particular), see John Exdell, "Feminism, Fundamentalism, and Liberal Legitimacy," *Canadian Journal of Philosophy* 24 (1994): 441–64, 461; and Susan Moller Okin, "Political Liberalism, Justice, and Gender," *Ethics* 105 (1994): 23–43, 32. Indeed, it seems that Rawls must admit that neutrally justified public policies cannot have liberalizing effects in all areas of society. For if this were not the case, why would he expect political liberalism to be better able than comprehensive liberalism to secure the basis for legitimate stability? That is, if the consequences of these two kinds of liberalism on the internal practices of nonliberal reasonable groups are ultimately the same, why would either of these liberal theories be any more acceptable than the other to individuals holding diverse views? The only difference between political and comprehensive liberalism in this case would be in the way each justifies liberal public policies: comprehensive liberals would say that the objective of, say, liberal education is "to foster the values of autonomy and individuality as ideals to govern much if not all of life," whereas the political liberal, to repeat, justifies this policy solely on political (i.e., neutral) grounds (Rawls, *Political Liberalism*, p. 199). But adherents of nonliberal comprehensive views worry about the actual effects of liberal policies on their ways of life and not just about how these policies are justified to them. So, in order for political liberalism to be a plausible alternative to comprehensive liberalism in the first place, Rawls must concede that the liberalizing tendencies of neutrally justified policies are limited in reach (see Exdell, pp. 453–55). But if this is so, then political liberalism does not avoid entirely the tension between toleration and individual liberty even in the domestic context.

is the point of this demand if it is not reinforced by the demand that states also be obliged to accept immigrants?³⁹ Most liberals, and this includes Rawls, are reluctant to insist on the right to *immigrate to* even though they may support the right to *emigrate from*.⁴⁰ Indeed, there is no mention in "The Law of Peoples" of any duty on the part of a people to accept immigrants. A right to emigrate from a country without a corresponding right to immigrate to a country is a facile right. In the domestic setting, when one leaves one's private association one is able to join another, even if it is the default community, as when one leaves the church and joins the secular community. In international society, on the other hand, one cannot leave one's country unless also adopted by another country.

Moreover, apart from the issue of whether the right to emigrate is meaningful without the corresponding right to immigrate, there is also the question of individual capacity: is it reasonable to expect an individual to leave one's country of birth if the political institutions of that country are unbearably oppressive? Or, to put it differently, is giving one the right to leave one's country a real choice? Oddly enough, on this matter, Rawls himself notes that "normally leaving one's country is a grave step: it involves leaving the society and culture in which we have been raised, the society and culture whose language we use in speech and thought to express and understand ourselves, our aims, our goals, our values."⁴¹ Whether it is true that it is harder to leave one's country than one's religion as Rawls appears to be implying is not the issue here. What is relevant is that given Rawls's acknowledgment that leaving one's country is more of a wrenching experience than renouncing one's comprehensive doctrine, he must admit that the right of exit is especially weak and empty in the international context, that the right of individuals to leave their country if they find their continuing membership in it too unbearable is very small comfort (even if this right were supplemented by the right to enter another country). On Rawls's own terms, the right of exit does not mitigate the tension between tolerating nonliberal groups and protecting individual liberty in the global case.⁴²

Is there any global liberalizing effect on nonliberal regimes? Does Rawls's law of peoples include this provision? It is not clear if it does, at

39. While it could be argued that liberal states have the duty to accept political refugees, it would seem that Rawls cannot classify political dissenters of WHSs as prospective political refugees; to do so would imply critical judgments of the political institutions of the WHSs in question. See Teson, p. 90.

40. Kymlicka, *Multicultural Citizenship*, pp. 124–26.

41. Rawls, *Political Liberalism*, p. 222.

42. Concerning individual capacity, besides the psychological costs discussed above, there are also economic ones. Ironically, individuals who may have the strongest reason to leave their country are often also the ones most badly exploited and hence least able to muster the financial resources necessary for travel, documentation, and other immigration related expenses. I owe this point to David Dyzenhaus.

least in any substantive sense. What kinds of global policies would have liberalizing effects on the domestic institutions of WHSs? Obviously, the one policy Rawls refers to in his domestic theory, that of a liberal public education, is not available in the international scene—there is no global educational policy, no global public schools all the children of the world are expected to attend. Likewise, some liberals argue that public policies aimed at improving gender equality can have positive effects in the homes and private associations (e.g., equal career opportunity in the public sphere can result in greater equality in the private sphere, some liberals argue); yet there is clearly no global equivalent here.⁴³ Moreover, because Rawls insists that the internal arrangements of WHSs are off-limits to political criticism and economic sanctions (pp. 80–81), liberal states cannot insist on any link between liberalization and trade or developmental aid, which is one important liberalizing tool available to liberal states against nonliberal states.

The one possible liberalizing tendency I can think of in the global setting would be the effects of cultural exchanges. Films, books, intellectual exchanges, and art play an important role in educating and raising public awareness and in informing individuals of the world of different possibilities and options. But Rawls would have no qualms about permitting the governments of WHSs the right to censor ideas contradictory to their “common” good conceptions of justice. As we may recall, freedom of expression or speech is not a necessary condition for a WHS; to demand this right as universal would make the law of peoples too “sectarian,” according to Rawls.⁴⁴ But more relevantly, the issue here is not whether individuals themselves can come to appreciate and acquire liberal values, but whether we should support those who already hold liberal aspirations. More so than with public policies in the domestic case, it is unlikely that global practices and policies can eventually turn the tide against oppressive traditions in favor of these dissenters within a reasonable time span, especially if these are state-sanctioned oppressions. Thus, Rawls’s reluctance to take a stance against WHSs in the clear absence of any significant global liberalizing effect and a *de facto* right of exit belies his liberal commitment to individual liberty.

CONCLUSION

Political liberalism faces a tension between tolerating reasonable nonliberal comprehensive views and supporting individual liberal aspirations. This tension is most vividly exposed and left entirely unremedied in the

43. Of course, other liberals object to this line of argument; see Exdell; and Okin. The point here is that this is an argument the political liberal can at least attempt in the domestic setting.

44. See his list on p. 62. Just to recall, Rawls says that what is demandable universally are the rights to security and subsistence, to liberty and property, to exit, and for formal equality before the law.

globalized version of the theory because of the special conditions of the international realm. In extending his domestically conceived theory to cover international relations, Rawls, inadvertently and very ironically, has rendered more visible this fundamental problem with political liberalism. The problem of toleration in “The Law of Peoples” is not so much a problem of application as an accentuation of an inherent theoretical problem. Political liberalism’s emphasis on toleration conflicts with its other liberal commitments, which in the domestic context is fortuitously (and only to a degree I stress again) alleviated. But a sound political theory cannot wait to be saved from internal tensions by fortuitous and contingent social circumstances—there is no guarantee that these circumstances will always be obtained, as they have not at the global level.⁴⁵

45. I call these circumstances (1) contingent because, as I pointed out, the significance of a formal right of exit is contingent on other conditions being in place, there being somewhere else to go to for one, and (2) fortuitous because (for the political liberal) the liberalizing effects of liberal policies on nonliberal reasonable associations are unintended and fortuitous side effects.